

Civil Rights Compliance



United States Department of Agriculture
Food and Nutrition Service



ALASKA NATIVE
TRIBAL HEALTH
CONSORTIUM

Agenda

- Civil Rights Laws
- Types of Discrimination
- The 113: 6 Big Issues
- Questions & Answers



Goals Of Civil Rights Compliance

- Equal treatment for all FDPIR applicants and beneficiaries
- Increase knowledge of civil rights and responsibilities
- Elimination of illegal barriers that prevent or deter people from receiving benefits
- Dignity and respect for all



Civil Rights Laws

- **Title VI Civil Rights Act of 1964** - race, color, national origin
- **Title IX of the Education Amendments of 1972** – sex
- **Section 504 of the Rehabilitation Act of 1973** – disability
- **Americans with Disabilities Act 1990** - disability

Civil Rights Laws (con't)

- **Age Discrimination Act of 1975** – age
- **Civil Rights Restoration Act of 1987** – race, color, national origin
- **Program statutes and regulations** – race, color, national origin, sex, age, religion, political beliefs, or disability
- **FNS Instruction 113-1 and Appendix C**

Civil Rights Laws: Protected Basis

- 1 Race
- 2 Color
- 3 National Origin
- 4 Age
- 5 Sex
- 6 Disability
- 7 Religion
- 8 Political Beliefs

Types Of Discrimination

- Disparate Treatment
- Disparate Impact
- Reprisal/Retaliation



Disparate Treatment

- Person is discriminated against because he or she belongs to a protected class or is perceived to belong to a protected class
- Creates legal liability for the tribe



Disparate Impact

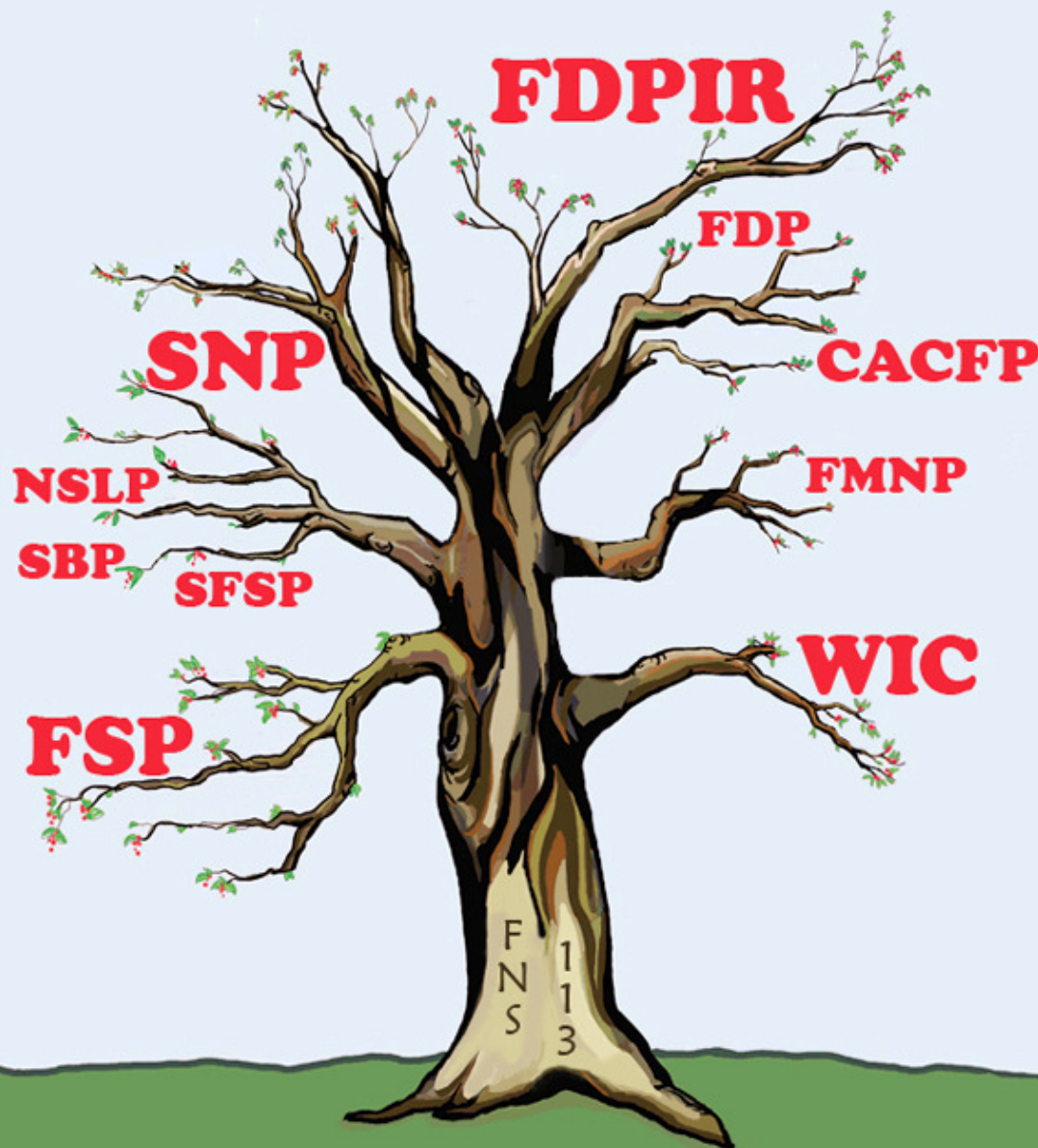
Person or group experiences discrimination because a rule, policy or practice that appears neutral on its face impacts disproportionately on members of this group.

It is illegal



Reprisal/Retaliation

- Persons have a legal right to file a discrimination complaint with USDA or the Indian Tribal Organization (ITO)
- Person(s) treated negatively because they filed a discrimination complaint, or complained about discrimination or testified as a witness in a complaint investigation
- This behavior can result in a finding of discriminatory retaliation even if the original complaint filed by the person is baseless.
- Retaliation creates serious legal liability for the tribe.



Civil Rights

The 6 Big Issues In 113

- 1. Public Notification in All Materials
- 2. Discrimination Complaints
- 3. Collection of Racial & Ethnic Data
- 4. Serving Limited English Proficient (LEP) Clients
- 5. Civil Right Training for Staff
- 6. Compliance Review

1. Public Notification

- 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:
 - 1. program availability.
 - 2. program rights and responsibilities,
 - 3. the policy of nondiscrimination and
 - 4. the procedure for filing a complaint.

CR Elements of Public Notification

1 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.

2 Nondiscrimination Statement

All information materials and sources, including Web sites, used by FNS, State agencies, local agencies, or other sub recipients to inform the public about FNS programs must contain a nondiscrimination statement. The statement is not required to be included on every page of the program Web site. At a minimum the nondiscrimination statement or a link to it must be included on the home page of the program information.

Nondiscrimination Statement

ITOs must use the following statement (as of August 2013):

The U.S. Department of Agriculture prohibits discrimination against its customers, employees, and applicants for employment on the bases of race, color, national origin, age, disability, sex, gender identity, religion, reprisal, and where applicable, political beliefs, marital status, familial or parental status, sexual orientation, or all or part of an individual's income from any public assistance program, or protected genetic information in employment or in any program or activity conducted or funded by the Department. (Not all prohibited bases will apply to all programs and/or employment activities.)

If you wish to file a Civil Rights program complaint of discrimination, complete the USDA Program Discrimination Complaint Form, found online at http://www.ascr.usda.gov/complaint_filing_cust.html, or at any USDA office, or call (866) 632-9992 to request a form. You may also write a letter containing all of the information requested in the form. Send your completed complaint form or letter to us by mail at U.S. Department of Agriculture, Director, Office of Adjudication, 1400 Independence Avenue, S.W. Washington D.C. 20250-9410, by fax (202) 690-7442 or email at program.intake@usda.gov.

Individuals who are deaf, hard of hearing or have speech disabilities may contact USDA through the Federal Relay Service at (800) 877-8339; or (800) 845-6136 (Spanish).

For any other information dealing with Supplemental Nutrition Assistance Program (SNAP) issues, persons should either contact the USDA SNAP Hotline Number at (800) 221-5689, which is also in Spanish or call the State Information/Hotline Numbers (click the link for listing of hotline numbers by State); found online at: http://www.fns.usda.gov/snap/contact_info/hotlines.htm.

USDA is an equal opportunity provider and employer.

Exception: Minimizing the full statement

- If material is too small to permit full statement
- The material will at a minimum include the statement, in print size no smaller than the text, that:

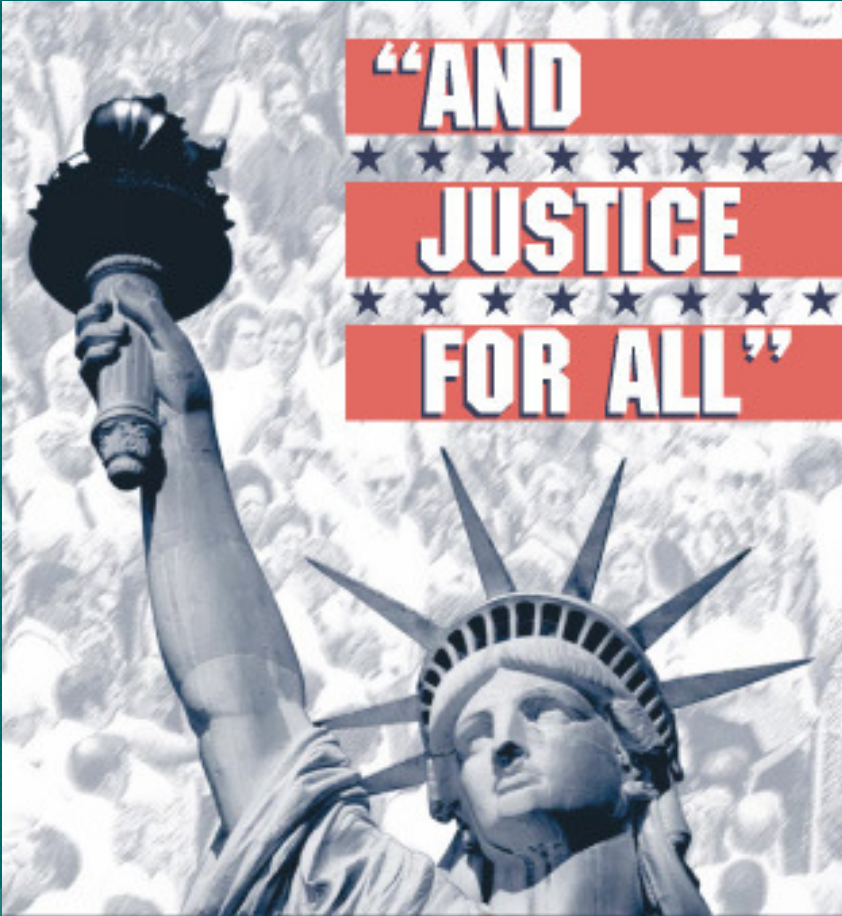
“This institution is an equal opportunity provider”

WHERE NON DISCRIMINATION STATEMENTS ARE NOT REQUIRED

- Imprinted on items such as cups, buttons, pens, etc.
- Read in its entirety when use in public service announcement on the radio, Internet, T.V., etc.
- Mentioning that the specific program is an equal opportunity provider is sufficient

Methods of Public Notification

- Prominently display the “And Justice for All” poster.
- Provide appropriate information in alternative formats for persons with disabilities.
- Include the required nondiscrimination statement on all appropriate publications, Web sites, posters and informational materials.
- Convey the message of equal opportunity in all photos and other graphics that are used to provide program or program-related information.



“AND JUSTICE FOR ALL”

The U.S. Department of Agriculture (USDA) prohibits discrimination in all its programs and activities on the basis of race, color, national origin, gender, religion, age, disability, political beliefs, sexual orientation, and marital or family status. (Not all prohibited bases apply to all programs.) Persons with disabilities who require alternative means for communication of program information (Braille, large print, audiotape, etc.) should contact USDA's TARGET Center at (202) 720-2600 (voice and TDD).

To file a complaint of discrimination, write USDA, Director, Office of Civil Rights, Room 326-W, 14th and Independence Avenue, SW, Washington, DC 20250-9410 or call (202) 720-5964 (voice and TDD). USDA is an equal opportunity provider and employer.

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El Departamento de Agricultura de los EE. UU. (USDA, siglas en inglés) prohíbe la discriminación en todos sus programas y actividades a base de raza, color, origen nacional, género, religión, edad, impedimentos, credo político, orientación sexual, estado civil o familiar. (No todas las bases de prohibición aplican a todos los programas.) Personas con impedimentos que requieran medios alternativos de comunicación para obtener información acerca de los programas (Braille, tipografía agrandada, cintas de audio, etc.) deben ponerse en contacto con el Centro TARGET de USDA, llamando al (202) 720-2600 (voz y TDD).

Para presentar una queja sobre discriminación, escriba a USDA, Director, Office of Civil Rights, Room 326-W, White House Building, 14th and Independence Avenue, SW, Washington, DC 20250-9410, o llame al (202) 720-5964 (voz y TDD). USDA es un proveedor y empleador que ofrece oportunidad igual a todos.

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2. COMPLAINTS OF DISCRIMINATION

Any person has the right to file a discrimination complaint.

- A Civil Rights Complaint must be based on one of the following:
 - 1) Race,
 - 2) Color,
 - 3) National Origin,
 - 4) Age,
 - 5) Sex, or
 - 6) Disability,
 - 7) Religion,
 - 8) Political Beliefs

Scenario #1

- A complaint is received from a participant that the staff at the FDPIR site was rude and disrespectful. The complaint states that the staff person's tone was demeaning and generally unpleasant.
 - Are there civil rights issues here and if so, what?
 - Does it make a difference if the recipient and the worker are different races, national origins or genders?

The CR complaint procedure:

- Name, address, and telephone number or other means of contacting the person alleging discrimination,
 - The location and name of the organization or office that is accused of the discriminatory practices,
 - The nature of the incident or action or the aspect of program administration that led the person to allege discrimination,
 - The basis for the alleged discrimination (age, race, color, sex, disability, religious creed, national origin, or political belief),
 - Refer age complaints to Federal Mediation and Conciliation Services
-

FNS and authorized ITOs then:

- Review and evaluate facts of investigation
- Write decision informing complainant of follow-up or closure action and provide appeal information

COMPLAINTS OF DISCRIMINATION

- Complainant must file complaint within 180 days from act of discrimination.
- Complaints may be verbal as well as anonymous.
- The use of a complaint form is not required.
- FNS and authorized ITOs must investigate and resolve complaints within 90 days.

3. DATA COLLECTION AND REPORTING

- ITO's are required to obtain data by race and ethnic category on potentially eligible populations, applicants, and participants in their program service area.

DATA COLLECTION AND REPORTING

The purpose is to:

- Determine how effectively FNS programs are “reaching” potential eligible persons and beneficiaries,
 - ITOs should compare their participant data with potential eligible persons within their service areas.
 - If disparities or areas of underrepresentation occur, it will be necessary to investigate the causes for it. Provide additional outreach as needed.

DATA COLLECTION AND REPORTING

Scenario #3

- There are people living in your community who may be eligible to participate in your Food Distribution Program, but they are not participating.
 - What are some reasons why this might be happening?
 - How could you find out for sure why they are not participating?
 - What might be done to get at least some of them to participate?

Collecting and Reporting Participation Data

- ITO's, are required to obtain data by race and ethnic category on potentially eligible populations, applicants, and participants in their program service area.
- Data must be collected/retained by the service delivery point for each program as specified in the program regulations, instructions, policies and guidelines.
- Self-identification or self-reporting is the preferred method of obtaining data.
- Records must be maintained for 3 years.
- Access restricted only to authorized personnel.

Race and Ethnic Categories

Two Question Format

1. Ethnicity:

- *Hispanic or Latino*
- *Not Hispanic or Latino*

2. Race

- *American Indian or Alaskan Native*
- *Asian*
- *Black or African American*
- *Native Hawaiian or Other Pacific Islander*
- *White*

Race and Ethnic Categories

- ITOs may have categories for race in addition to the ones required by FNS;
 - however, the additional categories must be mapped and extracted to the required FNS categories.
- Program applicants may not be required to furnish race or ethnicity.
 - Identification must be voluntary.
- Visual observation will be used when the applicant does not self-identify.

4. LIMITED ENGLISH PROFICIENCY (LEP)

Definition:

- Individuals who do not speak English as their primary language and who have a limited ability to read, speak, write, or understand English.
- ITOs have a responsibility to take reasonable steps to ensure meaningful access to their programs and activities by persons with limited English proficiency.

Scenario #2 LEP

- How should an ITO determine when materials should be translated into another language?
- When should an interpreter be hired?

Bilingual Requirements

- Current FDP rules at 7CFR Part 253.5(d) require State agencies to use appropriate bilingual personnel and printed materials in areas in which a substantial number of members of low-income households speak a language other than English, otherwise referred to as persons with Limited English Proficiency (LEP). To determine if a substantial number of LEP households reside in an area, the current rules specify the methodology for estimating the number of LEP households and thresholds that trigger mandatory bilingual services.

Bilingual Requirements (continued)

- In general, each certification office that provides service to an area containing approximately 100 single-language minority low-income households must routinely provide both bilingual certification materials and bilingual staff or interpreters.
- Certification materials include the application form, change report forms, (i.e., monthly, quarterly, or change reports) and notices to the household.

Bilingual Requirements (continued)

- Bilingual services as described in this section must be provided for all FDP activities including, but not limited to applications, outreach, and nutrition education.
- To determine the need to provide bilingual services, ITOs **are required to develop estimates** of the number of low-income single-language minority households, both participating and not participating in the program, for each project area and certification office, and use those estimates to determine if thresholds are met. If so, bilingual services must routinely be provided in those project areas and offices.

Scenario #3 Limited English Proficiency

- A family comes to the ITO office and does not speak English. You cannot understand them and have no idea what language they are speaking. You write a note to give to the family saying that they need to return with an interpreter.
- Is this proper or should something else be done?

5. CIVIL RIGHTS TRAINING

- ITOs are responsible for training their “frontline staff” who interact with applicants or participants on an annual basis.

CIVIL RIGHTS TRAINING

Specific subject matter required, but not limited to:

1. How to collect ethnic and racial data,
2. Notifying clients of their rights,
3. Address discrimination concerns,
4. Providing reasonable accommodation for persons with disabilities,
5. Serving persons needing language assistance,
6. Conflict resolution, and
7. Providing excellent Customer service.

6. COMPLIANCE REVIEWS

To examine the activities of ITO's to determine their adherence with civil rights requirements.

- FNS Region will review ITO agencies and their compliance with civil rights.
- But ITO's must review their own operations for compliance with civil rights requirements.

Compliance Reviews

3 Types of Compliance Reviews:

- Pre-approval or Pre-award
- Post-award or Routine
- Special

Questions ?



Scenario 4

The FDPIR site is located on the second floor in a building with no elevator.

- Could this cause any problems from a civil rights perspective?
- If so what, and what might be done?



Scenario 5

A man requests that only low carbohydrate foods be included in the food package since the diet he's on requires avoiding certain foods.

- Is it discrimination if you do not accommodate him?
- Would it make any difference if he has been diagnosed as obese?



Scenario 6

A female employee is being subjected to a series of sexual jokes and comments in the office and warehouse. She complains to her supervisor and her supervisor tells her she is being too sensitive.

- Is there a civil rights problem?



Scenario 7

Female employees apply for jobs in the warehouse but are not getting hired. When one female asks why, a supervisor tells her that women in the warehouse create a distraction for the men working there.

- Problem?

Contact Information

For more information:

Office of Civil Rights
USDA Food and Nutrition Service Western Region
90 Seventh Street, Ste. 10-100
San Francisco, CA 94103

Or contact:

Joe Torres, Director (415) 705-1322 ext. 519

- joe.torres@fns.usda.gov

Dominic Pagano, CR Specialist, ext. 518.

- dominic.pagano@fns.usda.gov

Office Toll Free Number: 888-271-5983

