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September 5, 2006

SUBJECT: Civil Rights Instruction

NSLP – 108
CACFP – 100
CACFPDCH –89
SMP – 11
SFSP – 43
TEFAP
CSFP

TO: Authorized Representatives

FROM: Child and Adult Nutrition Services

This information should be shared the person responsible for administration of the child nutrition and/or food distribution program and the original should be placed in the numbered memo notebook from Child and Adult Nutrition Services. The memo is also available on the Child & Adult Nutrition Services website. Questions should be referred to a Child & Adult Nutrition Services staff member.

The US Department of Agriculture revised Federal Instruction 113-1 governing Civil Rights in the Child Nutrition, Food Distribution, Food Stamp, and Special Supplemental Program for Women, Infants, and Children (WIC). A shortened version of that instruction is included here with sections for WIC, Food Stamps, and FDPIR removed as well as sections of instruction specifically for federal and/or state agencies.

The full Instruction 113-1 can be accessed from the USDA website at <http://www.fns.usda.gov/cr/>.

“And Justice For All” posters are to be posted in dining and service areas or other appropriate areas where clients access services. Due to the specific requirements on size and type of poster, these will be issued from US Department of Agriculture to the State agency. Until such time as a new poster is received, the local agency should continue to use the one formerly provided by the State Agency. More information on the JFA posters can be obtained at <http://www.fns.usda.gov/cr/justice.htm>.

Civil Rights Compliance and Enforcement – Nutrition Programs and Activities
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I PURPOSE

The purpose of this Instruction is to establish and convey policy and provide guidance and direction to the United States Department of Agriculture (USDA) Food and Nutrition Service (FNS) and its recipients and customers, and ensure compliance with and enforcement of the prohibition against discrimination in all FNS nutrition programs and activities, whether federally funded in whole or not. Portions of instructions that relate only to state or federal agencies or programs not operated in the State of South Dakota were eliminated.

II AUTHORITY

A Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d to 2000d-6, which prohibits discrimination based on race, color, and national origin in programs and activities receiving Federal financial assistance; and USDA Implementing Regulation, 7 CFR Part 15, Subpart A and Subpart C.

B Americans with Disabilities Act (28 CFR Part 35, Title II, Subtitle A), which prohibits discrimination on the basis of disability in all services, programs, and activities provided to the public by State and local governments, except public transportation services.

C Title IX of the Education Amendments of 1972 (20 U.S.C. § 1681 et. seq.), which prohibits discrimination based on sex under any education program or activity receiving Federal financial assistance; and USDA Implementing Regulation, 7 CFR Part 15 a.

D Section 504 of the Rehabilitation Act of 1973, which prohibits discrimination based on disability; and USDA Implementing Regulation, 7 CFR Part 15 b.

E Age Discrimination Act of 1975 (45 CFR Part 91), which prohibits discrimination based on age in programs or activities receiving Federal financial assistance.

F The Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA), and Department of Justice (DOJ) Memorandum dated January 28, 1999, entitled, "Policy Guidance Document -- Enforcement of Title VI of the Civil Rights Act of 1964 and Related Statutes in Block Grant Type Programs."

G Civil Rights Restoration Act of 1987, which clarifies the intent of Congress as it relates to the scope of Title VI of the Civil Rights Act of 1964 and related nondiscrimination statutes to ensure nondiscrimination in all programs and activities of a recipient, whether those programs and activities are federally funded or not.

H The Food Stamp Act of 1977, as amended. The Food Stamp Program (FSP) is an entitlement program available to all low-income individuals and families who meet the income, resource, and eligibility requirements as specified under the Act and corresponding regulations. The Act prohibits discrimination against any applicant or participant in any aspect of program administration for reasons of age, race, color, sex, handicap, religious creed, national origin, or political beliefs.

I Enforcement of Title VI of the Civil Rights Act of 1964 -- National Origin Discrimination Against Persons With Limited English Proficiency, 65 F.R. 50123, August 16, 2000. This is the Federal Register cite for Department of Justice guidance for Executive Order 13166, Improving Access To Services For Persons With Limited English Proficiency, signed on August 11, 2000.

J USDA Departmental Regulation 4330-2, Activities Receiving USDA Financial Assistance, ensures compliance with and enforcement of the prohibition against discrimination in programs and activities funded in whole or in part by the U.S. Department of Agriculture.

K USDA Regulation 7 CFR Part 16, Equal Opportunity for Religious Organizations, implements executive branch policy that, within the framework of constitutional church-State

guidelines, religiously affiliated (or “faith-based”) organizations should be able to compete on an equal footing with other organizations for USDA assistance.

Refer to the specific Program Appendices for additional authorities.

III POLICY

The U.S. Department of Agriculture prohibits discrimination in all its programs and activities on the basis of race, color, national origin, age, disability, and where applicable, sex, marital status, familial status, parental status, religion, sexual orientation, genetic information, political beliefs, reprisal, or because all or part of an individual’s income is derived from any public assistance program. (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 TTY).

Although it is the policy of the USDA and FNS, as so stated above, to provide fair and equitable treatment to every employee and customer, there are specific laws and regulations that provide for the protected bases for each nutritional assistance program.

For this reason, sexual orientation, marital or family status, parental status, and protected genetic information are not protected bases in FNS federally assisted programs.

The following is the list of FNS programs and their applicable protected bases:

A. Food Stamp Program and Food Distribution Program on Indian Reservations

- 1 race,
- 2 color,
- 3 national origin,
- 4 age,
- 5 sex,
- 6 handicap (disability),
- 7 religious creed, and
- 8 political beliefs.

B All other FNS nutritional assistance programs

- 1 race,
- 2 color,
- 3 national origin,
- 4 age,
- 5 sex, and
- 6 disability.

Refer to the specific Program Appendices for exceptions to this policy.

IV APPLICABILITY

This Instruction is applicable to all programs and activities of a recipient of Federal financial assistance, whether those programs and activities are federally funded in whole or not.

Sometimes programs or certain parts of programs are established to assist a certain group such as children, the elderly, pregnant or lactating mothers, etc. Whenever Congressional legislation specifies or sets restrictions on program eligibility, those provisions take precedence over certain protected bases.

V DEFINITIONS

A Alternative Dispute Resolution (ADR). The use of a neutral third party to resolve informally a complaint of discrimination, through the use of various techniques (e.g., fact finding, mediation, facilitating, ombudsman, or conciliation). A common element in most ADR techniques is the presence of a person who acts as the facilitator. This facilitator is a neutral person who works with the parties to help them develop an agreeable resolution to their problems.

B Applicant. A person who applies in writing, electronically, verbally, or through a designated representative for participation in an FNS federally assisted or conducted program.

C Assurance. A contractual agreement (i.e., Federal/State Agency Agreement or a State Agency/Local Agency Agreement) in which a State agency, local agency, or other subrecipient legally agrees to administer FNS program services and benefits in accordance with all laws, regulations, instructions, policies, and guidance related to nondiscrimination in program delivery.

D Beneficiaries. Individuals who receive assistance, services, or benefits under an FNS program (e.g., persons receiving food stamp benefits, WIC benefits, and/or commodities). Some programs commonly refer to these individuals as participants.

E Civil Rights (CR). The nonpolitical rights of a citizen; the rights of personal liberty guaranteed to U.S. citizens by the 13th and 14th Amendments to the U.S. Constitution and by acts of Congress.

F Civil Rights Act and Regulations. Title VI of the Civil Rights Act of 1964 and other authorities as outlined in Section II above and in the program-specific appendices.

G Complainant. A person or group of persons who allege discrimination in the delivery of program benefits or services by a State agency, local agency, or other subrecipient.

H Complaint. A verbal or written allegation of discrimination that indicates an FNS-conducted or -assisted program is administered or operated in such a manner that it results in disparity of treatment or services being provided to persons or groups of persons because of their protected bases.

I Contractor. A person or entity that agrees to perform FNS-conducted or -assisted program-related services based on a legal agreement.

J Corrective Action Plan. A plan describing the actions to be taken to resolve noncompliance with civil rights regulations, instructions, policies, and guidelines.

K Desk Review. An in-house examination of civil rights information submitted as part of a recipient's Federal financial assistance application.

L Disability. A physical or mental impairment that substantially limits one or more of an individual's major life activities, having a record of such impairment, or being regarded as having such an impairment.

M Discrimination. The act of distinguishing one person or group of persons from others, either intentionally, by neglect, or by the effect of actions or lack of actions based on their protected bases.

N Federal Financial Assistance. Federal financial assistance includes, but is not limited to:

- 1 Grants and loans of Federal funds,
- 2 Grant or donation of Federal property and interests in property,
- 3 Commodities,
- 4 Detail of Federal personnel,
- 5 Sale and lease of, and the permission to use (on other than a casual or

transient basis), Federal property or any interest in such property or the furnishing of services without consideration or at a nominal consideration, that is reduced for the purpose of assisting the State agency, local agency, or other subrecipient, or in recognition of the public interest to be served by such sale, lease, or furnishing of services to the State agency, local agency, or other subrecipient, and

6 Any Federal agreement, arrangement, or other contract that has as one of its purposes the provision of assistance.

O Federally Assisted Activities and Programs. Includes any program, project, or activity for the provision of services, financial aid, or other benefits to individuals (whether provided through a State agency, local agency, or other subrecipient receiving Federal financial assistance or provided by others through contracts or other arrangements with the State agency, local agency or other subrecipient), and including work opportunities, cash, loans, or other assistance to individuals. For the purposes of this definition, services, financial aid, or other benefits provided to individuals are those provided with the aid of Federal financial assistance or with the aid of any non-Federal funds, property, or other resources required to be expended or made available for the program to meet matching requirements or other conditions that must be met in order to receive the Federal financial assistance, and to include any services, financial aid, or other benefits to individuals provided in or through a facility with the aid of Federal financial assistance or such non-Federal resources.

P Grassroots Organization. An organization at the local level that interacts directly with potential eligibles or participants, such as an advocacy organization, community action program, civic organization, migrant group, religious organization, neighborhood council, or other similar group.

Q Investigation. Formal gathering of facts by the appropriate Office of Civil Rights (OCR) or other authorized government agency or private contractor that will refute or substantiate an allegation of discrimination.

R Limited English Proficiency (LEP) Persons. Individuals who do not speak English as their primary language and who have a limited ability to read, speak, write, or understand English. Recipients of Federal financial assistance have a responsibility to take reasonable steps to ensure meaningful access to their programs and activities by person(s) with limited English proficiency.

S Local Agency or Other Subrecipient. Any agency, organization, or corporation that receives Federal financial assistance either directly or indirectly from FNS. Examples of local agencies include, but are not limited to, school food authorities, food banks, and county health departments.

Refer to the appropriate program-specific appendix for additional clarification of local agency.

T Memorandum of Understanding (MOU). This document sets forth the agreement between FNS and the USDA Office of Civil Rights for processing complaints filed with the USDA that allege violations of Title VI of the Civil Rights Act of 1964 (as amended), Title IX of the Education Amendments of 1972, Section 504 of the Rehabilitation Act of 1973, Age Discrimination Act of 1975, Americans with Disabilities Act, Food Stamp Act of 1977 (as amended), and applicable USDA and FNS regulations, instructions, and guidance; and Executive Orders.

U Noncompliance. The finding that any civil rights requirement, as interpreted by regulations; this Instruction; policies; or State agency, local agency, or other subrecipient guidelines; has not been satisfied.

V Office of Civil Rights (OCR).

1 USDA OCR - The organizational unit reporting to the Office of the Secretary of Agriculture that has authority to develop and administer a comprehensive program to

assure equal opportunity and nondiscrimination for all persons in all aspects of USDA programs under applicable CR laws and regulations.

2 FNS Headquarters Civil Rights Division (CRD) - The organizational unit reporting to the Office of the FNS Deputy Administrator for Management that has delegated authority comparable to that of USDA OCR.

3 FNS Regional OCR – The organizational unit reporting to the Office of the Regional Administrator that has delegated CR authority at the regional level.

W Participants. Individuals who receive assistance, services, or benefits under an FNS program (e.g., persons receiving food stamp benefits, WIC benefits, and/or commodities).

X Post-approval Compliance Review. A civil rights review (desk or onsite) that is conducted after an entity has been authorized to receive Federal financial assistance from FNS to determine civil rights compliance. The review may be done as a routine part of the program compliance reviews or management evaluations. The review may also be a special in-depth review as determined by civil rights concerns.

Y Potentially Eligible Persons. Individuals or households that may be eligible to receive FNS program assistance, benefits, or services, but have not applied.

Z Preapproval/Preaward Compliance Review. A desk or onsite compliance review of specific civil rights information submitted by a State agency, local agency, or other subrecipient applicant agency in the application for Federal financial assistance. The review and approval of the information must take place before the application is approved for program operation.

AA Preliminary Inquiry (PI). An informal gathering of information that will refute or substantiate an allegation of discrimination.

BB Program Applicant. Any agency or organization that submits a request or plan as required for FNS or a State agency, as a condition of eligibility for Federal financial assistance.

CC Program Compliance Review. An evaluation procedure used to determine if State agencies, local agencies, and other subrecipients are administering and operating FNS programs in accordance with program and civil rights regulations, instructions, policies, and guidance.

DD Prohibited Bases. The bases for nondiscrimination are race, color, national origin, age, disability, or sex. The FSP and FDPIR also prohibit discrimination on the basis of political beliefs or religion.

EE Project Area. The county or similar political subdivision designated by a State as the administrative unit for program operations. Upon prior FNS approval a State, city, Indian Reservation, welfare district, or any entity with clearly defined geographic boundaries, or any combination of such entities, may be designated as a project area in accordance with regulations or guidelines for the specific program being administered.

FF Retail Food Store (Retailer). An establishment or house-to-house trade route that sells food for home preparation and consumption normally displayed in a public area; consistent with the Food Stamp Program's definition contained within 7 CFR Part 271.2.

GG Service Delivery Area. The locale serviced by a service delivery point in the administration of FNS assisted programs, such as a school district or a food stamp project area.

HH Service Delivery Point. A place in which FNS assisted program services or benefits are administered to the public. Examples of service delivery points are homes for elderly citizens, day care centers, clinic sites, and FSP certification centers.

II Special Compliance Reviews. Either scheduled or unscheduled reviews conducted when:

1 There is a need to follow up on noncompliance findings from postaward and preapproval reviews requiring additional information and comprehensive examination of specific aspects of program operations,

2 Statistical data indicates that a particular group is not participating in or benefiting from the program to an extent indicated by the population potentially eligible to participate in or benefit from the program,

3 Reports of noncompliance made by other agencies need to be investigated,

4 Systemic complaints of discrimination have developed that require follow-up, or

5 The Secretary of Agriculture, USDA OCR, the FNS Administrator, the FNS CR Director, or Regional CR Director requests a review.

JJ Standard Operating Procedures (SOP). Procedures designed by FNS to receive, process, and track program discrimination complaints or other matters under the MOU.

KK State Agency or other Recipient. Any State Department (e.g., Health, Social Services, Education, Agriculture) or entity (e.g., Indian Tribal Organization (ITO)) that receives Federal financial assistance directly or indirectly from FNS, and either extends those funds to another State agency, local agency, or other subrecipient for the purpose of carrying out a program, or expends those funds directly in carrying out a program.

Refer to FNS Program appendices for additional clarification on State agencies.

LL Subrecipient. Any agency, organization, or corporation that receives Federal financial assistance indirectly from FNS. Examples of subrecipients include but are not limited to school food authorities, food banks, and county health departments.

MM Underserved Group or Community. A group or community whose participation in an FNS program is significantly below the percentage of potentially eligible members of the group or community in the service area.

NN Vendor. A sole proprietorship, partnership, cooperative association, corporation, or other business entity operating one or more stores authorized by the State agency to provide WIC-authorized supplemental foods to participants under a retail food delivery system.

Refer to the program specific appendices for additional definitions.

VI RESPONSIBILITIES

USDA's OCR is responsible for the development, implementation, coordination, and enforcement of all aspects of the Department's CR program. The Administrator of FNS is assigned line responsibility for implementing a comprehensive CR program that ensures nondiscrimination compliance in all FNS programs and activities.

VII LIMITED ENGLISH PROFICIENCY

Title VI of the Civil Rights Act of 1964 prohibits recipients of Federal financial assistance from discriminating against or otherwise excluding individuals on the basis of race, color, or national origin in any of their activities. Section 601 of Title VI, 42 U.S.C. § 2000d, provides "No person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance."

The term "program or activity" is broadly defined. There is no numerical threshold that must be met before provisions of the Civil Rights Act, prohibiting discrimination based on national origin, are applicable.

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State agencies, local agencies, or other subrecipients that fail to provide services to Limited English Proficiency (LEP) potentially eligible persons, applicants, and participants, or deny them access to federally assisted programs and activities, may be discriminating on the basis of national origin in violation of Title VI and its implementing regulations. Title VI and its regulations require State agencies, local agencies, or other subrecipients to take reasonable steps to assure “meaningful” access to the information and services they provide. What constitutes reasonable steps to assure meaningful access will be contingent on a number of factors. Among the factors to be considered are (1) the number or proportion of LEP persons eligible to be served or likely to be encountered by the program or grantee; (2) the frequency with which LEP individuals come in contact with the program; (3) the nature and importance of the program, activity, or service provided by the program to people’s lives; and (4) the resources available to the grantee/recipient and costs.

The following will assist a recipient in determining the extent of its obligation to provide LEP services:

A. The Number or Proportion of LEP Persons Served or Encountered in the Eligible Population.

One factor in determining what language services recipients should provide is the number or proportion of LEP persons from a particular language group served or encountered in the eligible service population. The greater the number or proportion of these LEP persons, the more likely language services are needed. Ordinarily, persons “eligible to be served, or likely to be directly affected, by” a recipient’s program or activity are those who are served or encountered in the eligible service population. This population will be program-specific, and includes persons who are in the geographic area that has been approved by a Federal grant agency as the recipient’s service area. Where no service area has previously been approved, the relevant service area may be that which is approved by State or local authorities or designated by the recipient itself, provided that these designations do not themselves discriminatorily exclude certain populations.

Recipients should first examine their prior experience with LEP encounters and determine the breadth and scope of language services that were needed. In conducting this analysis, it is important to include language minority populations that are eligible for FNS programs or activities but may be underserved because of existing language barriers. Other data should be consulted to refine or validate a recipient’s prior experience, including the latest census data for the area served, data from school systems and from community organizations, and data from State and local governments. Community agencies, school systems, religious organizations, legal aid entities, and others can often assist in identifying populations for whom outreach is needed and who would benefit from the recipients’ programs and activities where language services are provided.

B The Frequency With Which LEP Individuals Come in Contact With the Program.

Recipients should assess, as accurately as possible, the frequency with which they have or should have contact with an LEP individual from different language groups seeking assistance. The more frequent the contact with a particular language group, the more likely that enhanced language services in that language are needed. The steps that are reasonable for a recipient that serves an LEP person on a one-time basis will be very different than those expected from a recipient that serves LEP persons daily. It is also advisable to consider the frequency of different types of language contacts. For example, frequent contacts with Spanish-speaking people who are LEP may require certain assistance in Spanish. Less frequent contact with different language groups may suggest a different and less intensified solution. If an LEP individual accesses a program or service on a daily basis, a recipient has greater duties than if the same individual’s program or activity contact is unpredictable or infrequent. But even recipients that serve LEP persons on an unpredictable or infrequent basis should use this balancing analysis to determine what to do if an LEP individual seeks services under the program in question. This plan need not be intricate. It may be as simple as being prepared to use one of the commercially-available telephonic interpretations services to obtain immediate interpreter services. In applying this standard, recipients should take care to consider whether appropriate outreach to LEP persons could increase the frequency of contact with LEP language groups.

C The Nature and Importance of the Program, Activity, or Service Provided by the Program.

The more important the activity, information, service, or program, or the greater the possible consequences of the contact to the LEP individuals, the more likely language services are needed. The obligations to communicate rights to a person who is arrested or to provide medical services to an ill or injured person, and to provide nutrition assistance to individuals or groups of persons differ, for example, from those to provide bicycle safety courses or recreational programming. A recipient needs to determine whether denial or delay of access to services or information could have serious or even life-threatening implications for the LEP individual. Decisions by a Federal, State, or local entity to make an activity compulsory, such as particular educational programs in the Special Supplemental Nutrition Program for Women, Infants, and Children (WIC) or the communication of eligibility requirements, can serve as strong evidence of the program's importance.

D The Resources Available to the Recipient and Costs.

A recipient's level of resources and the costs that would be imposed on it may have an impact on the nature of the steps it should take. Smaller recipients with more limited budgets are not expected to provide the same level of language services as larger recipients with larger budgets. In addition, "reasonable steps" may cease to be reasonable where the costs imposed substantially exceed the benefits.

Resource and cost issues, however, can often be reduced by technological advances; the sharing of language assistance materials and services among and between recipients, advocacy groups, and Federal grant agencies; and reasonable business practices. Where appropriate, training bilingual staff to act as interpreters and translators, information sharing through industry groups, telephonic and video conferencing interpretation services, pooling resources and standardizing documents to reduce translation needs, using qualified translators and interpreters to ensure that documents need not be "fixed" later and that inaccurate interpretations do not cause delay or other costs, centralizing interpreter and translator services to achieve economies of scale, or the formalized use of qualified community volunteers, for example, may help reduce costs.

Recipients should carefully explore the most cost-effective means of delivering competent and accurate language services before limiting services due to resource concerns. Large entities and those entities serving a significant number or proportion of LEP persons should ensure that their resource limitations are well-substantiated before using this factor as a reason to limit language assistance. Such recipients may find it useful to be able to articulate, through documentation or in some other reasonable manner, their process for determining that language services would be limited based on resources or costs.

[Specific FNS and Departmental LEP Guidance is Reserved]

VIII EQUAL OPPORTUNITY FOR RELIGIOUS ORGANIZATIONS

A Faith-based and community-based organizations (FBOs and CBOs) have a long history of involvement in Federal nutrition assistance programs and a tradition of supporting low-income people by providing a wide range of social services. These organizations are important and 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 State agencies, which in turn partner with local organizations. Generally, FBOs/CBOs participate in these programs through agreements with States, or through other local agencies that have agreements with States, rather than directly with the Federal government.

C Nutrition assistance program policy 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. In addition, FNS has undertaken special initiatives that recognize the role of FBOs/CBOs in serving low-income people.

D The Department of Agriculture promulgated a regulation on July 9, 2004, to ensure the elimination of unwarranted barriers to the participation of faith-based organizations 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.

E This regulation ensures a level playing field for the participation of faith-based organizations and other community organizations in USDA programs 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, and
- * • 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.

IX 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 the program availability, program rights and responsibilities, the policy of nondiscrimination, and the procedure for filing a complaint.

A Basic Elements of Public Notification. The public notification system must include the following three basic elements:

1 Program Availability. Each State agency, local agency, or other subrecipient that distributes program benefits and services must take specific action to inform applicants, participants, and potentially eligible persons of their program rights and responsibilities and the steps necessary for participation.

2 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.

3 Nondiscrimination Statement. All information materials and sources, including Web sites, used by FNS, State agencies, local agencies, or other subrecipients 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.

(...State and other program instruction removed)

d For all other FNS nutritional assistance programs, State or local agencies, and their subrecipients, 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 State authorizes additional language, it must be included in a separate statement.

(1) The authorized statement reads as follows:

“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.”

(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 announcements 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 Methods of Public Notification. Each State agency, local agency, or other subrecipient 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 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 State agency elects to produce its own posters, either due to unavailability from USDA/FNS or State agency preference, the reproduction must be approximately the same size as the applicable “And Justice for All” poster (11” width and 17” height).

2 Inform potentially eligible persons, 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.

3 Provide appropriate information, including Web-based information, in alternative formats for persons with disabilities.

4 Include the required nondiscrimination statement on all appropriate FNS and agency publications, Web sites, posters, and informational materials provided to the public.

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

X ASSURANCES

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 State agency and will ensure that State agencies are obtaining assurance from local agencies or other subrecipients 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/ subrecipient 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 as needed during hours of program operation to ascertain compliance. The FNS Regional OCR is responsible for reviewing, approving, and monitoring FNS/State agency agreements. State agencies are responsible for monitoring compliance with the agreements that cover their programs. State agencies are also responsible for reviewing, approving, and monitoring local agency and other subrecipient agreements.

Refer to FNS Program appendices for additional information.

XI CIVIL RIGHTS TRAINING

Training is required so that people involved in all levels of administration of programs that receive Federal financial assistance understand civil rights related laws, regulations, procedures, and directives. Persons responsible for reviewing CR compliance must receive training to assist them in performing their review responsibilities. This training may be carried out as part of ongoing technical assistance.

The FNS Regional OCR and State agencies will be responsible for training State agency staffs. State agencies are responsible for training local agencies. Local agencies are responsible for training their subrecipients, 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. Specific subject matter must include, but not be limited to:

- A Collection and use of data,
- B Effective public notification systems,
- 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.

XII DATA COLLECTION AND REPORTING

FNS Headquarters and Regional Offices, State agencies, local agencies, and other subrecipients must provide for and maintain a system to collect the racial and ethnic data in accordance with FNS policy. These data will be used to determine how effectively FNS programs are reaching potential eligible persons and beneficiaries, identify areas where additional outreach is needed, assist in the selection of locations for compliance reviews, and complete reports as required.

A Collecting and Reporting Participation Data

1 State agencies, local agencies, and other subrecipients 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. FNS requires recipients of Federal financial assistance to ask all program applicants and participants to identify all the racial categories that apply. This is consistent with existing OMB guidance. OMB states: “Respect for individual dignity should guide the processes and methods for collecting data on race and ethnicity; ideally, respondent self-identification should be facilitated to the greatest extent possible, recognizing that in some data collection systems observer identification is more practical.” FNS also believes that self-identification or self-reporting is the preferred method of obtaining characteristic data. Program applicants and participants should be

encouraged to provide the information by explaining the use of the statistical data. The following is an example that may be utilized when soliciting characteristic data from a program applicant/participant:

This information is requested solely for the purpose of determining the State's compliance with Federal civil rights laws, and your response will not affect consideration of your application, and may be protected by the Privacy Act. By providing this information, you will assist us in assuring that this program is administered in a nondiscriminatory manner." If the applicant declines to self-identify, the applicant should be informed that a visual identification of his or her race and ethnicity will be made and recorded in the data system.

In instances where demographic data, specifically racial/ethnic data, is collected via an online system, provisions must be made for the program applicant/participant to self-identify. Once the data is collected via the online system, the program applicant/participant must then be able to verify this data by signing some type of summary printout of this information or by attesting to the correctness and accuracy of the data in some manner.

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:

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.
- (5) White. A person having origins in any of the original peoples of Europe, the Middle East, or North Africa.

5 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. Provision shall be made to report the number of respondents in each racial category who are Hispanic or Latino.

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 a benefit 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.

Refer to FNS Program appendices for additional information.

B Determining the Eligible Population. State agencies 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 standard statistical sources such as reports issued by the U.S. Census Bureau or Bureau of Vital Statistics. State agencies may also use data or information collected by other Federal and State agencies (e.g., Department of Education (DOEd).)

XIII COMPLIANCE REVIEWS

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 State agency, local agency, or other subrecipients 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 State agencies and Regional Office Administered Programs (ROAP) local agencies. The State agencies are responsible for the review of local agencies, except for ROAP. Local agencies are responsible for the review of their subrecipients.

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 State agency, any significant findings are to be reported to the FNS Regional OCR. If the review is performed by the FNS Region, significant findings must be reported to FNS Headquarters CRD.

C Preapproval/Preaward Compliance Reviews. The FNS Region or State CR official(s) must determine that all State agency, local agency, or other subrecipient program 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 That each program applicant or recipient promptly notify FNS of any lawsuit filed against the program applicant or recipient or a subrecipient 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; and that each program applicant or recipient 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.

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 by any program applicant or recipient that it will compile and maintain records required by the FNS guidelines or other directives.

4 An onsite preapproval 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 State agency, local agency or other subrecipient may not be in compliance with CR requirements, action on the application will be deferred pending prompt initiation and completion of administrative action. The FNS Regional OCR or State must immediately notify, as appropriate, the State agency, local agency, or other subrecipient applicant in writing of the noncompliance and provide the program applicant with the opportunity to take corrective action within a specified timeframe.

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 applications 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 persons 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 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.

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.

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. State and local agencies responsible for the administration of an FNS program or subrecipients approved for participation in an FNS program must conduct routine compliance reviews as identified by this Instruction and program-specific regulations, policies, instructions, and guidelines. These reviews evaluate compliance with CR law, regulations, policies, instructions, and guidance.

1 Coverage and Frequency.

a FNS Regions must review all State agencies within their region and a sampling of local agencies or other subrecipients as required by current program regulations and CR requirements.

b State agencies must review local agencies as required by current program regulations and CR requirements. Local agencies must review their subrecipients as required by current program regulations and CR requirements.

2 Selection Criteria. The State agency, local agency, or other subrecipient to be reviewed for CR compliance by the Food and Nutrition Service Regional Office (FNSRO) may be selected based on an indication of possible concerns in the State agency, local agency or other subrecipient program operations. 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 a 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.

3 Review Content.

a ...(state instruction removed)

b When a review of a local agency or other subrecipient is performed, by either the FNS Region or the State, 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 local agency or subrecipient is providing program information to organizations within the community that may assist the local agency 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 local agency or other subrecipient has conducted CR training for its staff.

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

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.

H Special Compliance Reviews. A special compliance review should be conducted by FNS Regional and/or Headquarters CRD when significant CR concerns having a direct effect on the delivery of FNS program services and/or benefits are identified. Special compliance reviews

should be planned and conducted by FNS Headquarters or Regional OCRs. USDA OCR may conduct other special reviews.

Examples of Special Compliance Review circumstances include, but are not limited to:

- 1 Program participation data indicates that a particular group in a specific area is not benefiting from an FNS program,
- 2 Reports of alleged noncompliance made by the media, grassroots organizations, or advocacy groups need to be resolved,
- 3 Reports of alleged noncompliance made by other agencies, such as DOEd and HHS, need to be resolved, or
- 4 Patterns of complaints of discrimination have been documented.

XIV RESOLUTION OF NONCOMPLIANCE

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 State agency, local agency, or other subrecipient.

The following 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. The FSP and FDPIR also prohibit discrimination on the basis of religion and political beliefs.
- 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. The FSP and FDPIR also prohibit discrimination on the basis of religion and political beliefs.
- 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. The FSP and FDPIR also prohibit discrimination on the basis of religion and political beliefs.

B Achieving Voluntary Compliance. Once noncompliance is determined, 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 State agency, local agency, or other subrecipient. After a finding of noncompliance, the following action must be taken:

1 State agency must:

- a Provide immediate written notice to the local agency or other subrecipient indicating the areas of noncompliance and the action required to correct the situation.
- b Negotiate with the local agency or other subrecipient 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 documentation 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 State agency, local agency, and other subrecipient,
- (6) List of names, titles, office mailing addresses, and office telephone numbers of parties involved, including the chief local agency or other subrecipient 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 State agency advising the local agency or other subrecipient of failure to comply,
- (9) A statement of the defenses the local agency or other subrecipient may be expected to raise, and
- (10) Recommendation for enforcement proceeding or for permission to pursue voluntary compliance efforts.

2 FNS Regional OCR must, with the concurrence of the Regional Administrator (RA):
 a Determine whether the State agency should pursue further voluntary compliance efforts. If so, refer the case back to the State agency with suggestions for further actions that may achieve voluntary compliance.

b If it is determined that the State agency has exhausted all voluntary compliance efforts, or if the initial noncompliance determination was made by the FNS Regional OCR, FNS Regional OCR must prepare a letter to the State agency, local agency, or other subrecipient for the Regional Administrator's signature that includes:

- (1) The area of probable noncompliance,
- (2) Appropriate citations being violated under 7 CFR Part 15, this Instruction or other FNS regulation, policy, or guidance,
- (3) Sixty-day notice to resolve the matter and agree to corrective action, and
- (4) Warning that the matter may be subject to legal actions.

c If the RA determines that voluntary corrective action cannot be achieved within the 60 days allowed by negotiation with the State agency, local agency, or other subrecipient, the RA must submit the Report of Findings of Noncompliance, with appropriate documentation attached, to FNS Headquarters CRD, with copies to the appropriate FNS Deputy Administrator. Appropriate documentation should include the following:

- (1) Copies of compliance reviews,
- (2) A brief statement of the allegations of discrimination that can be factually supported,
- (3) A statement of all actions taken to achieve voluntary compliance,
- (4) List of available witnesses with their addresses and official titles, and with a brief statement of the matter about which they can testify,
- (5) Relevant contracts, assurances, and agreements with FNS and, where appropriate, between the State agency, local agency, or other subrecipient,
- (6) List of names, titles, office mailing addresses, and office telephone numbers of parties involved, including the chief agency 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 State agency and/or FNS advising the agency of failure to comply,

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

3 FNS Headquarters CRD must, with the concurrence of the appropriate Program Deputy Administrator:

a Determine whether the RA should pursue further voluntary compliance efforts. If so, refer the case back to the FNS Regional Administrator and Regional OCR with suggestions for further actions that may achieve voluntary compliance.

b If it is determined that the RA has exhausted all voluntary compliance efforts, FNS OCR must prepare a letter to the State agency, local agency, or other subrecipient for the FNS Administrator's signature that includes:

- (1) The area of probable noncompliance,
- (2) Appropriate citations being violated under 7 CFR Part 15, this Instruction or other FNS regulation, policy, or guidance,
- (3) Notification of 30 days to resolve the matter and agree to corrective action or to submit a request for reconsideration. Requests for an extension of the time to submit opposing comments must be made in writing before the time for such submissions has expired. FNS' decision on a request for reconsideration is final, and there is no further right to request reconsideration. A request for reconsideration must contain arguments or evidence which establish that:
 - (a) new material and evidence is available that was not readily available when the previous decision was issued, or
 - (b) the previous decision involved an erroneous interpretation of law, regulation, or material fact, or misapplication of established policy, or
 - (c) the decision is of such exceptional nature as to have substantial implications.
- (4) Warning that the matter may be subject to legal actions.

c If the letter from the FNS Administrator fails to achieve compliance within the 30 days allowed, the complete case and other required documentation will be forwarded to USDA OCR for formal enforcement action. Copies of the complete case must be included for forwarding by USDA OCR to the Office of the General Counsel (OGC) and DOJ.

4 USDA OCR Responsibilities

a Review the record for completeness and adequacy of efforts at securing voluntary compliance.

b Issue orders to give a notice of hearing or opportunity to request a hearing pursuant to 7 CFR Part 15 and arrange for the designation of an administrative law judge to preside over any such hearing.

c Authorize the taking of action pursuant to 7 CFR Part 15.8(a) relating to compliance by "other means authorized by law."

C Termination or Suspension of Assistance. Any action to suspend or terminate assistance must be limited to a particular State agency, local agency or other subrecipient against whom the finding of noncompliance has been made and must be limited in its effect to the particular program, or part thereof, on which noncompliance has been found.

1 General conditions for termination or suspension of assistance by USDA must not become effective until FNS and USDA administrative responsibilities have been met.

a FNS Responsibilities:

- (1) Advise the State agency, local agency, or other subrecipient in writing of its failure to comply and that it has been determined that compliance cannot be secured through voluntary means.

(2) Forward the complete case and other required documentation to USDA OCR for formal enforcement action. Copies of the complete case must be included for forwarding by USDA OCR to the OGC and the DOJ.

b USDA Responsibilities:

- (1) Document the finding that after opportunity for a hearing, the recipient has failed to comply with the requirements of this instruction, regulations, policies, and other applicable guidelines.
- (2) Ensure the action has been approved by the Secretary pursuant to 7 CFR Part 15.10(e).
- (3) Ensure 30 days have passed since the Secretary has filed a full written report of the circumstances and the grounds for such action with the committee of the House and committee of the Senate that have legislative jurisdiction over the program involved.

2 After final termination is approved by the Secretary, FNS Headquarters CRD must prepare a letter to the appropriate FNS Deputy Administrator for the termination of the financial assistance. The letter must advise the Deputy Administrator to advise FNS Headquarters OCR if the violating State agency, local agency, or other subrecipient reapplies for assistance. FNS Headquarters CRD must notify USDA OCR of the reapplication for assistance and, upon agreement with USDA OCR, conduct a preapproval onsite review.

XV COMPLAINTS OF DISCRIMINATION

A All complaints alleging discrimination on the basis of race, color, national origin, age, sex, or disability, either written or verbal, must be processed within the time frames established by Departmental regulations and agreements. The FSP and FDPIR also prohibit discrimination on the basis of religion or political beliefs.

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 State) for a determination on how the complaint will be handled. The appropriate OCR will prepare and issue letters of acknowledgment 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 possible.

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, State agency, local agency, or other subrecipient may develop complaint forms, but the use of such forms must not be a prerequisite for acceptance of a complaint. It is encouraged that complaint form format be

collaboratively developed and coordinated among FNS, State agency, local agency, and/or other subrecipients.

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 State agency, local agency, or other subrecipient 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 nondiscrimination are race, color, national origin, age, disability or sex. The FSP and FDPIR also prohibit discrimination on the basis of religion and political beliefs,
- 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.

XVI GUIDELINES FOR PROCESSING CIVIL RIGHTS COMPLAINTS

These guidelines summarize the responsibilities of FNS OCR, FNS Regional and Field Offices, and those State agencies delegated the authority to process complaints.

A FNS Headquarters CRD will:

- 1 Acknowledge complaints filed with the Secretary of Agriculture and the FNS Administrator informing the complainant of the action planned or requesting additional information needed for clarification.
- 2 Request that the appropriate regional office gather facts that will either support or refute the complainant's allegation(s).
- 3 Refer the complaint to the appropriate agency if not within FNS' jurisdiction.
- 4 Refer the complaint to the appropriate program division if no protected class is involved or the issues alleged are of a program nature.
- 5 Refer all age discrimination complaints to the Federal Mediation and Conciliation Service.
- 6 Review and evaluate the facts gathered and presented by the regional offices.
- 7 Recommend corrective action, when necessary.
- 8 Write Final Agency Decision letters informing the complainant of closure or follow-up action. Include the complainant's right to appeal to the Secretary of Agriculture.

B FNS Regional Offices will:

- 1 Acknowledge complaints received in the regional and field offices informing the complainant of the action planned or requesting additional information needed for clarification.

2 Request that the appropriate field office gather facts that will either support or refute the complainant's allegation(s).

3 Refer the complaint to the appropriate agency if not within FNS' jurisdiction.

4 Refer the complaint to the appropriate program division if no protected class is involved or the issues alleged are of a program nature.

5 Refer all age discrimination complaints to the Federal Mediation and Conciliation Service in Washington, D.C. within 10 days of receipt.

6 Review and evaluate facts gathered and presented by the field offices.

7 Write case decision letters informing the complainant of closure or follow-up action. Include the complainant's right to appeal to the Secretary of Agriculture.

8 Refer all recommendations for corrective action to FNS Headquarters CRD.

9 Submit, for concurrence and oversight, quarterly reports to FNS Headquarters CRD.

C State agencies delegated the authority to process complaints will:

1 Provide information at the program delivery site advising program applicants/participants of the option to file a complaint with the Secretary of Agriculture, FNS' Administrator, or the State agency.

2 Accept and acknowledge complaints filed with the State agency informing the complainant of the action planned or requesting additional information needed for clarification.

3 Refer all age discrimination complaints to FNS Regional OCR.

4 Gather facts that will either support or refute the complainant's allegation(s), ensuring that all relevant sources of information are investigated.

5 Review and evaluate the facts gathered.

6 Write decision letters informing the complainant of closure or follow-up action. Include the complainant's right to appeal to the Secretary of Agriculture.

7 Implement corrective action, when necessary.

8 Submit a report to FNSRO of each complaint processed, prior to issuing a decision letter to the complainant for the purpose of oversight and concurrence.

XVII PROCEDURES FOR PROCESSING AND RESOLVING COMPLAINTS OF DISCRIMINATION

A All complaints alleging discrimination on the basis of race, color, national origin, age, sex, or disability, either written or verbal, must be processed within 90 days of receipt.

B Responsibilities of State agencies, local agencies, or other subrecipients in regard to discrimination complaint processing are set out in USDA regulations implementing CR laws. In some instances, program regulations address complaint processing. This Instruction coordinates the complaint processing responsibilities of State agencies, local agencies, or other subrecipients. USDA regulations implementing Federal CR laws place certain direct requirements on State agencies, local agencies, or other subrecipients to maintain a processing system for discrimination complaints.

C State agencies are to follow the steps below for interacting with FNS Regional OCRs in the administration of their discrimination complaint processing system:

1 As part of the State Operations Plan, each State agency must submit a description of the agency's discrimination complaint/grievance processing system to the FNSRO for review. State agencies should operate their system as described in the approved submission unless there is an approved revision.

2 All complaints alleging discrimination on the basis of age, except as noted in program appendices, will be forwarded to the appropriate FNS Regional OCR by the State agency within 5 working days after receipt. The FNS Regional OCR will refer the complaint to the Federal Mediation and Conciliation Service (FMCS) within 10 days of initial receipt by the State agency, local agency, or other subrecipient, in accordance with the government wide arrangement. If FNS Headquarters CRD receives the complaint, it will adhere to the same processing standards. If FMCS mediation is successful, FMCS must notify the appropriate FNS CRD so that the case can be closed. If mediation is unsuccessful, FMCS must refer the complaint back to the appropriate OCR for processing through the established complaint processing system.

APPENDIX B CHILD NUTRITION PROGRAMS (CNP)

- National School Lunch Program (NSLP)
- Special Milk Program (SMP)
- School Breakfast Program (SBP)
- Summer Food Service Program (SFSP)
- Child and Adult Care Food Program (CACFP)

A LEGISLATIVE AUTHORITY

1 CNP: Richard B. Russell National School Lunch Act (NSLA)
42 USC 1751 et seq. Child Nutrition Act of 1966 (42 U.S.C. § 1771 et seq.)

2 NSLP: Section 2 of the National School Lunch Act (NSLA), as amended, established the National School Lunch Program (NSLP) to safeguard the health and well-being of the Nation's children and to encourage the domestic consumption of nutritious agricultural commodities and other foods.

3 SMP: Section 3 of the Child Nutrition Act, as amended, established the Special Milk Program (SMP) to encourage the domestic consumption of fluid milk by children in nonprofit schools and institutions that do not participate in a meal service program authorized under the NSLA or Child Nutrition Act.

4 SBP: Section 4 of the Child Nutrition Act, as amended, established the School Breakfast Program (SBP), to authorize payments to the States to assist them to initiate, maintain, or expand nonprofit breakfast programs in schools.

5 SFSP: Section 13 of the NSLA, as amended, established the Summer Food Service Program (SFSP) to provide meals for children from needy areas during periods when area schools are not in session.

6 CACFP: Section 17 of the NSLA, as amended, established the Child and Adult Care Food Program (CACFP) to initiate, maintain, and expand nonprofit food service programs for children or adult participants in nonresidential institutions that provide care.

B REGULATORY

- 1 NSLP: 7 CFR Part 210
- 2 SMP: 7 CFR Part 215
- 3 SBP: 7 CFR Part 220
- 4 SFSP: 7 CFR Part 225
- 5 CACFP: 7 CFR Part 226

C DEFINITIONS

1 CNP:

(a) CND -- The Child Nutrition Division of FNS is the Federal entity responsible for administering the NSLP, SBP and SMP, CACFP, and SFSP.

(b) NSLP, SBP, and SMP -- School Nutrition Programs that include NSLP, SBP, and SMP.

(c) Local Agency or Other Subrecipient -- Refer to Section V of this Instruction. For the purposes of this Instruction, entities such as the following will be considered a "local agency": public or private nonprofit organizations, such as school food authority (SFA) or local educational agency that are approved to administer NSLP, SMP, SBP, or SFSP; institutions that are approved to administer CACFP or SFSP; and sponsoring organizations of family day care homes (FDCHs) and/or child care centers, or summer feeding sites. The following entities will be considered a subrecipient: a school, child care facility, a FDCH provider, a CACFP center site, or a SFSP site that receives benefits from a

local agency to operate the CACFP or SFSP under the auspices of a sponsoring organization.

(d) School Food Authority (SFA) -- The legal governing body responsible for the administration of one or more schools and that has the legal authority to enter into an agreement with the State agency or FNSRO, where applicable, to operate the NSLP, SBP, SMP, SFSP, and/or CACFP.

(e) State Agency -- The State educational agency or such other agency of the State that has been designated by the Governor or other appropriate executive or legislative authority of the State that enters into an agreement with USDA to administer NSLP, SBP and SMP, CACFP, and/or SFSP within the State.

(f) School Year -- The period July 1 to June 30 of the following year.

2 SFSP:

(a) Camps -- Residential summer camps and nonresidential day camps that offer a regularly scheduled food service as part of an organized program for enrolled children. Nonresidential camp sites shall offer a continuous schedule of organized cultural or recreational programs for enrolled children between meal services.

(b) Sponsor -- A public or private nonprofit school food authority, a public or private nonprofit residential summer camp, a unit of local, municipal, county, or State government, a public or private nonprofit college or university currently participating in the National Youth Sports Program, or a private nonprofit organization that develops a special summer or other school vacation program providing food service similar to that made available to children during the school year under the NSLP and SBP and that is approved to participate in the Program. Sponsors are referred to in the NSLA as "service institutions."

3 CACFP:

(a) Adult Day Care Center -- Any public or private nonprofit organization or any for-profit Title XIX or Title XX center that (a) is licensed or approved by Federal, State, or local authorities to provide nonresidential adult day care services to functionally impaired adults or persons 60 years of age or older in a group setting outside their homes or a group living arrangement on a less than 24-hour basis and (b) provides for such care and services directly or under arrangements made by the agency or organization whereby the agency or organization maintains professional management responsibility for all such services. Such centers shall provide a structured, comprehensive program that provides a variety of health, social, and related support services to enrolled adult participants through an individual plan of care.

(b) Adult Day Care Facility -- A licensed or approved adult day care center under the auspices of a sponsoring organization.

(c) Child Care Center -- Any public or private nonprofit organization or for-profit center in which 25 percent or more of the children are eligible for free or reduced-price meals, or receive benefits under Title XX, licensed or approved to provide nonresidential child care services to enrolled children, primarily of preschool age, including, but not limited to, day care centers, settlement houses, neighborhood centers, Head Start centers, and organizations providing day care service for disabled children. Child care centers may participate in the program as independent institutions or under the auspices of a sponsoring organization.

(d) Outside-School-Hours Care Center -- Any public or private nonprofit organization or for-profit center in which 25 percent or more of the children are eligible for free or reduced-price meals, or receive benefits under Title XX, licensed or approved to provide organized nonresidential child care services to enrolled children outside of school hours. Outside-school-hours care centers may participate in the program as independent centers or under the auspices of a sponsoring organization.

(e) Proprietary Title XIX Center -- Any private, for-profit center (a) providing nonresidential adult day care services for which it receives compensation from

amounts granted to the States under Title XIX of the Social Security Act and (b) in which Title XIX beneficiaries were not less than 25 percent of enrolled eligible participants in the calendar month preceding initial application or annual reapplication for program participation.

(f) Proprietary Title XX Center – Any private, for-profit center (a) providing nonresidential child care services for which it receives compensation from amounts granted to the States under Title XX of the Social Security Act, and in which Title XX child care beneficiaries constitute no less than 25 percent of enrolled eligible participants or licensed capacity, whichever is less, during the calendar month preceding initial application or annual reapplication for program participation, or (b) providing nonresidential adult day care services for which it receives compensation from amounts granted to the States under Title XX of the Social Security Act, and in which adult beneficiaries were not less than 25 percent of enrolled eligible participants during the calendar month preceding initial application or annual reapplication for program participation.

(g) Child Care Facility -- A licensed or approved child care center, day care home, emergency shelter, at-risk afterschool site, or outside-school-hours care center operating under the auspices of a sponsoring organization.

(h) Family Day Care Home -- An organized nonresidential child care program for children enrolled in a private home, licensed or approved as a family or group day care home and under the auspices of a sponsoring organization.

(i) Institution -- A sponsoring organization, child care center, emergency shelter, outside-school-hours care center, or adult day care center that enters into an agreement with the State agency to assume final administrative and financial responsibility for program operations.

(j) Sponsor/Sponsoring Organization -- A public or nonprofit private organization which is entirely responsible for the administration of the food program in (a) one or more day care homes; (b) a child care center, outside-school-hours care center, emergency shelter, or adult day care center which is a legally distinct entity from the sponsoring organization; (c) two or more child care centers, outside-school-hours care centers, or adult day care centers; or (d) any combination of child care centers, adult day care centers, day care homes, emergency shelters, and outside-school-hours care centers. The term sponsoring organization also includes a for-profit organization that is entirely responsible for administration of the program in any combination of two or more child care centers, adult day care centers, and outside-school-hours day care centers that are part of the same legal entity as the sponsoring organization, and that are for-profit Title XIX or XX centers.

D CIVIL RIGHTS ASSURANCES

1 NSLP, SBP, and SMP:

(a) To qualify for Federal financial assistance, the program application must be accompanied by a written assurance that the program or facility will be operated in compliance with the CR laws and implementing nondiscrimination regulations.

(b) The FNSRO is responsible for obtaining from each State agency a written Statement of Assurance, using Federal-State Agreement, Form FNS-74. 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 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.

(c) State agencies will incorporate the following CR assurance into all written agreements for SFAs:

"The program applicant hereby agrees that it will comply with Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d et seq.), Title IX of the Education Amendments of 1972 (20 U.S.C. § 1681 et seq.), Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. § 794), the Age Discrimination Act of 1975 (42 U.S.C. § 6101 et seq.); all provisions required by the implementing regulations of the Department of Agriculture; Department of Justice Enforcement Guidelines, 28 CFR Part SO.3 and 42; and FNS directives and guidelines, to the effect that, no person shall, on the grounds of race, color, national origin, sex, age, or disability, be excluded from participation in, be denied benefits of, or otherwise be subject to discrimination under any program or activity for which the program applicant receives Federal financial assistance from FNS; and hereby gives assurance that it will immediately take measures necessary to effectuate this agreement."

"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."

2 CACFP and SFSP:

(a) To qualify for Federal financial assistance, the program application must be accompanied by a written assurance that the program or facility will be operated in compliance with the CR laws and implementing nondiscrimination regulations.

(b) (State instruction removed)

(c) State agencies will incorporate the following CR 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."

“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.”

E PARTICIPANTS

1 NSLP: Child --

- (a) A student of high school grade or under as determined by the State educational agency, who is enrolled in an educational unit of high school grade or under, including students who are mentally or physically disabled as defined by the State and who are participating in a school program established for the mentally or physically disabled;
- (b) a person under 21 chronological years of age who is enrolled in an institution or center, or
- (c) for purposes of reimbursement for meal supplements served in after school care programs, an individual enrolled in an after school care program operated by an eligible school who is 18 years of age or under, or in the case of children of migrant workers and children with disabilities, not more than 15 years of age.

2 SMP: Children –

- (a) Persons under 19 chronological years of age in child care institutions;
- (b) Persons under 21 chronological years of age attending schools; and
- (c) Students, including students who are mentally or physically disabled as defined by the State and who are participating in a school program for the mentally or physically disabled, of high school grade or under as defined by the State educational agency.

3 SBP: Child –

- (a) A student of high school grade or under as determined by the State educational agency, including a student who is mentally or physically disabled as defined by the State educational agency and who is participating in a school program for the mentally or physically disabled; and
- (b) A person under 21 chronological years of age who is enrolled in residential child care institution.

4 SFSP: Child –

- (a) A person 18 years of age and under, and
- (b) 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.

5 CACFP:

- (a) Children –
 - (1) Persons 12 years of age and under,
 - (2) Children of migrant workers who are 15 years of age and under
 - (3) Persons with mental or physical handicaps, as defined by the State, enrolled in an institution or a child care facility serving a majority of persons 18 years of age and under, and
 - (4) Persons 18 years of age or under who participate at at-risk after school snack or supper sites or in emergency shelters.

(b) Adult participant -- A person enrolled in an adult day care center who is functionally impaired or 60 years of age or older.

F DATA COLLECTION

1 NSLP, SBP, and SMP:

The collection and reporting of data on the actual number of children applying for free and reduced-price meals or free milk, by ethnic/racial group, is required by DOJ Regulations, 28 CFR Part 42, and 9 AR.

(a) The SFA or other program recipient agency will:

- (1) Develop a method for data collection. Methods include determination of the information by a school official through observation, personal knowledge, or voluntary self-identification by an applicant on the free and reduced-price meal or free milk application. State agencies may also use data or information collected by other Federal and State agencies (e.g., Department of Education).
- (2) Maintain information on file for 3 years.
- (3) Establish procedures to ensure that the information is made available only to authorized State and Federal personnel as requested, or as part of Office of Management and Budget (OMB) approved surveys.

(b) The State agency, or FNSRO where applicable, will:

- (1) Ensure that each SFA or other program recipient agency under its jurisdiction complies with the requirements set forth in the above paragraph.
- (2) Review and evaluate the data during the civil rights compliance phase of the monitoring and review activities required by program regulations; and identify SFAs or other program recipient agencies that need closer review to determine their compliance with the CR laws and with the requirements of this Instruction.

2 CACFP:

The State agency must ensure that racial or ethnic beneficiary data are collected and maintained on file for 3 years for all institutions within its jurisdiction. These data must include the number of actual beneficiaries and the estimated number of potentially eligible beneficiaries by racial or ethnic category. State agencies 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.

(a) Determining the Number of Potentially Eligible Beneficiaries: The number of potentially eligible beneficiaries by racial or ethnic category for the area served by each institution is to be determined each year. Data concerning the number of potentially eligible beneficiaries, along with identification of all sources of the information, will be updated annually and maintained on file for 3 years. Sources for obtaining such data might include census data or public school enrollment data.

(b) Collecting and Maintaining Actual Beneficiary Data: Actual beneficiary data by racial or ethnic category for each child care center, outside-school-hours care center, adult day care centers, and family day care home under its jurisdiction are to be collected by the institution each year. Visual identification may be used by institutions to determine a beneficiary's racial or ethnic category or the parents/guardian of a beneficiary may be asked to identify the racial or ethnic group of the participant.

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/guardian 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. Such collection systems will ensure that:

- (1) The actual beneficiary data will be maintained on file at the institution and retained for 3 years;
- (2) The data will be maintained under safeguards, restricting access of records only to authorized personnel.

3 SFSP:

(a) Determining the Number of Potentially Eligible Beneficiaries: 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.

(b) Collecting and Maintaining Actual Beneficiary Data: Actual beneficiary data by racial or ethnic category for each site under a sponsor's jurisdiction are to be collected by the sponsor each year. Sponsors of residential camps must collect and maintain this information separately for each session of the camp. For all other sites, the 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).

(c) Once collected, actual beneficiary data shall be maintained on file by the sponsor. Data, as well as documentation for the data, shall be retained by the 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.

G COMPLIANCE REVIEWS

1 NSLP, SBP, and SMP:

(a) FNSROs and State agencies are required to conduct compliance reviews, as part of the monitoring and review activities required by program regulations, to determine whether program delivery is in compliance with the requirements of 7 CFR Part 15 and this Instruction. FNSROs are responsible for ensuring Regional Office Administered Programs (ROAP) and State agency compliance; State agencies ensure compliance of SFAs and other program recipient agencies under their jurisdiction; and SFAs ensure compliance of schools in which they operate the program(s). Reviews will be conducted as part of ongoing program review procedures at each administrative level.

(b) Preaward Compliance Reviews -- State agencies or FNSROs, where applicable, are required to review applications from SFAs and other program recipient agencies to determine if the applicants are in compliance with the civil rights laws. These reviews are based on information provided by applicants in their official application for program funds. No Federal funds will be made available to a SFA or other program recipient agency until a preapproval compliance review has been conducted and the applicant determined to be in compliance. Information submitted for civil rights reviews as part of the application must include:

- (1) Copies of free and reduced price policy statements, letters to parents, public releases, and any other materials used to publicize the program's availability and nondiscrimination requirements.
- (2) Estimated data on the racial or ethnic makeup of the applicant organization's program service area and enrollment.
- (3) A description of membership requirements as a prerequisite for admission to the applicant's institution, if applicable.

(4) 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.

2 CACFP/SFSP

Preaward Compliance Reviews -- The Regional Offices are required to perform thorough desk reviews of applications from previously unfunded State agencies to determine if the applicants are in compliance with CR provisions. Similarly, State agencies are to perform thorough desk reviews of applications from institutions. These reviews are based on information provided by applicants in their official application for program funds. No Federal funds shall be made available to a State agency or institution until a preaward 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 preaward compliance review:

- (a) An estimate of the racial or ethnic makeup of the population to be served,
- (b) Efforts to be used to assure that underserved populations have an equal opportunity to participate,
- (c) Efforts to be used to contact grassroots organizations about the opportunity to participate, and
- (d) 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.

H COMPLIANCE REVIEWS FREQUENCY

1 NSLP, SBP, and SMP:

(a) Routine reviews of program operations, completed as a part of the overall management evaluation and administrative review processes, are the vehicle used to determine CR compliance in accordance with NSLP, SMP, and SBP, 7 CFR Parts 210, 215, and 220, respectively. In States where Regional Offices directly administer the program, Regional Offices shall conduct civil rights compliance reviews of participating SFAs and schools as a part of the program review process.

(b) The State agency or FNSRO, as applicable, shall review all SFAs according to the frequency set forth in 7 CFR Part 210.18.

2 CACFP:

(a) (State instruction removed)

(b) State agencies will conduct CR compliance reviews of participating institutions and facilities when they conduct program reviews according to the frequency set forth in 7 CFR Part 226.6.

3 SFSP:

(a) (State instruction removed)

(b) State agencies will conduct CR compliance reviews of participating sponsors and sites when they conduct program reviews according to the frequency set forth in 7 CFR Part 225.7.

APPENDIX C FOOD DISTRIBUTION

- The Emergency Food Assistance Program (TEFAP)
- Food Distribution Program on Indian Reservations (FDPIR)
- Commodity Supplemental Food Program (CSFP)
- Nutrition Assistance to Pacific Islands
- Food Assistance in Disasters and Situations of Distress
- Commodity Distributions to Charitable Institutions
- Commodity Component for: the National School Lunch Program, the Child and Adult Care Food Program, and the Summer Food Service Program

NOTE: The provisions of FNS INSTRUCTION 113-1 do not apply to entities that receive Federal financial assistance from USDA for the distribution of food through the Nutrition Services Incentive Program (NSIP), formerly the Nutrition Program for the Elderly, which is administered by the U.S. Department of Health and Human Services.

A LEGISLATIVE AUTHORITY (Section II)

- 1 Food Distribution Program on Indian Reservations (FDPIR) ...(information removed)
- 2 Commodity Supplemental Food Program (CSFP)
 - (a) Regulations -- 7 CFR Parts 250 and 247
 - (b) Legislation -- Sections 4(a) and 5 of the Agriculture and Consumer Protection Act of 1973 (Public Law 93-86), as amended
- 3 The Emergency Food Assistance Program (TEFAP)
 - (a) Regulations -- 7 CFR Parts 250 and 251
 - (b) Legislation -- The Emergency Food Assistance Act of 1983 (Public Law 98-8), as amended.
- 4 Nutrition Assistance to Pacific Islands:.....(information removed)
- 5 Food Assistance in Disasters and Situations of Distress:
 - (a) Regulation -- 7 CFR Part 250
 - (b) Legislation -- Section 4(a) of the Agriculture and Consumer Protection Act of 1973 (Public Law 93-86), as amended; Sections 412(a) and 413 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (Public Law 93-288).
- 6 Commodity Distributions to Charitable Institutions:
 - (a) Regulations -- 7 CFR Part 250
 - (b) Legislation -- Section 4(a) of the Agriculture and Consumer Protection Act of 1973 (Public Law 93-86), as amended.
- 7 Commodity Component for: National School Lunch Program, Child and Adult Care Food Program, and Summer Food Service Program:
 - (a) Regulations -- 7 CFR Part 250
 - (b) Legislation -- Section 6 and Section 13(h) of the Richard B. Russell National School Lunch Act (Public Law 79-936), as amended; Child Nutrition Act of 1966 (Public Law 89-642), as amended.

B POLICY (Section III) Exceptions to the Nondiscrimination Policy

- 1 FDPIR.(information removed)
- 2 CSFP. CSFP is restricted to pregnant, breastfeeding and postpartum women, infants, children under 6 years of age, and the elderly (60 years of age or older).

C DEFINITIONS (Section V)

1 Local Agency or Other Subrecipient. Please refer to Section V, Definitions, of this Instruction. For the purposes of this Instruction, examples of “local agency or other subrecipient” include: public or private nonprofit organizations, such as charitable institutions, food banks, hunger centers, food pantries, and community kitchens, that are approved to administer TEFAP; public or private nonprofit organizations, including community action agencies, county governments, and private nonprofit organizations, that are approved to administer CSFP; welfare agencies that are approved to certify households and distribute commodities or cash in lieu of commodities under Food Distribution Programs in the Commonwealth of the Northern Mariana Islands, the nuclear affected Marshall Islands, American Samoa, and Guam; emergency feeding organizations that are approved to provide food assistance in disaster situations; and nonprofit, tax-exempt private hospitals or institutions, or nonpenal (except correctional institutions that are considered charitable institutions under 7 CFR Part 250.41), noneducational public institutions that meet the definition of “charitable institutions” at 7 CFR Part 250.3

2 State Agency. For the purposes of this Instruction, a “State agency” is any Federal, State or private agency, or Indian Tribal Organization, that enters into an agreement with USDA for the distribution of donated foods to eligible local agencies or other subrecipients, and/or program participants. Examples include: State departments/offices and Indian Tribal Organizations that are approved to administer FDPIR; State departments/offices that are approved to serve as distributing agencies for commodity distributions to charitable institutions, TEFAP, and the Food Distribution Programs in the Pacific Islands; State departments/offices, Indian Tribal Organizations, and Indian Health Service offices that are approved to administer CSFP; and State departments/offices that are approved to provide food assistance in disaster situations.

D DATA COLLECTION AND REPORTING (Section VI)

State agencies and local agencies or other subrecipients that operate FDPIR and CSFP must collect and maintain racial or ethnic data as specified below. The other commodity programs listed under this Appendix are exempt from this requirement.
Participant Racial or Ethnic Data Collection and Retention

The State agency must establish a system for collecting and maintaining racial or ethnic participation data. Recording the racial or ethnic identification of applicants and participants may include the utilization of self-identification where a written application is required. Other methods of recording such data may include card files, rosters, logbooks, or any written record used by local agencies or other subrecipients. The racial and ethnic identification categories are listed in the Definitions section of this Instruction at Section V. The State agency must:

1 Ensure that racial or ethnic participation data is collected by the local agency or other subrecipient and retained at the service delivery point.

2 Ensure that documentation for the data collected by the local agency or other subrecipient is on file and maintained for the required 3 years. Data obtained shall be made available at the time of each compliance review by the State agency or FNSRO.

3 Use Form FNS-101, Participation in Food Programs – By Race, to record and submit to FNS racial or ethnic participation data for FDPIR households. Use Form FNS-191, Racial or Ethnic Group Participation – Commodity Supplemental Food Program, to record and submits to FNS racial or ethnic participation data for CSFP households. These reports must be submitted in accordance with the instructions contained on the respective forms.

4 Ensure that access to data is limited to authorized personnel.

E COMPLIANCE REVIEWS (Section XII)

Please refer to Section XII, Compliance Reviews, of this Instruction.

1 Preapproval Compliance Reviews

Information submitted by the applicant agency for the preapproval desk review must include, at a minimum:

- (a) Documentation of efforts to inform organizations and grassroots organizations about the program, including copies of letters, list of organizations or persons contacted, or media, if used.
- (b) An estimate of the racial or ethnic makeup of the applicant's service delivery area.
- (c) Nondiscrimination statement on the applicant agency's admissions requirements.
- (d) 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. When a determination as to compliance or noncompliance cannot be made from the data submitted by the applicant agency, it may be necessary to obtain additional information. Sources for this information may include the applicant agency, local government officials, and grassroots organizations.

2 Routine Compliance Reviews - Coverage and Frequency.

- (a) (State instruction removed)
- (b) State agencies shall include a review of CR compliance of local agencies or other subrecipients as part of their ongoing management evaluation process. Each local agency or other subrecipient shall be reviewed onsite in accordance with applicable provisions contained in 7 CFR Parts 247, 250, 251, 253, and 254.

F ASSURANCES

1 To qualify for Federal financial assistance, the program application must be accompanied by a written assurance that the program or facility will be operated in compliance with the CR laws and implementing nondiscrimination regulations.

2 (State instruction removed)

3 State agencies will incorporate the following CR assurance into the written agreements for SFAs:

"The program applicant hereby agrees that it will comply with Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d et seq.), Title IX of the Education Amendments of 1972 (20 U.S.C. § 1681 et seq.), Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. § 794), the Age Discrimination Act of 1975 (42 U.S.C. § 6101 et seq.); all provisions required by the implementing regulations of the Department of Agriculture; Department of Justice Enforcement Guidelines, 28 CFR Part SO.3 and 42; and FNS directives and guidelines, to the effect that, no person shall, on the grounds of race, color, national origin, sex, age, or disability, be excluded from participation in, be denied benefits of, or otherwise be subject to discrimination under any program or activity for which the program applicant receives Federal financial assistance from FNS; and hereby gives assurance that it will immediately take measures necessary to effectuate this agreement."

APPENDIX E SAMPLE COMPLAINT FORM

The purpose of this form is to assist you in filing a complaint with the [insert name of agency or organization]. You are not required to use this form; a letter with the same information is sufficient. However, the information requested in the items marked with a star (*) must be provided, whether or not the form is used.

1 State your name and address:

Name: _____

Address: _____

Telephone No.: Home: () _____ Work: () _____

2 *Person(s) discriminated against, if different from above:

Name: _____

Address: _____

Telephone No.: Home: () _____ Work: () _____

3 * Agency and department or program that discriminated:

Name: _____

Any individual if known: _____

Address: _____

Telephone No.: () _____

4 * Nonemployment: Does your complaint concern discrimination in the delivery of services or in other discriminatory actions in the department or agency in its treatment of you or others? YES NO
If so, please indicate below the base(s) on which you believe these discriminatory actions were taken (e.g., "Race: African American" or "Sex: Female").

____ Race/Color: _____

____ National Origin: _____

____ Sex: _____

____ Religion: _____

____ Age: _____

____ Disability: _____

* Employment: Does your complaint concern discrimination in employment by the department or agency? If so, please indicate below the base(s) on which you believe these discriminatory actions were taken (e.g., "Race: African American" or "Sex: Female").

____ Race/Color: _____

____ National Origin: _____

____ Sex: _____

____ Religion: _____

____ Age: _____

____ Disability: _____

5 What is the most convenient time and place for us to contact you about this complaint?

If we will not be able to reach you directly, you may wish to give us the name and phone number of a person who can tell us how to reach you and/or provide information about your complaint:

Name: _____

Tel. No.() _____

6 If you have an attorney representing you concerning the matters raised in this complaint, please provide the following:

Name: _____
Address: _____

Telephone No.: () _____

7 *To your best recollection, on what date(s) did the alleged discrimination take place?

Earliest date of discrimination:

Most recent date of discrimination:

8 Complaints of discrimination must generally be filed within 180 days of the alleged discrimination. If the most recent date of discrimination, listed above, is more than 180 days ago, you may request a waiver of the filing requirement. If you wish to request a waiver, please explain why you waited until now to file your complaint.

9 * Please explain as clearly as possible what happened, why you believe it happened, and how you were discriminated against. Indicate who was involved. Be sure to include how other persons were treated differently from you. (Please use additional sheets if necessary and attach a copy of written materials pertaining to your case.)

10 The laws we enforce prohibit recipients of Federal financial assistance from intimidating or retaliating against anyone because he or she has either taken action or participated in action to secure rights protected by these laws. If you believe that you have been retaliated against (separate from the discrimination alleged in #10), please explain the circumstances below. Be sure to explain what actions you took which you believe were the basis for the alleged retaliation.

11 Please list below any persons (witnesses, fellow employees, supervisors, or others) if known, whom we may contact for additional information to support or clarify your complaint.

Name: _____

NSLP - 108, CACFP - 100, CACFPDCH -89, SMP - 11, SFSP - 43

Civil Rights Instruction

September 5, 2006

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What was the result?

15 Have you filed or do you intend to file a charge or complaint concerning the matters raised in this complaint with any of the following?

- U.S. Equal Employment Opportunity Commission
- Federal or State Court
- Your State or local Human Relations/Rights Commission
- Grievance or complaint office

16 If you have already filed a charge or complaint with an agency indicated in #15, above, please provide the following information (attach additional pages if necessary):

Agency: _____
Date Filed: _____
Case or Docket Number: _____
Date of Trial/Hearing: _____
Location of Agency/Court: _____
Name of Investigator: _____
Status of Case: _____

Comments:

17 While it is not necessary for you to know about aid that the agency or institution you are filing against receives from the Federal government, if you know of any Food and Nutrition Service funds or assistance received by the program or department in which the alleged discrimination occurred, please provide that information below.

* We cannot accept a complaint if it has not been signed. Please sign and date this complaint form below.

Signature Date

Please feel free to add additional sheets to explain the present situation to us.

We will need your consent to disclose your name, if necessary, in the course of any investigation. Therefore, we will need a signed Consent Form from you. (If you are filing this complaint for a person whom you allege has been discriminated against, we will in most instances need a signed Consent Form from that person.) See the Notice about Investigatory Uses of Personal Information for information about the Consent Form. Please mail the completed, signed Discrimination Complaint Form and the signed Consent Form (please make one copy of each for your records) to:

United States Department of Agriculture
Food & Nutrition Service
Civil Rights Division
3101 Park Center Drive, Room 942
Alexandria, VA 22302
(703) 305-2195

18 How did you learn that you could file this complaint?

COMPLAINANT CONSENT/RELEASE FORM

Your Name: _____

Address: _____

Please read the information below, initial the appropriate space, and sign and date this form on the lines at the bottom of this form.

I have read the Notice of Investigatory Uses of Personal Information by the USDA, Food and Nutrition Service (FNS). As a complainant, I understand that in the course of a preliminary inquiry or investigation it may become necessary for FNS to reveal my identity to persons at the organization or institution under investigation. I am also aware of the obligations of FNS to honor requests under the Freedom of Information Act. I understand that it might be necessary for FNS to disclose information, including personally identifying details, which it has gathered as a part of its preliminary inquiry or investigation of my complaint. In addition, I understand that as a complainant I am protected by Federal regulations from intimidation or retaliation for having taken action or participated in action to secure rights protected by nondiscrimination statutes enforced by the Federal government.

CONSENT/RELEASE

_____ CONSENT GRANTED

Initial on line above if you give consent

– I have read and understand the above information and authorize FNS to reveal my identity to persons at the organization or institution under investigation and to other Federal agencies that provide Federal financial assistance to the organization or institution or also have civil rights compliance oversight responsibilities that cover that organization or institution. I hereby authorize FNS to receive material and information about me pertinent to the investigation of my complaint. This release includes, but is not limited to, applications, case files, personal records, and medical records. I understand that the material and information will be used for authorized civil rights compliance and enforcement activities. I further understand that I am not required to authorize this release, and I do so voluntarily.

_____ CONSENT DENIED

Initial on the line above or if you give consent

– I have read and understand the information and do not want FNS to reveal my identity to the organization or institution under investigation, or to review, receive copies of, or discuss material and consent information about me, pertinent to the investigation of my complaint. I understand that this is likely to make the investigation of my complaint and getting all the facts more difficult and, in some cases, impossible, and may result in the investigation being closed.

Signature Date

FNS 113 Complaint Processing Procedures & Timelines

