



United States  
Department of  
Agriculture

Food and  
Nutrition  
Service

Mountain  
Plains  
Region

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Reply to

Attn of: CACFP-790  
SP-07-04  
SFSP-535

October 30, 2006

Subject: MPRO Special Nutrition Programs Guidance for FNS Civil Rights  
Instruction 113-1, Revised November 8, 2005

To: STATE AGENCY DIRECTORS - Colorado ED, Colorado DPHE, Iowa, Kansas,  
(Special Nutrition Programs) Missouri ED, Missouri DHSS, Montana OPI,  
Montana DPHE, Nebraska ED, North Dakota,  
South Dakota, Utah and Wyoming ED

This memorandum transmits three Attachments. The attachments are Mountain Plains Regional Office Special Nutrition Programs Guidance for FNS Civil Rights Instruction 113-1, which was revised November 8, 2005. The three attachments address civil rights guidance in the Child and Adult Care Food Program (CACFP), Schools Programs (SP) and Summer Food Service Program (SFSP). At the end of each Attachment is a Questions and Answers section that addresses all Programs. We hope the Guidance is helpful to State Agencies in administering the Child Nutrition Programs.

If there are any questions concerning this memorandum, please contact our office at (303) 844-0354.

DARLENE SANCHEZ  
Regional Director  
Special Nutrition Programs

Attachments

# **FNS Instruction 113-1 School Programs Civil Rights Check List Revised 11/08/2005**

## **Limited English Proficiency (NEW) VII**

Title VI and its regulations require the **SA** and **LEA** to take reasonable steps to ensure that persons with Limited English Proficiency (LEP) have meaningful access to the information and the services that are provided.

Reasonable steps would be contingent on the following factors listed below:

- A) The Number of Proportion of LEP Persons Served or Encountered in the Eligible Population. **(Must see FNS Instruction for full statement)**
- B) The Frequency With Which LEP Individuals Come in Contact With the Program. **(Must see FNS Instruction for full statement)**
- C) The Nature and Importance of the Program, Activity, or Service Provided by the Program. **(Must see FNS Instruction for full statement)**
- D) The Resources Available to the Recipient and Costs. **(Must see FNS Instruction for full statement)**

## **Equal Opportunity for Religious Organizations VIII**

- A) Faith-based and community-based organizations (FBOs & CBOs) have a history of providing low income people with a wide range of social services and are longstanding partners in the Department of Agriculture's efforts to provide nutrition assistance to those in need.
- B) **Federal nutrition assistance programs operate primarily through partnerships with SAs, which in turn partner with local organizations. Generally, FBOs/CBOs participate in these programs through agreements with SAs, or through other LEAs that have agreements with SAs, rather than directly with the Federal government.**

FNS Instruction 113-1, VII Pgs 9-10

FNS Instruction 113-1, VII (A) Pg 10

FNS Instruction 113-1, VII (B) Pg 11

FNS Instruction 113-1, VII (C) Pg 11

FNS Instruction 113-1, VII (D) Pgs 11-12

FNS Instruction 113-1, VIII (A) Pg 12

FNS Instruction 113-1, VIII (B) Pg 12

C) Nutrition assistance programs encourages the participation of FBOs/CBOs on an equal footing with other kinds of local cooperating organizations, and avoids barriers that would make their participation difficult.

FNS Instruction 113-1, VIII (C) Pg 12

D) The Department of Agriculture promulgated a regulation on July 9, 2004, to ensure the elimination of unwarranted barriers to the participation of FBOs in USDA programs to ensure that no organization will be discriminated against in a USDA-funded program on the basis of religion and to ensure that USDA-funded programs are available to all regardless of religion. The regulation , entitled “Equal Opportunity for Religious Organizations,” is codified at 7 CFR Part 16.

FNS Instruction 113-1, VIII (D) Pg 12

E) This regulation ensures a level playing field for the participation of FBOs and CBOs in USDA programs by:

FNS Instruction 113-1, VIII (E) Pgs 12-13

- Prohibiting discrimination for or against an organization on the basis of religion, religious belief, or religious character in the administration or distribution of Federal funds,
- Allowing a religious organization that participates in USDA programs to retains its independence and continue to carry out its mission, provided that direct USDA funds do not support any inherently religious activities such as worship, religious instruction, or proselytization,
- Clarifying that FBO can use space in their facilities to provide USDA-funded services without removing religious art, icons, scriptures, or other religious symbols, and
- Ensuring that no organization that receives direct financial assistance from USDA can discriminate against a program beneficiary, or prospective beneficiary, on the basis of religion or religious belief.

## **Public Notification IX**

All FNS assistance programs must include a public notification system. The purpose of this system is to inform applicants, participants, and potentially eligible persons of the program availability, program rights and responsibilities, the policy of nondiscrimination, and the procedure for filing a complaint.

A) The public notification system must include the three basic elements:

- 1) **Program Availability**-Each **SA** and **LEA** that distributes program benefits and services must take specific action to inform applicants, participants and potentially eligible persons of their program rights and responsibilities.
- 2) **Complaint Information**-Applicants and participants must be advised at the service point of their right to file a complaint, how to file a complaint and the complaint procedures.
- 3) **Nondiscrimination Statement**-All information materials and sources, including Web sites, used by **SAs** and **LEAs** to inform the public about FNS programs must contain a nondiscrimination statement. It is not required that the nondiscrimination statement be included on every page of the program information Web site. At the minimum, the nondiscrimination statement, or a link to it, must be included on the home page of the program information.
- 4d) The **SA** and **LEA** must post the following nondiscrimination statement (or current applicable revision) and include it, in full, on all materials regarding such programs that are produced for public information, public education, or public distribution. The authorized statements below or current applicable revisions cannot be modified. If a SA authorized additional language, it must be included in a separate statement.

- 1) The authorized statement reads as follows:

FNS Instruction 113-1, IX Pg 13

FNS Instruction 113-1, IX (A) (1), Pg 13

FNS Instruction 113-1, IX (A) (2), Pg 13

FNS Instruction 113-1, IX (A) (3), Pg 13

FNS Instruction 113-1, IX (A) (4) (d) Pg 14

FNS Instruction 113-1, IX (A) (4) (d) (1) Pg 15

“In accordance with Federal law and U.S. Department of Agriculture policy, this institution is prohibited from discrimination on the basis of race, color, national origin, sex, age, or disability.”

*“To file a complaint of discrimination, write USDA, Director, Office of Civil Rights, 1400 Independence Avenue, SW, Washington, D.C. 20250-9410 or call (800) 795-3272 or (202) 720-6382 (TTY). USDA is an equal opportunity provider and employer.”*

- 2) If the material is too small to permit the full statement to be included, the material will at a minimum include the statement, in print size no smaller than the text that “This institution is an equal opportunity provider.”
- 3) A nondiscrimination statement is not required to be imprinted on items, such as cups, buttons, magnets, and pens that identify the program, when the size or configuration makes it impractical. In addition, recognizing that Internet, radio, and television public service announcement are generally short in duration, the nondiscrimination statement does not have to be read in its entirety. Rather, a statement such as “The [program name] is an equal opportunity provider” is sufficient to meet the nondiscrimination requirement.

B) The **SA** and **LEA** serving the public must take the following actions below to inform the general public, potentially eligible populations, community leaders, grassroots organizations, and referral sources about FNS programs and applicable CR requirements.

- 1) Prominently display the USDA nondiscrimination poster and “Justice for All,” or an FNS approved substitute, except in family day care homes. If a SA elects to produce its own posters, either due to unavailability from USDA/FNS or SA preference, the reproduction must be approximately the same size as the applicable “And Justice for All” poster (11” width and 17” height).

FNS Instruction 113-1, IX (A) (4) (d) (2) Pg 15

FNS Instruction 113-1, IX (A) (4) (d) (3) Pg 15

FNS Instruction 113-1, IX (B) Pg 15

FNS Instruction 113-1, IX (B) (1) Pg 15

- 2) Inform applicants, potentially eligible persons, participants and grassroots organization of program or changes in the program. This would include information pertaining to eligibility, benefits and services, the location of local facilities or service delivery points and hours of service. This information can be communicated by methods such as, but not limited to, Internet, newspaper articles, radio and television announcements letters, leaflets, brochures, computer-based applications, and bulletins.
- 3) Provide appropriate information, including Web-based information in alternative formats for persons with disabilities. **(NEW)**
- 4) Include the required nondiscrimination statement on all appropriate FNS and agency publications, Web sites, posters, and informational materials provided to the public. **(NEW)**
- 5) Convey the message of equal opportunity in all photographic and other graphics that are used to provide program or program related information. **(NEW)**

**Assurances X**

- A) To qualify for Federal financial assistance, an application must be accompanied by a written assurance that the entity to receive financial assistance will be operated in compliance with all nondiscrimination laws, regulations, instructions, policies, and guidelines. The Regional Offices will obtain written assurance of nondiscrimination compliance from each SA and will ensure that the **SAs** are obtaining written assurance from **LEAs** that receive Federal financial assistance. Retailer and vendor agreements, though not an indicator of being a recipient of Federal financial assistance, must also include an assurance of nondiscrimination.
- B) Where applicable, a statement of assurance must be incorporated into the Retailer/Vendor/Federal/State/Local agency agreement. With the exception of retailers and vendors, the agreement must state that the entity involved will compile data, maintain records, and submit reports as required to permit effective enforcement of nondiscrimination laws, regulations, policies, instructions, and guidelines. This agreement permits authorized USDA personnel to review such records, books, and accounts

FNS Instruction 113-1, IX (B) (2) Pg 15

FNS Instruction 113-1, IX (B) (3) Pg 15

FNS Instruction 113-1, IX (B) (4) Pg 15

FNS Instruction 113-1, IX (B) (5) Pg 15

FNS Instruction 113-1, X (A) Pg 16

FNS Instruction 113-1, X (B) Pg 16

as needed during hours of program operation to ascertain compliance. The FNS Regional OCR is responsible for reviewing, approving and monitoring FNS/SA agreements. **SAs** are responsible for monitoring compliance with the agreements that cover their programs. **SAs** are also responsible for reviewing, approving, and monitoring **LEA** agreements.

### **Civil Rights Training XI**

**The SA must ensure that SA staff is provided with CR training on a regular basis. The SA must ensure they provide CR training to LEAs. LEAs must ensure they provide training to sub-recipients, including “frontline” staff. Frontline staff and supervisors who deal directly with program applicants and participants are required to have annual training.**

Civil Rights training must include specific subject matters listed below, but not limited to:

- A) Collection and use of data;
- B) Effective public notification systems; Instruction
- C) Complaint procedures;
- D) Compliance review techniques;
- E) Resolution of noncompliance;
- F) Requirements for reasonable accommodation of persons with disabilities;
- G) Requirements for language assistance;
- H) Conflict resolution, and
- I) Customer service.

### **Data Collection & Reporting XII**

The **SA** and **LEA** must provide and maintain a system to collect racial and ethnic data according to FNS policy. This information will be used to determine how effective FNS programs are reaching potential eligible persons and beneficiaries, and identify areas that need additional outreach as well as assisting in the selection of locations for compliance reviews and completing reports as required.

FNS 113-1, XI (A-I) Pgs 16-17

FNS Instruction 113-1, XII Pgs 17-19

A) Collecting and Reporting Participation Data

- 1) **SAs** and **LEAs** are required to obtain data by race and ethnic category on potentially eligible populations, applicants, and participants in their program service area.
  
- 2) Systems for collecting actual racial and ethnic data must be established and maintained for all programs. **(Must see FNS Instruction for full statement)**
  
- 3) Such systems must ensure that data collected about potentially eligible persons, program applicants, and participants are:
  - a) Collected and retained by the service delivery point for each program as specified in the program regulations, instructions, policies, and guidelines.
  - b) Based on documented records and maintained for 3 years.
  - c) Maintained under safeguards that restrict access of records only to authorized personnel, and,
  - d) Submitted, as requested, to the FNS Regional or Headquarters Offices.

- 4) Race and Ethnic Categories, Two-Question Format: To provide flexibility and ensure data quality, separate categories shall be used when collecting and reporting race and ethnicity. Ethnicity shall be collected first. Respondents shall be offered the option of selecting one or more racial designations. Recommended instructions accompanying the multiple response for race should specify “Mark one or more” or “Select one or more.” The minimum designations for collection are:

FNS Instruction 113-1, XII (A) Pg 17

FNS Instruction 113-1, XII (A) (1) Pg 17

FNS Instruction 113-1, XII (A) (2) Pg 17

FNS Instruction 113-1, XII (A) (3) (a-d) Pg 18

FNS Instruction, XII (A) (4) Pgs 18-19

a) Ethnicity:

- 1) Hispanic or Latino. A person of Cuban, Mexican, Puerto Rican, South or Central American, or other Spanish culture or origin, regardless of race. The term “Spanish origin” can be used in addition to “Hispanic or Latino.”
- 2) Not Hispanic or Latino

b) Race:

- 1) American Indian or Alaskan Native. A person having origins in any of the original peoples of North and South America (including Central America), and who maintains tribal affiliation or community Attachment.
- 2) Asian. A person having origins in any of the original peoples of the Far East, Southeast Asia, or the Indian subcontinent, including, for example, Cambodia, China, India, Japan, Korea, Malaysia, Pakistan, the Philippine Islands, Thailand, and Vietnam.
- 3) Black or African American. A person having origins in any of the black racial groups of Africa. Terms such as “Haitian” or “Negro” can be used in addition to ‘Black or African American.’
- 4) Native Hawaiian or Other Pacific Islander. A person having origins in any of the original peoples of Hawaii, Guam, Samoa, or other Pacific Islands.
- 4) White. A person having origins in any of the original peoples of Europe, the Middle East, or North Africa.
- 5) A SA may have categories for race in addition to the ones required by FNS; however, the additional categories must be mapped and extracted to the FNS-required categories. Provision shall be made to report the number of respondents in each racial category who are Hispanic or Latino.

FNS Instruction, XII (A) (4) (a) (1-2) Pg 18

FNS Instruction XII (A) (4) (b) (1-6) Pgs 18-19

6) Program applicants/participants may not be required to furnish information on their race or ethnicity unless this information is necessary to determine the applicant's eligibility to receive or to determine the amount of benefit to which an eligible participant may be entitled. Self-identification by the applicant/participant is the preferred method of obtaining characteristic data. Where an applicant does not provide this information, the data collector shall through visual observation secure and record the information where possible. However, the data collector may not "second guess," or in any other way change or challenge a self-declaration made by the applicant as to his or her race or ethnic background unless such declarations are patently false.

B) **Determining Eligible Population.** **SAs** must identify the population of potentially eligible persons to participate in an FNS program by racial and ethnic data category for each service delivery area or county. The information may be derived from standard statistical sources such as reports issued by the U.S. Census Bureau or Bureau of Vital Statistics. **SAs** may also use data or information collected by other Federal and SAs (e.g., Department of Education (DOEd).)

### **Compliance Reviews XIII**

The CR compliance review is a component of the FNS management evaluation review process that is conducted on an ongoing basis for all FNS programs. The CR review must examine the activities of SA and LEA to determine that FNS programs are being administered in compliance with CR requirements. FNS Regions should refer to the program-specific management evaluation guidance for further information on the management evaluation review process.

A) The FNS Regions are responsible for the review of SAs and Regional Office Administered Programs (ROAP) local agencies. The **SAs** are responsible for the review of **LEAS**, except ROAP. **LEAs** are responsible for the review of their subrecipients.

FNS Instruction 113-1 XII (B) Pg 19

FNS Instruction 113-1, XIII Pgs 19-24

FNS Instruction 113-1, XIII (A) Pg 19

B) The office performing compliance reviews must advise the reviewed entity, in writing, of the review findings and recommendations. If the review is performed by a **SA**, any significant findings are to be reported to the FNS Regional OCR.

C) Preapproval/Preward Compliance Reviews. The FNS Region or **State CR official(s)** must determine that all **SA** and **LEA** applicants are in compliance with CR requirements prior to approval for Federal financial assistance. Such determinations must be based on a desk or onsite review of CR information provided by the program applicant. The preapproval/preaward review report must be maintained in the appropriate program files. In all cases, FNS shall require from the program applicant:

- 1) Each program applicant is to notify FNS immediately of any **lawsuits** that have been filed against the program applicant or recipient or a sub-recipient alleging discrimination on the basis of race, color, or national origin. Also, that each recipient notify FNS of any **complaints** filed against the recipient alleging such discrimination.
- 2) A statement by any program applicant describing any civil rights compliance reviews regarding the program applicant conducted during the 2-year period before the application; information concerning the agency or organization performing the review; and periodic statements by any recipient regarding such reviews.
- 3) A written assurance that program applicant will compile and maintain records by the FNS guidelines.
- 4) Onsite reviews must be conducted if insufficient information is provided in the application. However, if the review determines that the SA and LEA may not be in compliance, the application will be deferred until corrective administrative action is completed. The State must immediately notify the applicant in writing and provide an opportunity for the applicant to take corrective action within a specified timeframe. **Must see FNS Instruction for full statement.**

FNS Instruction 113-1, XIII (B) Pg 19

FNS Instruction 113-1, XIII (C) (1-5) Pg 20

- 5) The report of the preapproval/preaward compliance review must include specific facts upon which the written determination of compliance is made.

D) The FNS Regional OCR or **State CR** reviewer must secure information as necessary to make the determination of compliance. In any application for approval of specific projects or significant changes in applications for continuation or renewal of assistance, and at other times as appropriate, FNS shall require program applicants and recipients to provide relevant and current CR information. Examples of such data and information that are required, to the extent necessary and appropriate, for determining compliance with CR laws, regulations, and instructions, are as follows:

- 1) The manner in which services are or will be provided by the program in question, and related data necessary for determining whether any persons are or will be denied such services on the basis of prohibited discrimination.
- 2) The demographics of the population eligible to be served, as necessary to determine any barriers to access by any person on the basis of prohibited discrimination.
- 3) Data regarding covered employment, including use or planned use of bilingual public-contact employees serving beneficiaries of the program where necessary to permit effective participants by beneficiaries who do not speak English as their primary language and who have a limited ability to read, speak, write, or understand English.
- 4) The location of existing or proposed facilities connected with the program, and related information adequate for determining whether the location has or will have the effect of unnecessarily denying access to any persons on the basis of prohibited discrimination.

FNS Instruction 113-1, XIII (D) (1-6) Pgs 20-21

- 5) The present or proposed membership demographic statistics of any planning or advisory body that is an integral part of the program.
- 6) A civil rights impact analysis where relocation is involved. Where additional data, such as demographic maps, the racial composition of affected neighborhoods, or census data, are necessary or appropriate for understanding information required by this section, FNS shall specify, in its guidelines or in other directives, the need to submit such data. Such additional data should be required, however, only to the extent that they are readily available or can be compiled with reasonable effort.

E) Post-Award or Routine Compliance Reviews. The SA and LEA that is responsible for the administration of FNS programs must conduct annual routine compliance reviews and program-specific regulations, policies, instructions and guidelines. This is to evaluate if policies, instructions and instructions are in compliance with CR law, regulations, policies and guidance.

1) Coverage and Frequency

- b. SAs must review LEAs as required by current program regulations and CR requirements. LEAs must review their subrecipients as required by current program regulations and CR requirements.

2) Selection Criteria. The SA and LEA to be reviewed for CR compliance by the Food & Nutrition Service Regional Office may be selected based on an indication of possible concerns in the SA or LEA. Indicators of possible CR concerns may include, but are not limited to, the following:

- a) An unusual fluctuation in the participation of racial or ethnic groups in service area,
- b) The number of discrimination complaints filed against the agency,
- c) Information from grassroots organizations, advocacy groups, individuals, State Officials, or other interested parties, or
- d) Unresolved findings from previous CR reviews.

FNS Instruction 113-1, XIII (E) Pg 21

FNS Instruction 113-1, XIII (E) (1) (b) Pg 21

FNS Instruction 113-1, XIII (E) (2) (a-d) Pgs 21-22

3) Review Content

- b) When a review of a **LEA** is performed, by either the FNS Region or the **SA**, the following items should be determined:
- 1) Whether potentially eligible persons and households have an equal opportunity to participate in the program,
  - 2) Whether case records are coded by race or ethnic origin,
  - 3) Whether offices are displaying the USDA nondiscrimination poster in a conspicuous location,
  - 4) Whether the nondiscrimination statement is included on all printed materials such as applications, pamphlets, forms, or any other program materials distributed to the public and on Web sites; and whether graphic materials reflect inclusiveness based on race, color, national origin, age, sex, and disability,
  - 5) Whether program information is being made available to potentially eligible persons, program applicants, and participants. Whether the LEA is providing program information to organizations within the community that may assist the LEA in reaching potentially eligible populations,
  - 6) Whether actual applicant and participant racial and ethnic data are being collected and maintained on file for 3 years,
  - 7) Whether CR complaints are being handled in accordance with procedures outlined in this Instruction or other regulations, policies, and guidance, and
  - 8) Whether the LEA has conducted CR training for its staff.

FNS Instruction 113-1, XIII (E) (3) (b) (1-8)

F) Reports. The FNS Region, SA or LEA must submit a written report detailing the findings of the CR review to the State or LEA as appropriate. FNS Region reports must be forwarded to FNS Headquarters CRD upon completion. The SA and LEA reports must be maintained on file and must be made available during subsequent CR reviews.

FNS Instruction 113-1, XIII (F) Pg 23

G) Corrective Action. Findings that indicate probable noncompliance with CR requirements must be handled in accordance with the procedures for resolving noncompliance contained in this Instruction.

FNS Instruction 113-1, XIII (G) Pg 23

**Resolution of Noncompliance XIV**

FNS Instruction 113-1, XIV (A) (1-4) Pg 24

A) Noncompliance. A finding of noncompliance may be the result of a routine management evaluation review, a special review, or an investigation. Noncompliance is a factual finding that any CR requirement, as provided by law, regulation, policy, instruction, or guidelines, is not being adhered to by a SA or LEA.

The following below are general examples of prohibited discrimination:

- 1) Denying an individual or household the opportunity to apply for FNS program benefits or services on the basis of race, color, national origin, age, sex, or disability.
- 2) Providing FNS program services or benefits in a disparate manner on the basis of race, color, national origin, age, sex, or disability, unless the difference is necessary to comply with nondiscrimination requirements, such as disability accommodations.
- 3) Selecting members for planning and advisory bodies in such a way as to exclude persons from membership on the basis of race, color, national origin, age, sex, or disability.
- 4) Selecting FNS program sites or facilities in a manner that denies an individual access to FNS program benefits, assistance, or services on the basis of race, color, national origin, age, sex, or disability.

B) Achieving Voluntary Compliance. Once noncompliance is determined, immediate steps must be taken immediately to obtain voluntary compliance. The effective date of the finding of noncompliance is the date of the written notice of noncompliance to the **SA** or **LEA**. After a finding of noncompliance the following action must be taken:

1) **SA** must:

- a) Provide immediate written notice to the LEA indicating the areas of noncompliance and the action required to correct the situation.
- b) Negotiate with the LEA to achieve compliance.
- c) Submit to the Regional Administrator a Report of Findings of Noncompliance in letter format on all cases where corrective action has not been completed within 60 days of the finding. The attached document must include the following:
  - 1) Copies of compliance reviews,
  - 2) A brief statement of the allegations of noncompliance that can be factually supported,
  - 3) A statement of all actions taken to achieve voluntary compliance,
  - 4) List of available witnesses, their addresses, and official titles, with a brief statement of the matter about which they can testify,
  - 5) Relevant contracts, assurances, and agreements between the SA and LEA,
  - 6) List of names, titles, office mailing address, and office telephone numbers of parties involved, including the chief local agency or official and the State administrative official responsible for the program,
  - 7) A report of the specific amount of assistance provided during the last 3 fiscal years and the program authorities under which the assistance is extended,
  - 8) Letters from the SA advising the LEA of failure to comply,

FNS Instruction 113-1, XIV (B) Pg 25

FNS Instruction 113-1, XIV (B) (1) (a-c) (1-10) Pg 25

- 9) A statement of the defenses the LEA may be expected to raise, and
- 10) Recommendation for enforcement proceeding or for permission to pursue voluntary compliance efforts.

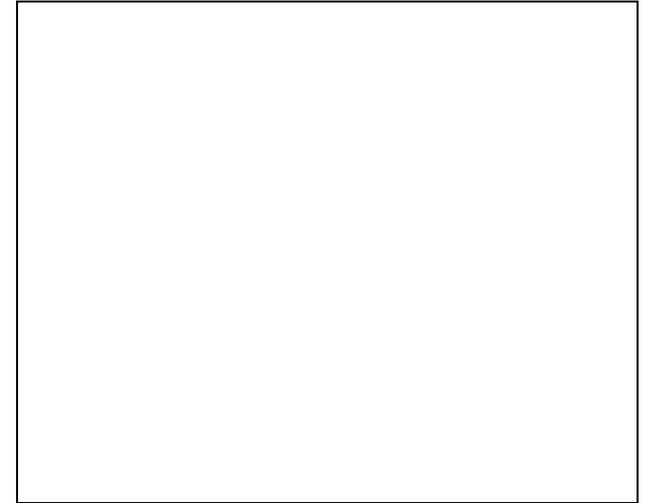
### **Complaints of Discrimination XV**

- A) All complaints of alleging discrimination on the basis of race, color, national origin, age, sex, disability, either written or verbal, must be processed within the time frames established by Departmental regulations and agreements.
- B) FNS Headquarters CRD and the FNS Regional OCRs have been delegated the authority to determine whether or not complaints will be reviewed and if so, the manner in which they are to be reviewed. Depending on where the complaint was initially filed, it must be forwarded to the appropriate OCR (FNS Headquarters, Regional, or SA for a determination on how the the compliant will be handled. The appropriate OCR will prepare and issue letters of acknowledgements to the complainants.
- C) FNS Headquarters and Regional OCRs must establish and maintain a system for processing and resolving complaints of discrimination that complies with Departmental regulations and agreements. FNS Headquarters CRD has a Memorandum of Understanding with USDA OCR regarding complaint processing and resolution that directs FNS actions as follows:
  - 1) **Right to file.** Any person or representative alleging discrimination based on a prohibited basis has the right to file a complaint within 180 days of the alleged discriminatory action. Only the Secretary of Agriculture may extend this time under special circumstances. The complainant must be advised of confidentiality and Privacy Act applications. The complainant and the entity that the complaint is filed against will be encouraged to resolve the issue at the lowest possible level and as expeditiously as possibly.

FNS Instruction 113-1, XV (A-C) (1-4)  
Pg 29

- 2) **Acceptance.** All complaints, written or verbal, must be forwarded to the appropriate Regional or FNS OCR Director, unless an approved State complaint procedure is in place, Anonymous complaints will be handled as any other complaints, to the extent feasible, based on available information.
  
- 3) **Forms.** FNS Headquarters and Regional OCR, **SA** and **LEA** may develop complaint forms, but the use of such forms must not be prerequisite for acceptance of a complaint. It is encouraged that complaint form format be collaboratively developed and coordinated among FNS, SA and LEA.
  
- 4) **Verbal Complaints.** In the event a complainant makes the allegations verbally or in person and refuses or is not inclined to place such allegations in writing, the person to whom the allegations are made must write up the elements of the complaint for the complainant. Every effort should be made to have the complainant provide the following information:
  - a) Name, address, and telephone number or other means of contacting the complainant,
  
  - b) The specific location and name of the SA or LEA delivering the service or benefit,
  
  - c) The nature of the incident or action that led the complainant to feel discrimination was a factor, and an example of the method of administration that is having a disparate effect on the public, potential eligible persons, applicants, or participants,
  
  - d) The basis on which the complainant believes discrimination exists. The bases for non discrimination are race, color, national origin, age, disability or sex.

- e) The names, telephone numbers, titles, and business or personal addresses of persons who may have knowledge of the alleged discriminatory action, and
- f) The date(s) during which the alleged discriminatory actions occurred or, if continuing, the duration of such actions.



## **Questions on Civil Rights from FNS Instruction 113-1**

- 1Q) In Section VIII Equal Opportunity For Religious Organizations, on page 13 of the FNS Instruction 113-1, the third bullet, the Instruction states, “Ensuring that no organization that receives direct financial assistance from the USDA can discriminate against a program beneficiary, or prospective, on the basis of religion or religious belief.” What does this mean?
- 1A) This bullet is applicable to the participation of religious organizations that receive Federal funding. It’s intent is to ensure that the religious organization provides equal access to the Child Nutrition Program benefits regardless of religious belief.
- 2Q) On page 15 of FNS Instruction 113-1, the Instruction states, “Prominently display the USDA nondiscrimination poster “And Justice for All” or an FNS approved substitute, except in family day care homes. Does this mean State Agencies (SA) can produce their own posters and upon approval from FNS can display them in lieu of the USDA poster?
- 2A) Yes, if the poster is 11” x 17” and is approved by FNS.

- 3Q) On page 16 of FNS Instruction 113-1, the Instruction states “local agencies are responsible for training their sub-recipients, including, “frontline staff.” “Frontline staff” who interact with program applicants or participants, and those persons who supervise “frontline staff”, must be provided civil rights training on an annual basis. Elsewhere in this section there is no annual training requirement for State Agencies (SA). Is it correct to say that SA and local Agencies must train frontline staff annually?
- 3A) Yes, frontline staff and managers must be trained annually and others must be trained as often as needed to enable them to perform their CR responsibilities and ensure equal access to all beneficiaries.
- 4Q) On page 18 of FNS Instruction 113-1, the Instruction states “recommended instructions accompanying the multiple responses for race should specify “Mark one or more” or “Select one or more.” This means that a person who identifies with more than one race can mark more than one category. Is it then okay if the sum of the categories is greater than the number of participants?
- 4A) No. The sum of the categories cannot be greater than the number of participants. The organization collecting and reporting the data may either drop the data for those respondents that choose more than one racial category or may assign the data into the appropriate single ethnic or nonwhite race box for each combination. In addition, the organization may assign the non-Hispanic individual who selected more than one race to the largest nonwhite group he or she marked using the state’s population data.

- 5Q) On page 19 of FNS Instruction 113-1, the Instruction states “A State agency may have categories for race in addition to the ones required by FNS; however, the additional categories must be mapped and extracted to the FNS-required categories.” Does this mean that if an organization wanted to list some of the sub-races within a race, for example instead of just listing Asian, they might want to list Malaysia, Thai, and Cambodian in addition to Asian, they could since all four races could be extracted back to Asian?
- 5A) Yes
- 6Q) On page 29 of the FNS Instruction 113-1, the Instruction covers *Guidelines for Processing Civil Rights Complaints*. We were under the impression that Child Nutrition Programs have not delegated the SA to process civil rights complaints. Is this correct and what effect does it have on the processes on page 31 under *State agencies delegated the authority to process complaints will?*
- 6A) The Food Stamp Program is the only FNS Program that is authorized to process CR complaints. All other Programs are to forward CR complaints to the Secretary of Agriculture at USDA, Director, Office of Civil Rights, 1400 Independence Avenue, SW, Washington, D.C. 20250-9410.

- 7Q) What are the record retention requirements for civil rights data in the Child Nutrition Programs? Page 8 of Appendix B under the NSLP, SBP, SMP, CACFP, and SFSP all state the record retention requirement is for 3 years. Does this apply to all civil rights data including compliance data such as the pre-award and post-award compliance data?
- 7A) All Federal records should be maintained for 3 years plus the current Fiscal year.
- 8Q) On page 15 of FNS Instruction 113-1, number (2) states “If the material is too small to permit the full statement to be included, the material will at a minimum include the statement, in print size no smaller than the text that “This institution is an equal opportunity provider.” In the case of program flyers that may contain several different print sizes, would the statement have to be no smaller than the smallest print size used?
- 8A) No, it must be no smaller than the largest print size in the main text. The main text is the part of the material where the message regarding the FNS Program is located.
- 9Q) Will the new And Justice for All poster look the same or different?
- 9A) They will be the same with the new message.
- 10Q) What is the difference between ethnicity and race?
- 10A) Ethnicity refers to a person’s place of origin/nationality or the culture they identify with. Hispanic is an ethnicity but can be any race.

# **MPRO Special Nutrition Programs Guidance for FNS Civil Rights Instruction 113-1, Revised November 8, 2005**

## **Child and Adult Care Food Program**

The FNS Instruction 113-1 refers to State Agencies (SAs), Local Agencies (LAs), and Sub-recipients. In the CACFP, a SA is the agency that has been designated by the Governor or other appropriate authority of the State that enters into an agreement with USDA to administer the CACFP. The LAs are institutions that are approved to administer the CACFP and/or sponsoring organizations of family day care homes (FDCH) and/or child care centers. The sub-recipients are child care facilities, FDCH providers, or CACFP center sites.

The CACFP protected classes are race, color, national origin, age, sex and disability.

### **Limited English Proficiency (LEP):**

Limited English Proficiency (LEP) Persons are individuals who do not speak English as their primary language and who have a limited ability to read, speak, write or understand English. All CACFP SA, LA, and sub-recipients must take reasonable steps to assure LEP persons have “meaningful” access to the Program information and services they provide. Reasonable steps to assure meaningful access will be contingent on several factors. Among the factors are:

- Number or proportion of LEP persons eligible to be served or likely to be encountered by the Program or grantee.
- Frequency with which the LEP individuals come in contact with the Program.
- Nature and importance of the Program, activity, or service provided by the Program to the people’s lives.
- Resources available to the grantee/recipient and costs.

### Citations

FNS 113-1, Appendix B, (C)(1)(c), page 2

FNS 113-1, III, (B)(1-6), page 3

FNS 113-1, VII, page 9-10

FNS 113-1, VII, (A), page 10

FNS 113-1, VII, (B), page 11

FNS 113-1, VII, (C), page 11

FNS 113-1, VII, (D), page 11-12

**Equal Opportunity for Religious Organizations:**

The “Equal Opportunity for Religious Organizations” regulation eliminates unwarranted barriers to the participation of faith-based organizations in USDA programs to ensure no organization will be discriminated against in a USDA-funded program on the basis of religion and to ensure that USDA-funded programs are available to all regardless of religion. All SAs, LAs, and sub-recipients must ensure equal opportunity for Faith Based and Community Based Organizations by:

- Prohibiting discrimination for or against an organization on the basis of religion, religious belief, or religious character in the administration or distribution of Federal funds.
- Allowing a religious organization that participates in USDA programs to retain its independence and continue to carry out its mission, provided that direct USDA funds do not support any inherently religious activities such as worship, religious instruction, or proselytization.
- Clarifying that faith-based organizations can use space in their facilities to provide USDA-funded services without removing religious art, icons, scriptures, or other religious symbols.
- Ensuring that no organization that receives direct financial assistance from the USDA can discriminate against a program beneficiary, or perspective beneficiary, on the basis of religion or religious belief.

FNS 113-1, VIII, (D), page 12

FNS 113-1, VIII, (E), page 12

FNS 113-1, VIII, (E), page 13

FNS 113-1, VIII, (E), page 13

FNS 113-1, VIII, (E), page 13

**Public Notification:**

**Public Notification System:**

All SAs, LAs, and sub-recipients must have a public notification system that informs applicants, participants and/or potentially eligible persons of the program availability, program rights and responsibilities, the policy of nondiscrimination, and the procedure for filing a complaint.

**Basic Elements of Public Notification:**

The public notification system must include the following three basic elements:

- Program Availability. Each SA, LA, and sub-recipient that provides CACFP program benefits and services must inform applicants, participants, and potentially eligible persons of their program rights and responsibilities and the steps necessary for participation.
- Complaint Information. Applicants and participants must be advised at the service delivery point of their right to file a complaint, how to file a complaint, and the complaint procedures.
- Nondiscrimination Statement. All FNS, SA, LA, or other sub-recipients must post the following nondiscrimination statement and include it, in full, on all materials regarding the CACFP that are produced for public information, public education, or public distribution. The authorized statements below or current applicable revisions cannot be modified. If a State authorizes additional language, it must be included in a separate statement.

“In accordance with Federal law and U.S. Department of Agriculture policy, this institution is prohibited from discriminating on the basis of race, color, national origin, sex, age or disability.”

“To file a complaint of discrimination, write USDA, Director, Office of Civil Rights, 1400 Independence Avenue, SW, Washington, D.C. 20250-9410 or call (800) 795-3272 or (202) 720-6382 (TTY). USDA is an equal opportunity provider and employer.”

FNS 113-1, IX, page 13

FNS 113-1, IX, page 13

FNS 113-1, IX, (A)(1), page 13

FNS 113-1, IX, (A)(2), page 13

FNS 113-1, IX, (A)(3) and (A)(4), page 13

FNS 113-1, IX, (A)(4)(a), page 14

FNS 113-1, IX, (A)(4)(a), page 14

If the material is too small to permit the full statement to be included, the material will at a minimum include the statement, in print size no smaller than the text that “This institution is an equal opportunity provider.”

**Methods of Public Notification:**

Each SA, LA, or sub-recipient serving the public must take the actions below to inform the general public, potentially eligible populations, community leaders, grassroots organizations, and referral sources about FNS programs and applicable civil rights (CR) requirements by:

- Prominently displaying the USDA nondiscrimination poster “And Justice for All” or an FNS approved substitute, except in family day care homes. If a SA elects to produce its own posters, either due to unavailability from USDA/FNS or SA preference, the reproduction must be approximately the same size as the applicable “And Justice for All” poster (11” width and 17” height).
- Informing potentially eligible applicants, participants, and grassroots organizations (particularly those in underserved populations), of programs or changes in programs. This includes information pertaining to eligibility, benefits, and services, the location of local facilities or service delivery points, and hours of service. This information can be communicated by methods such as, but not limited to, Internet, newspaper articles, radio and television announcements, letters, leaflets, brochures, computer-based applications, and bulletins.
- Providing appropriate information, including Web-based information, in alternative formats for persons with disabilities.
- Including the required non-discrimination statement on all appropriate FNS, SA, LA, and sub-recipient publications, Web sites, posters, and informational materials provided to the public.

FNS 113-1, IX, (A)(4)(a), page 15

FNS 113-1, IX, (B), page 15

FNS 113-1, IX, (B)(1), page 15

FNS 113-1, IX, (B)(2), page 15

FNS 113-1, IX, (B)(3), page 15

FNS 113-1, IX, (B)(4), page 15

- Convey the message of equal opportunity in all photographic and other graphics that are used to provide Program or Program-related information.

**Assurances:**

The SA must have a signed Form FNS-74 filed at the FNS Regional Office. The FNS-74 was signed for each SA as a part of the original agreement with USDA. By accepting this assurance, the program applicant agrees to compile data, maintain records, and submit reports, as required, to permit effective enforcement of the nondiscrimination laws and permit authorized USDA personnel during hours of program operation to review such records, books, and accounts as needed to ascertain compliance with the nondiscrimination laws. If there are any violations of this assurance, FNS shall have the right to seek judicial enforcement of this assurance. This assurance is binding on the program applicant and its successors, transferees, and assignees, as long as they receive assistance or retain possession of any assistance from USDA.

The SA must incorporate the following CR assurance statement into all LA agreements:

“The Program applicant hereby agrees that it will comply with Title VI of the Civil Rights Act of 1964 (P.L. 88-352) and all requirements imposed by the regulations of the Department of Agriculture (7 CFR Part 15), DOJ (28) CFR Parts 42 and 50) and FNS directives or regulations issued pursuant to that Act and the regulations, to the effect that, no person in the United States shall, on the ground of race, color, national origin, sex, age, or disability, be excluded from participation in, be denied the benefits of, or be otherwise subject to discrimination under any program or activity for which the Program applicant received Federal financial assistance from USDA; and hereby gives assurance that it will immediately take any measures necessary to fulfill this agreement.”

FNS 113-1, IX, (B)(5), page 15

FNS 113-1, Appendix B, (D)(2)(b), page 5

FNS 113-1, Appendix B, (D)(2)(c), page 5

“This assurance is given in consideration of and for the purpose of obtaining any and all Federal financial assistance, grants, and loans of Federal funds, reimbursable expenditures, grant, or donation of federal property and interest in property, the detail of Federal personnel, the sale and lease of, and the permission to use Federal property or interest in such property or the furnishing of services without consideration or at a nominal consideration, or at a consideration that is reduced for the purpose of assisting the recipient, or in recognition of the public interest to be served by such sale, lease, or furnishing of services to the recipient, or any improvements made with Federal financial assistance extended to the Program applicant by USDA. This includes any Federal agreement, arrangement, or other contract that has as one of its purposes the provision of cash assistance for the purchase of food, and cash assistance for purchase or rental of food service equipment or any other financial assistance extended in reliance on the representations and agreements made in this assurance.”

“By accepting this assurance, the Program applicant agrees to compile data, maintain records, and submit reports as required, to permit effective enforcement of nondiscrimination laws and permit authorized USDA personnel during hours of program operation to review such records, books, and accounts as needed to ascertain compliance with the nondiscrimination laws. If there are any violations of this assurance, the Department of Agriculture, FNS, shall have the right to seek judicial enforcement of this assurance. This assurance is binding on the program applicant, its successors, transferees, and assignees as long as it receives assistance or retains possession of any assistance from USDA. The person or persons whose signatures appear below are authorized to sign this assurance on the behalf of the Program applicant.”

FNS 113-1, Appendix B, (D)(2)(c), page 5-6

FNS 113-1, Appendix B, (D)(2)(c), page 5-6

**Civil Rights Training:**

Training is required so that people involved in all levels of administration of programs that receive Federal financial assistance understand CR related laws, regulations, procedures, and directives. The SA review personnel must receive training in CR compliance to be able to assist them in performing reviews of CR. The SA review tools should include an assessment of the areas that the LAs must be trained on as listed below. The SAs are trained by the Regional Office as part of ongoing technical assistance

The SA is responsible for training LAs so the LAs can train their frontline staff. Training of LAs must occur as often as necessary to enable the LAs to fulfill their CR responsibilities. The SA must inform LAs that frontline staff and managers of frontline staff must be trained annually. Frontline staff are those persons who interact with program applicants or participants. The following topics must be included in the training:

- Collection and use of data
- Effective public notification systems
- Complaint procedures
- Compliance review techniques
- Resolution of noncompliance
- Requirements for reasonable accommodation of persons with disabilities
- Requirements for language assistance
- Conflict resolution
- Customer service

FNS 113-1, XI, page 16

FNS 113-1, XI, page 16

FNS 113-1, XI, (A), page 16

FNS 113-1, XI, (B), page 16

FNS 113-1, XI, (C), page 16

FNS 113-1, XI, (D), page 16

FNS 113-1, XI, (E), page 17

FNS 113-1, XI, (F), page 17

FNS 113-1, XI, (G), page 17

FNS 113-1, XI, (H), page 17

FNS 113-1, XI, (I), page 17

## **Data Collection and Reporting:**

### **Collecting and Reporting Participation Data:**

The SAs and LAs are required to obtain data by race and ethnic category on potentially eligible populations, applicants, and participants in their program service area. The data must include the number of actual beneficiaries and the estimated number of potentially eligible beneficiaries by racial or ethnic category.

The SAs must use these data during routine compliance reviews to determine how effectively the Program is reaching potentially eligible beneficiaries, identify areas where additional outreach is needed, and assess institution compliance. Program applicants/participants may not be required to furnish information on their race/ethnicity unless this information is necessary to determine the applicant's eligibility to receive a benefit or to determine the amount of the benefit that the recipient is entitled to. The ideal is for participants to self-identify, if the participant declines to self-identify, the applicant should be informed that a visual identification of his/her race will be made and recorded in the data system.

For data-collecting purposes, a beneficiary may be included in the group to which he or she appears to belong, identifies with, or is regarded in the community as belonging. Parents/guardians of beneficiaries may be asked to identify the racial or ethnic group of the participant only after it has been explained, and they understand, that the collection of this information is strictly for statistical reporting requirements and has no effect on the determination of their eligibility to receive benefits under the Program. The data collector may not "second guess" or in any way change or challenge a self declaration made by an applicant unless the declaration is patently false.

If the SA collects racial/ethnic data via an on-line system provisions must be made for applicants to self-identify and then be able to verify the data by signing some type of summary printout of the information or by attesting to the correctness and accuracy of the data in some manner.

FNS 113-1, XII, (A)(1), page 17  
FNS 113-1, Appendix B, (F)(2), page 8-9

FNS 113-1, XII, (A)(2), page 17  
FNS 113-1, XII, Appendix B, (F)(2), page 9

FNS 113-1, XII, (A)(2), page 17  
FNS 113-1, Appendix B, (F)(2)(b), page 9

FNS 113-1, XII, (A)(6), page 19

FNS 113-1, XII, (A)(2), page 17

Any data collection system must ensure the data collected about potentially eligible persons, program applicants and participants are:

- Collected and retained by the service delivery point for each program as specified in the Program regulations, instructions, policies and guidelines.
- The number of potentially eligible beneficiaries by racial or ethnic category for the area served by each institution is to be determined each year. Based on documented records and maintained for 3 years.
- Actual beneficiary data by racial or ethnic category for each child care center, outside-school-hours care center, adult day care center, and family day care home under its jurisdiction are to be collected by the institution each year.
- Maintained under safeguards that restrict access of records to authorized personnel.
- Submitted, as requested, to the FNS Regional or Headquarters Offices.

The SA must use separate categories to collect and report race and ethnicity. The two question format must be used. Ethnicity must be collected first. Then respondents shall be offered the option of selecting one or more racial designations. Language in the instructions should specify “Mark one or more” or “Select one or more”. The minimum designations are:

Ethnicity: Hispanic or Latino  
 Not Hispanic or Latino

Race: American Indian or Alaskan native  
 Asian  
 Black or African American  
 Native Hawaiian or other Pacific Islander  
 White

FNS 113-1, XII, (A)(3), page 18

FNS 113-1, XII, (A)(3)(a), page 18

FNS 113-1, XII, (A)(3)(b), page 18  
 FNS 113-1, Appendix B, (F)(2)(b)(1), page 9

FNS 113-1, Appendix B, (F)(2)(b), page 9

FNS 113-1, XII, (A)(3)(c), page 18  
 FNS 113-1, Appendix B, (F)(2)(b)(2), page 9

FNS 113-1, XII, (A)(3)(d)

FNS 113-1, XII, (A)(4), page 18

FNS 113-1, XII, (A)(4)(a)(1 and 2), page 18

FNS 113-1, XII, (A)(4)(b)(1-5), page 18-19

The SA may have categories in addition to those listed above; however, the additional categories must be mapped and extracted to the FNS-required categories. Provisions must be made to report the number of respondents in each racial category who are Hispanic or Latino.

**Determining the Eligible Population:**

The SA must identify the population of potentially eligible persons to participate in an FNS program by racial and ethnic data category for each service delivery area, project area or county. The information may be derived from the U.S. Census Bureau, Bureau of Vital Statistics, or information collected by other Federal and SAs.

**Compliance Reviews:**

Compliance reviews for CR consist of both pre-approval/pre-award compliance reviews and post-award compliance reviews. The SAs are responsible for the review of LAs. The LAs are responsible for the review of their sub-recipients.

The SA performing the compliance review must advise the reviewed entity, in writing, of any review findings and recommendations. The SA must also report any significant findings to the FNS Regional Office of Civil Rights (OCR).

**Pre-approval/Pre-award Compliance Reviews:**

The SA must determine that all LA or other sub-recipient program applicants are in compliance with CR requirements prior to approval for Federal financial assistance. The determination must be based on a desk or on-site review of CR information provided by the program applicant. The pre-approval/pre-award review report must be maintained in the SA files. In all cases, FNS shall require from the program applicant:

FNS 113-1, XII, (A)(5), page 19

FNS 113-1, XII, (A)(6), page 19

FNS 113-1, XIII, (A), page 19

FNS 113-1, XIII, (B), page 19

FNS 113-1, XIII, (C), page 20

- That each program applicant or recipient must promptly notify FNS of any lawsuit filed against the program applicant, recipient or sub-recipient alleging discrimination on the basis of race, color, or national origin and that each recipient notify FNS of any complaints filed against the recipient alleging such discrimination. In addition, each program applicant or recipient must provide a brief description of any pending applications to other Federal agencies for assistance and of Federal assistance being provided at the time of the application or requested report.
- A statement by the program applicant describing any CR compliance reviews regarding the program applicant conducted during the 2-year period before the application; information concerning the agency performing the review; and periodic statements by any recipients regarding such reviews.
- A written assurance by any program applicant or recipient that it will compile and maintain records required by the FNS guidelines or other directives.
- An on-site pre-approval compliance review must be conducted if warranted. For instance, an on-site review must be conducted if the information provided in the application is insufficient to make a determination of compliance, or if the review determines the local agency or other sub-recipient may not be in compliance with CR requirements. In which case, action on the application will be deferred pending prompt initiation and completion of administrative action and cannot be approved until the local agency or sub-recipient corrects the noncompliance.
- The pre-approval/pre-award review report must include specific facts upon which the written determination of compliance is made.

FNS 113-1, XIII, (C)(1), page 20

FNS 113-1, XIII, (C)(2), page 20

FNS 113-1, XIII, (C)(3), page 20

FNS 113-1, XIII, (C)(4), page 20

FNS 113-1, XIII, (C)(5), page 20

The SA reviewer must secure information as necessary to make a determination of compliance. In any applications for approval of specific projects or significant changes in applications for continuation or renewal of assistance, the SA must require program applicants and recipients to provide relevant and current CR information to include but not necessarily limited to the following:

- The manner in which services are or will be provided and any related data necessary to determine whether any persons are or will be denied such services on the basis of prohibited discrimination.
- The demographics of the population eligible to be served, as necessary to determine any barriers to access by any persons on the basis of prohibited discrimination.
- Data regarding covered employment, including use or planned use of bilingual public-contact employees serving beneficiaries of the program where necessary to permit effective participation by beneficiaries who do not speak English as their primary language and who have a limited ability to read, speak, write or understand English.
- The location of existing or proposed facilities connected with the program, and related information adequate for determining whether the location has or will have the effect of unnecessarily denying access to any persons on the basis of prohibited discrimination.
- The present or proposed membership demographic statistics of any planning or advisory body that is an integral part of the program.
- If the applicant is anticipating relocation, a CR impact analysis to the extent that such data is readily available or can be compiled with reasonable effort. Additional data may include demographic maps, the racial composition of affected neighborhoods, or census data as necessary or appropriate for understanding the information required in this section.

FNS 113-1, XIII, (D), page 20

FNS 113-1, XIII, (D)(1), page 20

FNS 113-1, XIII, (D)(2), page 21

FNS 113-1, XIII, (D)(3), page 21

FNS 113-1, XIII, (D)(4), page 21

FNS 113-1, XIII, (D)(5), page 21

FNS 113-1, XIII, (D)(6), page 21

No Federal funds shall be made available to a SA or a LA until a pre-award compliance review has been conducted and the applicant is determined to be in compliance with nondiscrimination laws, regulations, instructions, or guidance. At a minimum, the following data will be analyzed during the pre-award compliance review:

- An estimate of the racial or ethnic makeup of the population to be served.
- Efforts to be used to assure that underserved populations have an equal opportunity to participate.
- Efforts to be used to contact grassroots organizations about the opportunity to participate.
- The names of other Federal agencies providing assistance to the applicant organization and whether the applicant has ever been found to be in noncompliance by those Federal agencies.

### **Post-award Compliance Reviews:**

#### **Compliance reviews:**

The SA must conduct routine compliance reviews of LAs as required by program specific regulations, policies, instructions and guidelines. The SAs will conduct CR compliance reviews of participating institutions and facilities when they conduct program reviews according to the frequency set forth in 7 CFR 226.6(m)(6). The LAs will conduct CR compliance reviews of their sub-recipients when they conduct program reviews as required in 7 CFR 226.16(d)(4)(iii). The SA must evaluate the LAs compliance with the applicable regulations, policies, instructions and guidelines. When a review of a LA or other sub-recipient is performed, by the SA the following should be determined:

- Whether potentially eligible persons and households have an equal opportunity to participate in the Program.

FNS 113-1, Appendix B, (G)(2), page 11

FNS 113-1, Appendix B, (G)(2)(a), page 11

FNS 113-1, Appendix B, (G)(2)(b), page 11

FNS 113-1, Appendix B, (G)(2)(c), page 11

FNS 113-1, Appendix B, (G)(2)(d), page 11

FNS 113-1, Appendix B, (H)(2)(b), page 12

FNS 113-1, XIII, (E)

FNS 113-1, XIII, (E)(3)(b), page 23

FNS 113-1, XIII, (E)(3)(b)(1), page 23

- Whether case records are coded by race or ethnic origin.
- Whether offices are displaying the USDA nondiscrimination poster in a conspicuous location.
- Whether the nondiscrimination statement is included on all printed materials such as applications, pamphlets, forms, or any other program materials distributed to the public and on Web sites; and whether graphic materials reflect inclusiveness based on race, color, national origin, age, sex, and disability.
- Whether program information is being made available to potentially eligible persons, program applicants, and participants. Whether the LA or sub-recipient is providing program information to organizations within the community that may assist the LA in reaching potentially eligible populations.
- Whether actual applicant and participant racial and ethnic data are being collected and maintained on file for 3 years.
- Whether CR complaints are being handled in accordance with procedures outlined in FNS Instruction 113-1 or other regulations, policies, and guidance.
- Whether the LA or other sub-recipient has conducted the required annual CR training for its staff

FNS 113-1, XIII, (E)(3)(b)(2), page 23

FNS 113-1, XIII, (E)(3)(b)(3), page 23

FNS 113-1, XIII, (E)(3)(b)(4), page 23

FNS 113-1, XIII, (E)(3)(b)(5), page 23

FNS 113-1, XIII, (E)(3)(b)(6), page 23

FNS 113-1, XIII, (E)(3)(b)(7), page 23

FNS 113-1, XIII, (E)(3)(b)(8), page 23

Selection of LAs to be reviewed may be based on indicators of possible concern including, but not limited to the following:

- Unusual fluctuation in the participation of racial or ethnic groups in a service area.
- Number of discrimination complaints filed against the agency.
- Information from grassroots organizations, advocacy groups, individuals, State officials or other interested parties.
- Unresolved findings from previous CR reviews.

The SA must write the LA a written report detailing the findings of the SA CR review. These reports must be maintained on file and made available during subsequent CR reviews. Findings that indicate probable noncompliance with CR requirements must be handled in accordance with the procedures for resolving noncompliance contained in FNS 113-1.

When the FNS Region is reviewing CR compliance in a state, the following items should be determined as appropriate:

- Whether the State is meeting its requirement to review LAs.
- Whether the State's data collection system results in valid counts of program applicants and participants.
- Whether the State's data collection system ensures that access to program records is restricted to authorized personnel only.
- Whether uniform program requirements are applied to all LAs or other sub-recipients

FNS 113-1, XIII, (E)(2), page 21

FNS 113-1, XIII, (E)(2)(a), page 21

FNS 113-1, XIII, (E)(2)(b), page 22

FNS 113-1, XIII, (E)(2)(c), page 22

FNS 113-1, XIII, (E)(2)(d), page 22

FNS 113-1, XIII, (F), page 23

FNS 113-1, XIII, (G), page 23

FNS 113-1, XIII, (E)(3)(a), page 22

FNS 113-1, XIII, (E)(3)(a)(1), page 22

FNS 113-1, XIII, (E)(3)(a)(2), page 22

FNS 113-1, XIII, (E)(3)(a)(3), page 22

FNS 113-1, XIII, (E)(3)(a)(4), page 22

- Whether there is a public notification system in place that meets the minimum requirements set forth in this Instruction and other applicable regulations, policies, and guidance.
- Whether the complaint procedure meets the minimum requirements set forth in this Instruction and other applicable regulations, policies, and guidance.
- Whether training is provided to all new and current employees to assure that these persons are competent in CR enforcement or the operation of the in a nondiscriminatory manner.
- Whether the State is using the USDA nondiscrimination statement.
- Whether the State provides CR training to its LAs or other sub-recipients.
- Whether the State is conducting analyses to determine that denied applications are not disproportionately composed of any segment of the population.
- Whether vendors are serving all persons in compliance with CR requirements, and whether program participants are treated the same as other customers.

FNS 113-1, XIII, (E)(3)(a)(5), page 22

FNS 113-1, XIII, (E)(3)(a)(6), page 22

FNS 113-1, XIII, (E)(3)(a)(7), page 22

FNS 113-1, XIII, (E)(3)(a)(8), page 22

FNS 113-1, XIII, (E)(3)(a)(9), page 22

FNS 113-1, XIII, (E)(3)(a)(10), page 22

FNS 113-1, XIII, (E)(3)(a)(11), page 22

**Resolution of Non-Compliance:**

A finding of noncompliance may be the result of a routine management evaluation, a special review, or an investigation. Noncompliance is a factual finding that any CR requirement, as provided by law, regulation, policy, instruction, or guidelines, is not being adhered to by a SA, LA, or other sub-recipient. The following are general examples of prohibited discrimination:

FNS 113-1, XIV, (A), page 24

- Denying an individual or household the opportunity to apply for FNS program benefits or services on the basis of race, color, national origin, age, sex, or disability.

FNS 113-1, XIV, (A)(1), page 24

- Providing FNS program services or benefits in a disparate manner on the basis of race, color, national origin, age, sex, or disability, unless the difference is necessary to comply with nondiscrimination requirements, such as disability accommodations.
- Selecting members for planning and advisory bodies in such a way as to exclude persons from membership on the basis of race, color, national origin, age, sex, or disability.
- Selecting FNS program sites or facilities in a manner that denies an individual access to FNS program benefits, assistance, or services on the basis of race, color, national origin, age, sex, or disability.

FNS 113-1, XIV, (A)(2), page 24

FNS 113-1, XIV, (A)(3), page 24

FNS 113-1, XIV, (A)(4), page 24

If the SA review indicates LA noncompliance corrective action must be taken immediately to achieve voluntary compliance. The effective date of the finding of noncompliance is the date of the written notice of noncompliance to the LA. After a finding of noncompliance the SA must take the following action:

FNS 113-1, XIV, (B), page 25

- Provide immediate written notice to the LA or other sub-recipient indicating the areas of noncompliance and the action required to correct the situation.
- Negotiate with the LA to achieve compliance.
- Submit to the Regional Administrator a Report of Findings of Noncompliance in letter format on all cases where corrective action has not been completed within 60 days of the finding.

FNS 113-1, XIV, (B)(1)(a), page 25

FNS 113-1, XIV, (B)(1)(b), page 25

FNS 113-1, XIV, (B)(1)(c), page 25

The Report of Findings of Noncompliance must include the following documentation:

- Copies of noncompliance reviews.
- A brief statement of the allegations of noncompliance that can be factually supported.

FNS 113-1, XIV, (B)(1)(c)(1), page 25

FNS 113-1, XIV, (B)(1)(c)(2), page 25

- A statement of all actions taken to achieve voluntary compliance.
- List of available witnesses, their addresses, and official titles, with a brief statement of the matter about which they can testify.
- Relevant contracts, assurances, and agreements between the SA, LA and other sub-recipients.
- List of names, titles, office mailing addresses, and office telephone numbers of parties involved, including the chief LA or other sub-recipient official and the State administrative official responsible for the Program.
- A report of the specific amount of assistance provided during the last 3 fiscal years and the Program authorities under which the assistance is extended.
- Letters from the State agency advising the LA or other sub-recipient of failure to comply.
- A statement of the defenses the LA or other sub-recipient may be expected to raise.
- Recommendation for enforcement proceeding or for permission to pursue voluntary compliance efforts.

The FNS Regional OCR with concurrence from the Regional Administrator will determine if the SA should pursue further voluntary compliance efforts or if the SA has exhausted all voluntary compliance efforts. See FNS 113-1, pages 26-29 for details of actions to be taken from this point forward.

**Complaints of Discrimination:**

All complaints alleging discrimination on the basis of race, color, national origin, age, sex, or disability, either verbal or written must be forwarded to the Secretary of Agriculture at USDA, Director, Office of Civil Rights, 1400 Independence Avenue, SW, Washington, D.C. 20250-9410. The Child Nutrition Programs are not delegated to process complaints of discrimination in FNS programs. The OCR will determine how the complaint will be handled.

FNS 113-1, XIV, (B)(1)(c)(3), page 25

FNS 113-1, XIV, (B)(1)(c)(4), page 25

FNS 113-1, XIV, (B)(1)(c)(5), page 25

FNS 113-1, XIV, (B)(1)(c)(6), page 25

FNS 113-1, XIV, (B)(1)(c)(7), page 25

FNS 113-1, XIV, (B)(1)(c)(8), page 25

FNS 113-1, XIV, (B)(1)(c)(9), page 25

FNS 113-1, XIV, (B)(1)(C)(10), page 25

FNS 113-1, XIV, (B)(2)(a and b), page 25

FNS 113-1, XV, (A and B), page 29

FNS 113-1, XV, (C)(2), page 29

Any person or representative alleging discrimination based on a prohibited basis has the right to file a complaint within 180 days of the alleged discriminatory action.

The FNS Head Quarters and Regional OCR, SA, LA, or other sub-recipient may develop complaint forms, but the use of such forms must not be a prerequisite for acceptance of a complaint. See FNS 113-1, Appendix E for sample complaint forms. If the complainant makes the allegations verbally and refuses or is not inclined to put the allegation in writing the person to whom the allegations were made to, must write up the elements of the complaint. Every effort should be made to have the complainant provide the following information:

- Name, address, and telephone number or other means of contacting the complainant.
- The specific location and name of the SA, LA, or other sub-recipient delivering the service or benefit.
- The nature of the incident or action that led the complainant to feel discrimination was a factor, and an example of the method of administration that is having a disparate effect on the public, potential eligible persons, applicants, or participants.
- The basis on which the complainant believes discrimination exists. The bases for discrimination are race, color, national origin, age, disability, or sex.
- The names, telephone numbers, titles, and business or personal addresses of persons who may have knowledge of the alleged discriminatory action.
- The date(s) during which the alleged discriminatory actions occurred, or if continuing, the duration of such actions.

FNS 113-1, XV, (C)(1), page 29

FNS 113-1, XV, (C)(3), page 29  
FNS 113-1, Appendix E, pages 1-9

FNS 113-1, XV, (C)(4), page 29

FNS 113-1, XV, (C)(4)(a), page 29

FNS 113-1, XV, (C)(4)(b), page 29

FNS 113-1, XV, (C)(4)(c), page 29

FNS 113-1, XV, (C)(4)(d), page 29

FNS 113-1, XV, (C)(4)(e), page 29

FNS 113-1, XV, (C)(4)(f), page 29

## Questions on Civil Rights from FNS Instruction 113-1

- 1Q) In Section VIII Equal Opportunity For Religious Organizations, on page 13 of FNS Instruction 113-1, the third bullet, the Instruction states, “Ensuring that no organization that receives direct financial assistance from the USDA can discriminate against a program beneficiary, or prospective beneficiary, on the basis of religion or religious belief.” What does this mean?
- 1A) This bullet is applicable to the participation of religious organizations that receive Federal funding. It’s intent is to ensure that the religious organization provides equal access to the Child Nutrition Program benefits regardless of religion or religious belief.
- 2Q) On page 15 of FNS Instruction 113-1, the Instruction states, “Prominently display the USDA nondiscrimination poster “And Justice for All” or an FNS approved substitute, except in family day care homes. Does this mean State Agencies (SA) can produce their own posters and upon approval from FNS can display them in lieu of the USDA poster?
- 2A) Yes, if the poster is 11” x 17” and is approved by FNS.
- 3Q) On page 16 of FNS Instruction 113-1, the Instruction states “local agencies are responsible for training their sub-recipients, including, “frontline staff.” “Frontline staff” who interact with program applicants or participants, and those persons who supervise “frontline staff”, must be provided civil rights training on an annual basis. Elsewhere in this section there is no annual training requirement for State Agencies (SA). Is it correct to say SA and local agencies must be trained as needed and local agencies must train frontline staff annually?

3A) Yes, frontline staff and managers must be trained annually and others must be trained as often as needed to enable them to perform their CR responsibilities and ensure equal access to all beneficiaries.

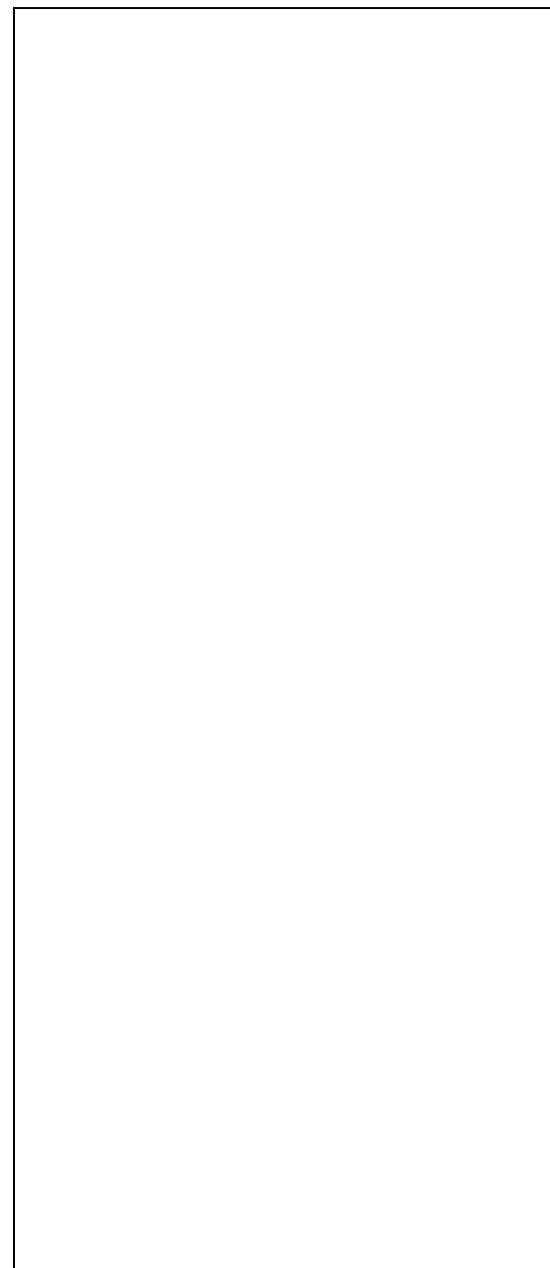
4Q) On page 18 of FNS Instruction 113-1, the Instruction states “recommended instructions accompanying the multiple responses for race should specify “Mark one or more” or “Select one or more”. This means that a person who identifies with more than one race can mark more than one category. Is it then okay if the sum of the categories is greater than the number of participants?

4A) No. The sum of the categories cannot be greater than the number of participants. The organization collecting and reporting the data may either drop the data for those respondents that choose more than one racial category or may assign the data into the appropriate single ethnic or nonwhite race box for each combination. In addition, the organization may assign the non-Hispanic individual who selected more than one race to the largest nonwhite group he or she marked using the state’s population data.

5Q) On page 19 of FNS Instruction 113-1, the Instruction states “A State agency may have categories for race in addition to the ones required by FNS; however, the additional categories must be mapped and extracted to the FNS-required categories.” Does this mean that if an organization wanted to list some of the sub-races within a race, for example instead of just listing Asian, they might want to list Malaysia, Thai, and Cambodian in addition to Asian, they could since all four races could be extracted back to Asian?

5A) Yes

6Q) On page 29 of the FNS Instruction 113-1, the Instruction covers *Guidelines for Processing Civil Rights Complaints*. We were under the impression that Child Nutrition Programs have not delegated SA to process civil rights complaints. Is this correct and what effect does it have on the processes on page 31 under *State agencies delegated the authority to process complaints will?*



6A) The Food Stamp Program is the only FNS Program that is authorized to process CR complaints. All other Programs are to forward CR complaints to the Secretary of Agriculture at USDA, Director, Office of Civil Rights, 1400 Independence Avenue, SW, Washington, D.C. 20250-9410.

7Q) What are the record retention requirements for civil rights data in the Child Nutrition Programs? Page 8 of Appendix B under the NSLP, SBP, SMP, CACFP, and SFSP all state the record retention requirement is for 3 years. Does this apply to all civil rights data including compliance data such as the pre-award and post-award compliance data?

7A) All Federal records should be maintained for 3 years plus the current Fiscal year.

8Q) On page 15 of FNS Instruction 113-1, number (2) states “If the material is too small to permit the full statement to be included, the material will at a minimum include the statement, in print size no smaller than the text that “This institution is an equal opportunity provider.” In the case of program flyers that may contain several different print sizes, would the statement have to be no smaller than the smallest print size used?

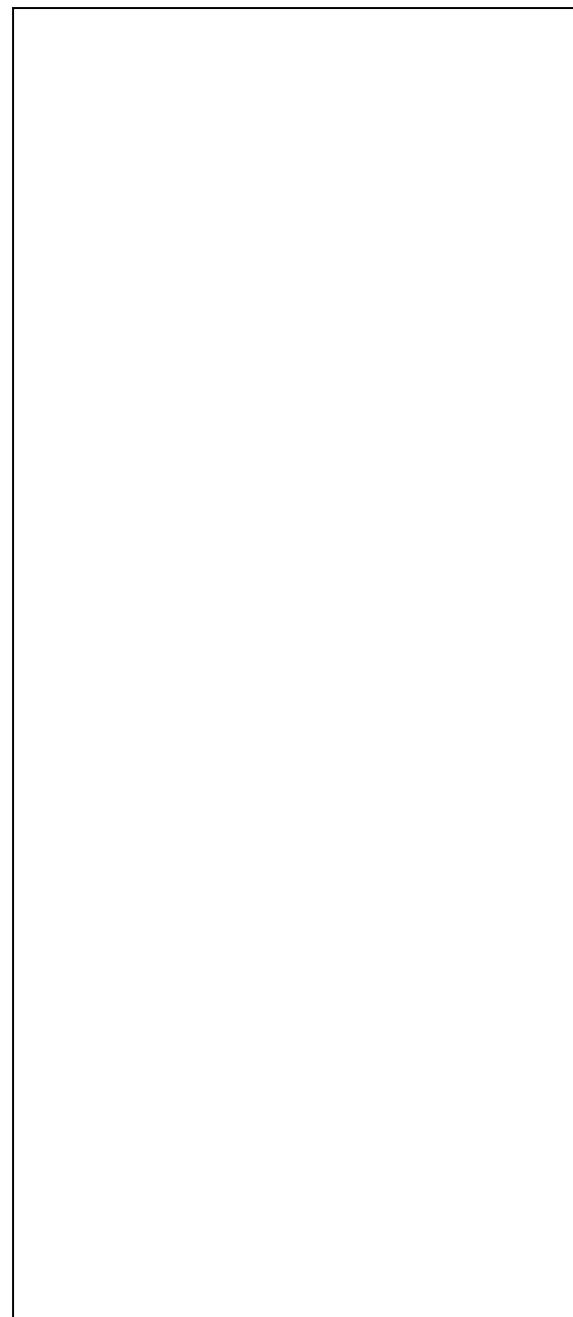
8A) No, It must be no smaller than the largest print size in the main text. The main text is the part of the material where the message regarding the FNS Program is located.

9Q) Will the new And Justice for All poster look the same or different?

9A) They will be the same with the new message.

10Q) What is the difference between ethnicity and race?

10A) Ethnicity refers to a person’s place of origin/nationality or the culture they identify with. Hispanic is an ethnicity but can be any race.



## **MPRO Special Nutrition Programs Guidance for FNS Civil Rights Instruction 113-1, Revised November 8, 2005 Summer Food Service Program (SFSP)**

FNS Instruction 113-1 refers to State Agencies (SAs), Local Agencies (LAs), and Sub-recipients. In the SFSP, a SA is a State educational agency or an alternate agency that has been designated by the Governor or other appropriate executive or legislative authority of the State and which has been approved by USDA to administer the SFSP within the State. The LAs are school food authorities (SFAs) and sponsoring organizations that are approved to administer the SFSP. The sub-recipients are schools and sites where the children receive the service benefit.

\* SFSP Protected Classes are race, color, national origin, age, sex, and disability.

### **Limited English Proficiency (LEP):**

All SFSP SAs, SFAs/sponsors and sites must take reasonable steps to assure “meaningful” access to Program information and services to individuals who do not speak English as their primary language and who have a limited ability to read, speak, write or understand English. Reasonable steps will be contingent on several factors. Among the factors are:

- Number or proportion of LEP persons eligible to be served or likely to be encountered by the program.
- Frequency with which the LEP individuals come in contact with the program.
- Nature and importance of the program, activity, or service provided by the program to the people’s lives.
- Resources available to the grantee/recipient and costs.

### Citations

FNS 113-1, Appendix (C)(1)(c), page 2

FNS 113-1, III, (B)(1-6), page 3

FNS 113-1, VII, page 9-10

FNS 113-1, VII (A), page 10

FNS 113-1, VII (B), page 11

FNS 113-1, VII, (C), page 11

FNS 113-1, VII, (D), page 11-12

**Equal Opportunity for Religious Organizations:**

The “Equal Opportunity for Religious Organizations” regulation eliminates unwarranted barriers to the participation of faith-based organizations in USDA programs to ensure no organization will be discriminated against in a USDA-funded program on the basis of religion and to ensure that USDA-funded programs are available to all regardless of religion. All SAs, SFAs/sponsors and sites must ensure equal opportunity for faith-based organizations by:

- Prohibiting discrimination for or against an organization on the basis of religion, religious belief, or religious character in the administration or distribution of Federal funds.
- Allowing a religious organization to retain its independence and continue to carry out its mission, provided that direct USDA funds do not support any inherently religious activities such as worship, religious instruction, or proselytization.
- Clarifying that faith-based organizations can use space in their facilities to provide USDA-funded services without removing religious art, icons, scriptures, or other religious symbols.
- Ensuring that no organization that receives direct financial assistance from the USDA can discriminate against a program beneficiary, or prospective beneficiary, on the basis of religion or religious belief.

FNS 113-1, VIII, (D), page 12

FNS 113-1, VIII, (E), page 12

FNS 113-1, VIII, (E), page 13

FNS 113-1, VIII, (E), page 13

FNS 113-1, VIII, (E), page 13

**Public Notification:**

All FNS assistance programs must have a public notification system that informs applicants, participants, and potentially eligible persons of the program availability, program rights and responsibilities, the policy of nondiscrimination, and the procedures for filing a complaint.

**Basic Elements of Public Notification:**

The public notification system must contain the following:

- Program Availability. SAs, SFAs/sponsors and sites that distribute program benefits and services must inform applicants, participants, and potentially eligible persons of their program rights and responsibilities and the steps necessary for participation.
- Complaint Information. Advise applicants and participants at the service delivery point of their right to file a complaint, how to file a complaint, and the complaint procedures, as follows: “To file a complaint of discrimination, write USDA, Director, Office of Civil Rights, 1400 Independence Avenue, SW, Washington, D.C. 20250-9410 or call (800) 795-3272 or (202) 720-6382 (TTY).”
- Nondiscrimination Statement. All information materials and sources, including Web sites, used by SA, SFA/sponsors or sites to inform the public about FNS programs must contain the following statements: “In accordance with Federal law and U.S. Department of Agriculture policy, this institution is prohibited from discriminating on the basis of race, color, national origin, sex, age, or disability” and “To file a complaint of discrimination, write USDA, Director, Office of Civil Rights, 1400 Independence Avenue, SW, Washington, D.C. 20250-9410 or call (800) 795-3272 or (202) 720-6382 (TTY).”

FNS 113-1, IX, page 13

FNS 113-1, IX, (A)(1), page 13

FNS 113-1, IX, (A)(2), page 13

FNS 113-1, IX, (A)(3 -4), page 13

If the material is too small to permit the full statement to be included, the material will at a minimum include the statement, in print size no smaller than the main text that “This institution is an equal opportunity provider.” Many SFSP flyers contain several text sizes; in this case the abbreviated nondiscrimination statement will need to be no smaller than the text offering information about the Program.

**Methods of Public Notification:**

Each SA, SFA/sponsor or site serving the public must take the actions below to inform the general public, potentially eligible populations, community leaders, grassroots organizations, and referral sources about FNS programs and applicable civil rights requirements by the following:

- Prominently display the USDA nondiscrimination poster “And Justice for All” or an FNS approved substitute. If a SA elects to produce its own posters, either due to unavailability from USDA/FNS or SA preference, the reproduction must be approximately the same size as the applicable “And Justice for All” poster (11” width and 17” height).
- Inform potentially eligible applicants, participants, and grassroots organizations (particularly those in underserved populations), of programs or changes in programs. This includes information pertaining to eligibility, benefits, and services, the location of local facilities or service delivery points, and hours of service. This Information can be communicated by methods such as, but not limited to, Internet, newspaper articles, radio and television announcements, letters, leaflets, brochures, computer-based applications, and bulletins.

FNS 113-1, IX, (A)(4)(a), page 15

FNS 113-1, IX, (B), page 15

FNS 113-1, IX (B)(1), page15

FNS 113-1, IX (B)(2), page 15

- Provide appropriate information, including Web-based information, in alternative formats for persons with disabilities.
- Include the required non-discrimination statement on all appropriate SA, SFA/Sponsor and site publications, this includes, but is not limited to newspaper articles, radio and television announcements, letters, leaflets, brochures, posters, computer-based applications, bulletins, and informational materials provided to the public.
- Convey the message of equal opportunity in all photographic and other graphics that are used to provide program or program-related information.

**Assurances:**

The SA must have a signed Form FNS-74 filed at the FNS Regional Office. By accepting this assurance, the program applicant agrees to compile data, maintain records, and submit reports, as required, to permit effective enforcement of the nondiscrimination laws and permit authorized USDA personnel during hours of program operations to review such record, books, and accounts as needed to ascertain compliance with the nondiscrimination laws. If there are any violations of this assurance, FNS shall have the right to seek judicial enforcement of this assurance. This assurance is binding on the program applicant and its successor, transferees, and assignees, as long as they receive assistance or retain possessions of any assistance from USDA.

FNS 113-1, (B)(3), page 15

FNS 113-1, (B)(4), page 15

FNS 113-1, (B)(5), page 15

FNS 113-1, Appendix B, (D)(2)(b) page 5

The SA will incorporate the following civil rights assurance into all written agreements:

“The Program applicant hereby agrees that it will comply with Title VI of the Civil Rights Act of 1964 (P.L. 88-352) and all requirements imposed by the regulations of the Department of Agriculture (7 CFR Part 15), DOJ (28) CFR Parts 42 and 50) and FNS directives or regulations issued pursuant to that Act and the regulations, to the effect that, no person in the United States shall, on the ground of race, color, national origin, sex, age, or disability, be excluded from participation in, be denied the benefits of, or be otherwise subject to discrimination under any program or activity for which the Program applicant received Federal financial assistance from USDA; and hereby gives assurance that it will immediately take any measures necessary to fulfill this agreement.”

“This assurance is given in consideration of and for the purpose of obtaining any and all Federal financial assistance, grants, and loans of Federal funds, reimbursable expenditures, grant, or donation of Federal property and interest in property, the detail of Federal personnel, the sale and lease of, and the permission to use Federal property or interest in such property or the furnishing of services without consideration or at a nominal consideration, or at a consideration that is reduced for the purpose of assisting the recipient, or in recognition of the public interest to be served by such sale, lease, or furnishing of services to the recipient, or any improvements made with Federal financial assistance extended to the Program applicant by USDA. This includes any Federal agreement, arrangement, or other contract that has as one of its purposes the provision of cash assistance for the purchase of food, and cash assistance for purchase or rental of food service equipment or any other financial assistance extended in reliance on the representations and agreements made in this assurance.”

FNS 113-1, Appendix B, (D)(2)(c), page 5

FNS 113-1, Appendix B, (D)(2)(c), page 5-6

“By accepting this assurance, the Program applicant agrees to compile data, maintain records, and submit reports as required, to permit effective enforcement of nondiscrimination laws and permit authorized USDA personnel during hours of program operation to review such records, books and accounts as needed to ascertain compliance with the nondiscrimination laws. If there are any violations of this assurance, the Department of Agriculture, FNS shall have the right to seek judicial enforcement of this assurance. This assurance is binding on the Program applicant, its successors, transferees, and assignees as long as it receives assistance or retains possession of any assistance from USDA. The person or persons whose signatures appear below are authorized to sign this assurance on the behalf of the Program applicant.”

**SFSP participant:**

A SFSP participant is a person 18 years of age and under, and a person over 18 years of age who is determined by a State educational agency or a local public educational agency of a State to be mentally or physically disabled and who participates in a public or nonprofit private school program established for the mentally or physically handicapped.

**Civil Rights Training:**

Training is required so that people involved in all levels of administration of programs that receive Federal financial assistance understand CR related laws, regulations, procedures, and directives. The SA review personnel must receive training in CR compliance to be able to assist them in performing reviews of CR. The SA review tools should include an assessment of the areas that the LAs must be trained on as listed below. The SAs are trained by the Regional Office as part of ongoing technical assistance

FNS 113-1, Appendix B, (D)(2)(c), page 5-6

FNS 113-1, Appendix B, (E)(4)(a-b), page 7

FNS 113-1, XI, page 16

State Agencies are responsible for training SFAs/sponsors so that the SFAs/sponsors can conduct annual training for their supervisors and frontline staff (those who interact with program applicants or participants) on the following topics:

- Collection and use of data
- Effective public notification systems
- Complaint procedures
- Compliance review techniques
- Resolution of noncompliance
- Requirements for reasonable accommodation of persons with disabilities
- Requirements for language assistance
- Conflict resolution
- Customer service

**Data Collection and Reporting:**

**Collecting and Reporting Participation Data:**

State agencies are required to obtain data by race and ethnic category on potentially eligible populations, applicants, and participants in their program service area.

FNS 113-1, XI, page 16

FNS 113-1, XI, page 16

FNS 113-1, XI, page 17

FNS 113-1, XII, (A)(1), page 17

Program applicants/participants may not be required to furnish information on their race/ethnicity unless this information is necessary to determine the applicant's eligibility to receive a benefit or to determine the amount of the benefit that the recipient is entitled to receive. The ideal is for participants to self-identify; however, if the participant declines to self-identify, the applicant should be informed that a visual identification of his/her race will be made and recorded in the data system. The data collector may not "second guess" or in any way change or challenge a self declaration made by an applicant unless the declaration is patently false.

If the SA collects racial/ethnic data via an on-line system provisions, must be made for applicants to self-identify and then be able to verify the data by signing some type of summary printout of the information or by attesting to the correctness and accuracy of the data in some manner.

Determining the Number of Potentially Eligible Beneficiaries:

The number of potentially eligible beneficiaries by racial or ethnic category for the area served by each sponsor is to be determined each year. Data concerning the number of potentially eligible beneficiaries, along with identification of all sources of the information, are to be updated annually and maintained on file for 3 years. Sources for obtaining such data might include census data or public school enrollment data.

FNS 113-1, XII, (A)(6), page 19

FNS 113-1, XII, (A)(2), page 17

FNS 113-1, Appendix B, (F)(3)(a), page 9

Collecting and Maintaining Actual Beneficiary Data:

Actual beneficiary data by racial or ethnic category for each site under a SFAs/sponsor’s jurisdiction are to be collected by the SFA/sponsor each year. Residential camps must collect and maintain this information separately for each session of the camp. For all other sites, the SFA/sponsor must count the participating children at least once during the site’s operation. Visual identification may be used by the sponsors to determine a beneficiary’s racial or ethnic category or the parents of a beneficiary may be asked to identify the racial or ethnic group of their child(ren).

Once collected, actual beneficiary data shall be maintained on file by the SFA/sponsor. Data, as well as documentation for the data, shall be retained by the SFA/sponsor for the required 3 years. The data shall be maintained using safeguards that prevent its use for discriminatory purposes. Such safeguards shall include allowing access to program records containing this data only by authorized personnel.

The SA must use separate categories to collect and report race and ethnicity. The two question format must be used. Ethnicity must be collected first. Respondents shall be offered the option of selecting one or more racial designations. Language in the instructions should specify “Mark one or more” or “Select one or more”. The minimum designations are as follows (see pages 18 and 19 of the FNS Instruction 113-1 for more specific descriptions of the designations):

- Ethnicity:      Hispanic or Latino  
                         Not Hispanic or Latino
- Race:            American Indian or Alaskan native  
                         Asian  
                         Black or African American  
                         Native Hawaiian or other Pacific Islander  
                         White

FNS 113-1, Appendix B, (3)(b), page 9-10

FNS 113-1, Appendix B, (3)(c), page 10

FNS 113-1, XII, (A)(4), page 18

FNS 113-1, XII, (A)(4)(a)(1-2), page 18

FNS 113-1, XII, (A)(4)(b)(1-5), page 18-19

The SA may have categories in addition to those listed above; however, the additional categories must be mapped and extracted to the FNS-required categories. Provisions must be made to report the number of respondents in each racial category who are Hispanic or Latino.

**Compliance Reviews:** Civil Rights compliance reviews consist of both pre-approval/pre-award compliance reviews and post-award compliance reviews. The SA is responsible for the review of SFA/sponsors. The SA performing the compliance review must advise the reviewed entity, in writing, of any review findings and recommendations. The SA must also report any significant findings to the FNS Regional Office of Civil Rights.

**Pre-approval/Pre-award Compliance Reviews:**

The SA must determine that all SFAs/sponsors and sites are in compliance with Civil Rights requirements prior to approval for Federal financial assistance. The determination must be based on a desk or on-site review of civil rights information provided by the program applicant. The pre-approval/pre-award review report must be maintained in the SA files. The following requirements must be included in each review:

- That each program applicant or recipient must promptly notify FNS of any lawsuit filed against the program applicant, recipient or sub-recipient alleging discrimination on the basis of race, color, or national origin and that each recipient notify FNS of any complaints filed against the recipient alleging such discrimination. In addition, each program applicant or recipient must provide a brief description of any pending applications to other Federal agencies for assistance and of Federal assistance being provided at the time of the application or requested report.

FNS 113-1, XII, (A)(5), page 19

FNS 113-1, XIII, (A)(B), page 19

FNS 113-1, XIII, (C), page 20

FNS 113-1, XIII, (C)(1), page 20

- A statement by the program applicant describing any civil rights compliance reviews regarding the program applicant conducted during the 2-year period before the application; information concerning the agency performing the review; and periodic statements by any recipients regarding such reviews.
- A written assurance by any program applicant or recipient that it will compile and maintain records required by the FNS guidelines or other directives.
- An on-site pre-approval compliance review must be conducted if warranted. For instance, an onsite review must be conducted if the information provided in the application is not sufficient to make the determination of compliance. If the preapproval/preaward compliance review determines that the SA, LA, SFA/Sponsor may not be in compliance with civil rights requirements, action on the application will be deferred pending prompt initiation and completion of administrative action. The SA, LA or SFA/Sponsor must notify the applicant in writing of the noncompliance and provide the program applicant with the opportunity to take corrective action within a specified timeframe.
- The pre-approval/pre-award review report must include specific facts upon which the written determination of compliance is made.

FNS 113-1, XIII, (C)(2), page 20

FNS 113-1, XIII, (C)(3), page 20

FNS 113-1, XIII, (C)(4), page 20

FNS 113-1, XIII, (C)(5), page 20

The SA reviewer must secure information as necessary to make a determination of compliance. In any applications for approval of specific projects or significant changes in applications for continuation or renewal of assistance, the SA must require program applicants and recipients to provide relevant and current civil rights information. Examples of such data and information that are required, to the extent necessary and appropriate, for determining compliance with civil rights laws, regulations, and instructions, are as follows:

- The manner in which services are or will be provided and any related data necessary to determine whether any persons are or be denied such services on the basis of prohibited discrimination.
- The demographics of the population eligible to be served, as necessary to determine any barriers to access by any persons on the basis of prohibited discrimination.
- Data regarding covered employment, including use or planned use of bilingual public-contact employees serving beneficiaries of the program where necessary to permit effective participation by beneficiaries who do not speak English as their primary language and who have a limited ability to read, speak, write or understand English.
- The location of existing or proposed facilities connected with the program, and related information adequate for determining whether the location has or will have the effect of unnecessarily denying access to any persons on the basis of prohibited discrimination.

FNS 113-1, XIII, (D), page 20

FNS 113-1, XIII, (D)(1), page 20

FNS 113-1, XIII, (D)(2), page 21

FNS 113-1, XIII, (D)(3), page 21

FNS 113-1, XIII, (D)(4), page 21

- The present or proposed membership demographic statistics of any planning or advisory body that is an integral part of the program.
- If the applicant is anticipating relocation, a civil rights impact analysis to the extent that such data is readily available or can be compiled with reasonable effort. (see page 21, for description of acceptable data)

No Federal funds shall be made available to a State agency or a SFA/sponsor until a pre-award compliance review has been conducted and the applicant is determined to be in compliance with nondiscrimination laws, regulations, instructions, or guidance. At a minimum, the following data will be analyzed during the pre-award compliance review:

- An estimate of the racial or ethnic makeup of the population to be served.
- Efforts to be used to assure that underserved populations have an equal opportunity to participate.
- Efforts to be used to contact grassroots organizations about the opportunity to participate.
- The names of other Federal agencies providing assistance to the applicant organization and whether the applicant has ever been found to be in noncompliance by those Federal agencies.

FNS 113-1, XIII, (D)(5), page 21

FNS 113-1, XIII, (D)(6), page 21

FNS 113-1, Appendix B, (G)(2), page 11

FNS 113-1, Appendix B, (G)(2)(a), page 11

FNS 113-1, Appendix B, (G)(2)(b), page 11

FNS 113-1, Appendix B, (G)(2)(c), page 11

FNS 113-1, Appendix B, (G)(2)(d), page 11

## **Post-award Compliance Reviews:**

### **Compliance reviews:**

The SA must conduct civil rights compliance reviews of participating SFA/sponsors and sites when they conduct program reviews according to the frequency set forth in 7 CFR 225.7. The SA must evaluate the SFA/sponsor's compliance with the applicable regulations, policies, instructions and guidelines. When the SA is evaluating the local agency's compliance, the following should be determined:

- Whether potentially eligible persons and households have an equal opportunity to participate in the program.
- Whether case records are coded by race or ethnic origin.
- Whether offices are displaying the USDA nondiscrimination poster in a conspicuous location.
- Whether the nondiscrimination statement is included on all printed materials such as applications, pamphlets, forms, or any other program materials distributed to the public and on Web sites; and whether graphic materials reflect inclusiveness based on race, color, national origin, age, sex, and disability.
- Whether program information is being made available to potentially eligible persons, program applicants, and participants. Whether the local agency or sub-recipient is providing program information to organizations within the community that may assist the local agency in reaching potentially eligible populations.

FNS 113-1, Appendix B, (H)(3)(a-b), page 12

FNS 113-1, XIII, (E)(3)(b)(1), page 23

FNS 113-1, XIII, (E)(3)(b)(2), page 23

FNS 113-1, XIII, (E)(3)(b)(3), page 23

FNS 113-1, XIII, (E)(3)(b)(4), page 23

FNS 113-1, XIII, (E)(3)(b)(5), page 23

- Whether actual applicant and participant racial and ethnic data are being collected and maintained on file for 3 years.
- Whether civil rights complaints are being handled in accordance with procedures outlined in this FNS Instruction 113-1 or other regulations, policies, and guidance.
- Whether the local agency or other sub-recipient has conducted the required annual civil rights training for its staff.

Selection of SFA/sponsors to be reviewed may be based on indicators of possible concern including, but not limited to, the following:

- Unusual fluctuation in the participation of racial or ethnic groups in a service area.
- Number of discrimination complaints filed against the agency.
- Information from grassroots organizations, advocacy groups, individuals, State officials or other interested parties.
- Unresolved findings from previous civil rights reviews.

The SA must write the SFA/sponsor a written report detailing the findings of the SA civil rights review. These reports must be maintained on file and made available during subsequent civil rights reviews. See pages 21-23 of FNS 113-1 for more details.

When the FNS Region is reviewing CR compliance in a state, the following items should be determined as appropriate:

- Whether the State is meeting its requirement to review SFAs/sponsors.

FNS 113-1, XIII, (E)(3)(b)(6), page 23

FNS 113-1, XIII, (E)(3)(b)(7), page 23

FNS 113-1, XIII, (E)(3)(b)(8), page 23

FNS 113-1, XIII, (E)(2), page 21

FNS 113-1, XIII, (E)(2)(a), page 21

FNS 113-1, XIII, (E)(2)(b), page 22

FNS 113-1, XIII, (E)(2)(c), page 22

FNS 113-1, XIII, (E)(2)(d), page 22

FNS 113-1, XIII, (F), page 23

FNS 113-1, XIII, (E)(3)(a), page 22

FNS 113-1, XIII, (E)(3)(a)(1), page 22

- Whether the State’s data collection system results in valid counts of program applicants and participants.
- Whether the State’s data collection system ensures that access to program records is restricted to authorized personnel only.
- Whether uniform program requirements are applied to all LAs or other sub-recipients
- Whether there is a public notification system in place that meets the minimum requirements set forth in this Instruction and other applicable regulations, policies, and guidance.
- Whether the complaint procedure meets the minimum requirements set forth in this Instruction and other applicable regulations, policies, and guidance.
- Whether training is provided to all new and current employees to assure that these persons are competent in CR enforcement or the operation of the in a nondiscriminatory manner.
- Whether the State is using the USDA nondiscrimination statement.
- Whether the State provides CR training to its LAs or other sub-recipients.
- Whether the State is conducting analyses to determine that denied applications are not disproportionately composed of any segment of the population.
- Whether vendors are serving all persons in compliance with CR requirements, and whether program participants are treated the same as other customers.

FNS 113-1, XIII, (E)(3)(a)(2), page 22

FNS 113-1, XIII, (E)(3)(a)(3), page 22

FNS 113-1, XIII, (E)(3)(a)(4), page 22

FNS 113-1, XIII, (E)(3)(a)(5), page 22

FNS 113-1, XIII, (E)(3)(a)(6), page 22

FNS 113-1, XIII, (E)(3)(a)(7), page 22

FNS 113-1, XIII, (E)(3)(a)(8), page 22

FNS 113-1, XIII, (E)(3)(a)(9), page 22

FNS 113-1, XIII, (E)(3)(a)(10), page 22

FNS 113-1, XIII, (E)(3)(a)(11), page 22

**Resolution of Non-Compliance:**

A finding of noncompliance may be the result of a routine management evaluation, a special review, or an investigation. Noncompliance is a factual finding that any CR requirement, as provided by law, regulation, policy, instruction, or guidelines, is not being adhered to by a SA, LA, or other sub-recipient. The following are general examples of prohibited discrimination:

- Denying an individual or household the opportunity to apply for FNS program benefits or services on the basis of race, color, national origin, age, sex, or disability.
- Providing FNS program services or benefits in a disparate manner on the basis of race, color, national origin, age, sex, or disability, unless the difference is necessary to comply with nondiscrimination requirements, such as disability accommodations.
- Selecting members for planning and advisory bodies in such a way as to exclude persons from membership on the basis of race, color, national origin, age, sex, or disability.
- Selecting FNS program sites or facilities in a manner that denies an individual access to FNS program benefits, assistance, or services on the basis of race, color, national origin, age, sex, or disability.

If the SA review indicates local agency noncompliance, corrective action must be taken immediately to achieve voluntary compliance. The effective date of the finding of noncompliance is the date of the written notice of noncompliance to the local agency. After a finding of noncompliance, the SA must take the following action:

FNS 113-1, XIV, (A), page 24

FNS 113-1, XIV, (A)(1), page 24

FNS 113-1, XIV, (A)(2), page 24

FNS 113-1, XIV, (A)(3), page 24

FNS 113-1, XIV, (A)(4), page 24

FNS 113-1, XIV, (B), page 25

- Provide immediate written notice to the SFA/sponsor or other sub-recipient indicating the areas of noncompliance and the action required to correct the situation.
- Negotiate with the SFA/sponsor to achieve compliance.
- Submit to the Regional Administrator a Report of Findings of Noncompliance in letter format on all cases where corrective action has not been completed within 60 days of the finding.

The Report of Findings of Noncompliance must include the following documentation:

- Copies of noncompliance reviews.
- A brief statement of the allegations of noncompliance that can be factually supported.
- A statement of all actions taken to achieve voluntary compliance.
- List of available witnesses, their addresses, and official titles, with a brief statement of the matter about which they can testify.
- Relevant contracts, assurances, and agreements between the SA, SFAs/sponsors and sites.
- List of names, titles, office mailing addresses, and office telephone numbers of parties involved, including the SFA/sponsor or other site official and the State administrative official responsible for the program.
- A report of the specific amount of assistance provided during the last 3 fiscal years and the program authorities under which the assistance is extended.

FNS 113-1, XIV, (B)(1)(a), page 25

FNS 113-1, XIV, (B)(1)(b), page 25

FNS 113-1, XIV, (B)(1)(c), page 25

FNS 113-1, XIV, (B)(1)(c)(1), page 25

FNS 113-1, XIV, (B)(1)(c)(2), page 25

FNS 113-1, XIV, (B)(1)(c)(3), page 25

FNS 113-1, XIV, (B)(1)(c)(4), page 25

FNS 113-1, XIV, (B)(1)(c)(5), page 25

FNS 113-1, XIV, (B)(1)(c)(6), page 25

FNS 113-1, XIV, (B)(1)(c)(7), page 25

Letters from the State agency advising the SFA/sponsor or site of failure to comply.

- A statement of the defenses the SFA/sponsor or site may be expected to raise.
- Recommendation for enforcement proceeding or for permission to pursue voluntary compliance efforts.

The FNS Regional Office of Civil Rights with concurrence from the regional Administrator will determine if the SA should pursue further voluntary compliance efforts or if the SA has exhausted all voluntary compliance efforts. See FNS Instruction 113-1 for details of actions to be taken from this point forward.

### **Complaints of Discrimination:**

All complaints alleging discrimination on the basis of race, color, national origin, age, sex, or disability, either verbal or written must be forwarded to the Secretary of Agriculture at USDA, Director, Office of Civil Rights, 1400 Independence Avenue, SW, Washington, D.C. 20250-9410. The Child Nutrition Programs are not delegated to process complaints of discrimination in FNS programs. The OCR will determine how the complaint will be handled.

Any person or representative alleging discrimination based on a prohibited basis has the right to file a complaint within 180 days of the alleged discriminatory action.

The FNS Head Quarters and Regional OCR, SA, SFAs/sponsors may develop complaint forms, but the use of such forms must not be a prerequisite for acceptance of a complaint. See FNS 113-1, Appendix E for sample complaint forms. If the complainant makes the allegations verbally and refuses or is not inclined to put the allegation in writing, the person to whom the allegations were made must write up the elements of the complaint. Every effort should be made to have the complainant provide the following information:

FNS 113-1, XIV, (B)(1)(c)(8), page 25

FNS 113-1, XIV, (B)(1)(c)(9), page 25

FNS 113-1, XIV, (B)(1)(c)(10), page 25

FNS 113-1, XIV, (B)(2)(a-b), page 25

FNS 113-1, XV, (A and B), page 29

FNS 113-1, XV, (C)(2), page 29

FNS 113-1, XV, (C)(1), page 29

FNS 113-1, XV, (C)(3), page 29

FNS 113-1, Appendix E, pages 1-9

- Name, address, and telephone number or other means of contacting the complainant.
- The specific location and name of the State agency, sponsor, or site delivering the service or benefit.
- The nature of the incident or action that led the complainant to feel discrimination was a factor, and an example of the method of administration that is having a disparate effect on the public, potential eligible persons, applicants, or participants.
- The basis on which the complainant believes discrimination exists. The bases for discrimination are race, color, national origin, age, disability, or sex.
- The names, telephone numbers, titles, and business or personal addresses of persons who may have knowledge of the alleged discriminatory action.
- The date(s) during which the alleged discriminatory actions occurred, or if continuing, the duration of such actions.

FNS 113-1, XV, (C)(4)(a), page 29

FNS 113-1, XV, (C)(4)(b), page 29

FNS 113-1, XV, (C)(4)(c), page 29

FNS 113-1, XV, (C)(4)(d), page 29

FNS 113-1, XV, (C)(4)(e), page 29

FNS 113-1, XV, (C)(4)(f), page 29

## Questions on Civil Rights from FNS Instruction 113-1

1Q) In Section VIII Equal Opportunity For Religious Organizations, on page 13 of FNS Instruction 113-1, the third bullet, the Instruction states, “Ensuring that no organization that receives direct financial assistance from the USDA can discriminate against a program beneficiary, or prospective beneficiary, on the basis of religion or religious belief.” What does this mean?

1A) This bullet is applicable to the participation of religious organizations that receive Federal funding. It’s intent is to ensure that the religious organization provides equal access to the Child Nutrition Program benefits regardless of religion or religious belief.

2Q) On page 15 of FNS Instruction 113-1, the Instruction states, “Prominently display the USDA nondiscrimination poster “And Justice for All” or an FNS approved substitute, except in family day care homes. Does this mean State Agencies (SA) can produce their own posters and upon approval from FNS can display them in lieu of the USDA poster?

2A) Yes, if the poster is 11” x 17” and is approved by FNS.

3Q) On page 16 of FNS Instruction 113-1, the Instruction states “local agencies are responsible for training their sub-recipients, including, “frontline staff.” “Frontline staff” who interact with program applicants or participants, and those persons who supervise “frontline staff”, must be provided civil rights training on an annual basis. Elsewhere in this section there is no annual training requirement for State Agencies (SA). Is it correct to say SA and local agencies must be trained as needed and local agencies must train frontline staff annually?

3A) Yes, frontline staff and managers must be trained annually and others must be trained as often as needed to enable them to perform their CR responsibilities and ensure equal access to all beneficiaries.

4Q) On page 18 of FNS Instruction 113-1, the Instruction states “recommended instructions accompanying the multiple responses for race should specify “Mark one or more” or “Select one or more”. This means that a person who identifies with more than one race can mark more than one category. Is it then okay if the sum of the categories is greater than the number of participants?

4A) No. The sum of the categories cannot be greater than the number of participants. The organization collecting and reporting the data may either drop the data for those respondents that choose more than one racial category or may assign the data into the appropriate single ethnic or nonwhite race box for each combination. In addition, the organization may assign the non-Hispanic individual who selected more than one race to the largest nonwhite group he or she marked using the state’s population data.

5Q) On page 19 of FNS Instruction 113-1, the Instruction states “A State agency may have categories for race in addition to the ones required by FNS; however, the additional categories must be mapped and extracted to the FNS-required categories.” Does this mean that if an organization wanted to list some of the sub-races within a race, for example instead of just listing Asian, they might want to list Malaysia, Thai, and Cambodian in addition to Asian, they could since all four races could be extracted back to Asian?

5A) Yes

6Q) On page 29 of the FNS Instruction 113-1, the Instruction covers *Guidelines for Processing Civil Rights Complaints*. We were under the impression that Child Nutrition Programs have not delegated SA to process civil rights complaints. Is this correct and what effect does it have

on the processes on page 31 under *State agencies delegated the authority to process complaints will?*

6A) The Food Stamp Program is the only FNS Program that is authorized to process CR complaints. All other Programs are to forward CR complaints to the Secretary of Agriculture at USDA, Director, Office of Civil Rights, 1400 Independence Avenue, SW, Washington, D.C. 20250-9410.

7Q) What are the record retention requirements for civil rights data in the Child Nutrition Programs? Page 8 of Appendix B under the NSLP, SBP, SMP, CACFP, and SFSP all state the record retention requirement is for 3 years. Does this apply to all civil rights data including compliance data such as the pre-award and post-award compliance data?

7A) All Federal records should be maintained for 3 years plus the current Fiscal year.

8Q) On page 15 of FNS Instruction 113-1, number (2) states “If the material is too small to permit the full statement to be included, the material will at a minimum include the statement, in print size no smaller than the text that “This institution is an equal opportunity provider.” In the case of program flyers that may contain several different print sizes, would the statement have to be no smaller than the smallest print size used?

8A) No, It must be no smaller than the largest print size in the main text. The main text is the part of the material where the message regarding the FNS Program is located.

9Q) Will the new And Justice for All poster look the same or different?

9A) They will be the same with the new message.

10Q) What is the difference between ethnicity and race?

10A) Ethnicity refers to a person's place of origin/nationality or the culture they identify with. Hispanic is an ethnicity but can be any race.