

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TENNESSEE
KNOXVILLE DIVISION

THE STATE OF TENNESSEE, *et al.*

Plaintiffs,

v.

UNITED STATES DEPARTMENT OF
AGRICULTURE, *et al.*

Defendants.

Case No. 3:22-cv-00257

District Judge Travis R. McDonough
Magistrate Judge Debra C. Poplin

**DEFENDANTS' OPPOSITION TO PLAINTIFFS'
MOTION FOR PRELIMINARY INJUNCTION**

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INTRODUCTION

The United States Department of Agriculture (“USDA”) is not “trying to take the States’ lunch money.” Pls.’ Mem. in Support of Mot. for Prelim. Inj. at 1, ECF No. 3 (“Br.”). Nor is USDA imposing new requirements on “elementary school classrooms and bathrooms.” *Id.* USDA has merely issued interpretive documents, related to food and nutrition assistance programs, that remind stakeholders of the meaning of sex discrimination under Title IX of the Education Amendments of 1972 (“Title IX”) and the Food and Nutrition Act of 2008 (“FNA” or the “Act”). Both laws prohibit sex discrimination, including on the basis of sexual orientation or gender identity. They use slightly different words to do so: Title IX prohibits such discrimination “on the basis of sex,” 20 U.S.C. § 1681(a), and the FNA prohibits discrimination “by reason of . . . sex,” 7 U.S.C. § 2020(c)(1). Both formulations are substantively indistinguishable from the language of Title VII of the Civil Rights Act of 1964, which prohibits discrimination “because of” an individual’s sex, 42 U.S.C. § 2000e-2(a). In *Bostock v. Clayton Cnty.*, 140 S. Ct. 1731 (2020), the Supreme Court found that Title VII unambiguously precludes employers from firing someone “simply for being [gay] or transgender.” *Id.* at 1737. The Supreme Court’s reasoning also governs the nearly identical text in Title IX and the FNA.

On May 5 and June 14, 2022, USDA issued documents interpreting the requirements of Title IX and the FNA for state agencies and operators of programs or activities that receive federal financial assistance from the USDA’s Food and Nutrition Services (“FNS”), which administers the Supplemental Nutrition Assistance Program (“SNAP”) and a related grant program, SNAP-Education (“SNAP-Ed”). Specifically, on May 5, 2022, USDA issued a document explaining to Regional and State Directors of FNS Programs that “the certification of applicant households for SNAP shall be conducted without discrimination on the basis of gender identity and sexual orientation.” *See* Compl., Ex. A at 3, ECF No. 1-1 (“May 5 Memo.”). The May 5 Memo advised state agencies and program operators to ensure that complaints “alleging discrimination on the basis of gender identity and sexual

orientation are processed and evaluated as complaints of discrimination on the basis of sex.” *Id.* On June 14, 2022, USDA published a rule updating language used in the legal agreements between USDA and state SNAP administrators to reflect, as pertinent here, the civil rights requirements of Title IX and the FNA, as interpreted by the agency. 87 Fed. Reg. 35,855 (2022) (“Final Rule”).

Despite Plaintiffs’ explicit assurances that they do not “deny benefits based on a household member’s sexual orientation or gender identity,” Compl. ¶ 12, ECF No.1; *see also id.* ¶ 40, and Br. at 1, 17, Plaintiffs claim that the Final Rule and May 5 Memo will irreparably harm them by forcing them to choose “between their sovereignty,” and “education and lunch money for children.” Br. at 24. Plaintiffs argue that the documents are procedurally defective, arbitrary and capricious, and contrary to law, but they are unlikely to succeed on those claims and cannot meet the other preliminary injunction factors.

At the outset, Plaintiffs cannot show that the Court has jurisdiction over their claims. First, Plaintiffs lack standing. They do not plausibly allege any pending or foreseeable enforcement action by USDA, and they fail to plausibly allege the sort of harms that would afford them standing to bring a claim for pre-enforcement review. Indeed, the harms Plaintiffs allege to their sovereignty and funding streams from USDA are either not ripe, not traceable to USDA action, or not redressable by this Court. Plaintiffs fail to plausibly allege that their state laws conflict with the challenged documents, and no such injury would be traceable to USDA or redressable by the relief Plaintiffs expressly seek, because Title IX and the FNA, not the Final Rule or May 5 Memo, are the source of the prohibitions on sex discrimination. Further, Plaintiffs are not in imminent danger of losing SNAP or SNAP-Ed funds; fourteen of the Plaintiff-States have already entered into new SNAP agreements with the updated non-discrimination language, no State alleges that it will refuse to enter into such an agreement, and only one has even proposed alternative language. Also, no State refused to abide by SNAP-Ed’s requirements, nor has any State been denied SNAP-Ed funds. Finally, Plaintiffs’ concern

that the May 5 Memo or Final Rule will trigger enforcement action by the U.S. Department of Education is speculative.

The Court also lacks jurisdiction because Plaintiffs could bring these claims as defenses in any enforcement action, and because both Title IX and the FNA provide a comprehensive enforcement scheme that precludes district court jurisdiction over pre-enforcement challenges to USDA's interpretation of those statutes under the doctrine set forth in *Thunder Basin Coal Co. v. Reich*, 510 U.S. 200, 215-16 (1994).

Even if Plaintiffs could surmount these threshold obstacles, they are not likely to succeed on the merits of their claims. The May 5 Memo does not constitute final agency action reviewable under the Administrative Procedures Act ("APA"); it is an interpretive rule not subject to the APA's notice and comment requirements. The Final Rule was promulgated consistent with the APA's notice and comment requirements. Neither the Final Rule nor the May 5 Memo are arbitrary and capricious or contrary to law; Defendants' interpretations hew closely to the reasoning of the Supreme Court's decision in *Bostock*, and Plaintiffs' attempts to distinguish the texts of Title VII, Title IX, and the FNA are unavailing. In addition, the challenged documents do not violate the Spending Clause, the First Amendment, the Tenth Amendment, the anticommandeering doctrine, the separation of powers principle/major questions doctrine, or the nondelegation doctrine.

Finally, the balance of the equities and public interest militate against a preliminary injunction. The primary intent of the May 5 Memo and the Final Rule is to protect individuals eligible for USDA-funded programs like SNAP and SNAP-Ed from being denied access to those programs because of their gender identity and sexual orientation. The States disavow engaging in such discrimination in the administration of those programs. The equities and public interest weigh heavily in favor of the government's ability to protect vulnerable populations pursuant to its statutory authority under civil rights laws. For these reasons, the Court should deny Plaintiffs' Motion for Preliminary Injunction.

BACKGROUND

I. USDA'S FOOD AND NUTRITION SERVICE AND ITS ADMINISTRATION OF SNAP AND SNAP-ED

USDA's FNS administers the nutrition assistance programs of USDA. Decl. of Angela Kline ¶ 4 ("Kline Decl."), attached hereto as Ex. A. FNS's mission is to provide children and needy families better access to food and a more healthful diet through its food assistance programs and comprehensive nutrition education efforts. *Id.* The largest nutrition assistance program FNS administers is SNAP, *id.* ¶ 5, whose mission is "to safeguard the health and well-being of the Nation's population by raising the levels of nutrition among low-income households." 7 U.S.C. § 2011. SNAP benefits increase the food purchasing power of eligible households by supplementing the funds those households have to spend on food. Kline Decl. ¶ 5 (citing 7 U.S.C. § 2013).

Congress limited participation in the SNAP program to "those households whose incomes and other financial resources . . . are determined to be a substantial limiting factor in permitting them to obtain a more nutritious diet." 7 U.S.C. § 2014(a). Congress required the Secretary of Agriculture to establish "uniform national standards of eligibility." *Id.* § 2014(b). The Secretary issued regulations establishing eligibility standards based on household income and assets, *see* 7 C.F.R. Part 273 (standards); none included sex-based considerations, and "no State agency [may] impose any other standards of eligibility as a condition for participating in the program," 7 U.S.C. § 2014(b), including standards of eligibility related to sexual orientation or gender identity.

The SNAP program provides low-income households with federal funds to purchase food from authorized retailers (*e.g.*, grocery stores). Kline Decl. ¶¶ 5, 7. Schools do not meet the FNA's statutory definition of "retail food store[s]," and do not participate in SNAP as authorized retailers. *Id.* ¶ 7. Nor do meals provided in school cafeterias constitute eligible food for purposes of SNAP. *Id.* (citing 7 U.S.C. § 2012(k)). FNS also administers SNAP-Ed, a much smaller program which provides nutrition education in a wide variety of settings and for diverse audiences. *See id.* ¶ 9. Unlike the main

SNAP program, SNAP-Ed is a grant program and does not distribute funds or other direct benefits. *Id.* ¶ 9. Although schools may be implementing agencies or sites for the SNAP-Ed program, FNS's focus in relation to the program is limited strictly to its nutrition and education purposes and to ensuring that eligible individuals have access to the program. *Id.* Neither SNAP nor SNAP-Ed concern or otherwise relate to policy concerning the regulation of bathrooms, locker rooms, athletics, dress codes, or other areas identified in Plaintiffs' Complaint. *Id.* ¶¶ 8-9.

Although USDA funds and oversees SNAP, it is administered through USDA's partnership with state agencies. *Id.* ¶ 6. To participate in SNAP, state agencies must submit a State Plan of Operation, which includes the Federal/State Agreement ("FSA"), the Budget Projection Statement, and the Program Activity Statement. *Id.* ¶ 10. The FSA is the legal agreement through which states agree to administer SNAP in accordance with the FNA, the Act's associated regulations, and the FNS-approved State Plan of Operation. *Id.* ¶ 11 (citing 7 C.F.R. § 272(a)(2)).¹ The FSA contains standard nondiscrimination language set forth by regulation, *see* 7 C.F.R. § 272(b)(1), but a State may "propose alternative language to any or all the provisions." *Id.* § 272(b)(2); *see also* Kline Decl. ¶ 14. Any proposed alternative language must be approved by both parties before execution. *Id.*

II. USDA UPDATES ITS STANDARD SNAP FSA LANGUAGE BASED ON *BOSTOCK* IN ITS FINAL RULE

From time to time, USDA has updated the standard SNAP FSA language. USDA began that process in late 2016 by publishing a proposed rule in the Federal Register. *See* 81 Fed. Reg. 81,015-01 (Nov. 17, 2016) ("Proposed Rule"). Among other topics, the Proposed Rule addressed the standard SNAP FSA non-discrimination language. *Id.* USDA proposed modifying the standard language to "incorporate references to additional civil rights legislation," *id.* at 81,015, including references to Title

¹ State agencies wishing to participate in SNAP-Ed must include a Nutrition Education Plan to FNS by August 15 if they wish to participate in SNAP-Ed in the next federal fiscal year. Kline Decl. ¶ 10.

IX, the Age Discrimination in Employment Act, and certain parts of the Americans with Disabilities Act, among others. This change was intended only to “codify protections already required by Federal law, regulations and existing policy.” *Id.*

Following the comment period, USDA published its Final Rule on June 14, 2022. 87 Fed. Reg. 35,855. Under the Final Rule, the updated SNAP FSA non-discrimination language includes a reference to additional civil rights legislation, including an assurance that a state receiving SNAP funds would comply with Title IX. 87 Fed. Reg. at 35,855, 35,857. Moreover, although past FSA non-discrimination assurances had long prohibited states from discriminating against SNAP beneficiaries on the basis of sex, the new language explicitly included “gender identity and sexual orientation” as forms of sex discrimination. *Id.* at 35,857. USDA stated that the updated non-discrimination language was intended to “codify protections already required by Federal law and existing policy.” *Id.* at 35,855. Further, states retained the option, “[i]f [they did] . . . not wish to sign the FSA with the language as written in 7 C.F.R. § 272.2(b)(1),” to “propose alternative language to any or all the provisions.” Kline Decl. ¶ 14 (quoting 7 C.F.R. § 272.2(b)(2)). USDA and the state must agree in writing on any alternative language. 87 Fed. Reg. at 35,857.

The Final Rule became effective as of August 15, 2022, and provided, consistent with 7 C.F.R. § 272.2(e)(1), that each participating state must sign and submit a new SNAP FSA to FNS within 120 days after the publication of the regulations in final form. Kline Decl. ¶ 13. This means that states must submit their new signed FSA to FNS by December 15, 2022. *Id.* Once signed, the SNAP FSA is valid until terminated. *Id.* In the interim, the state’s currently effective FSAs remain in place, meaning it can continue to participate in SNAP until the deadline for the new FSA. *Id.*

As of September 8, 2022, fourteen Plaintiff-States (Alaska, Arizona, Arkansas, Georgia, Kansas, Louisiana, Montana, Nebraska, Ohio, Oklahoma, South Carolina, Tennessee, Utah, and West Virginia) have finalized their new SNAP FSA, adopting the exact language promulgated in the Final

Rule. *Id.* ¶ 15 & Exs. 2-15. Of the remaining eight other Plaintiff-States, three (Alabama, Indiana, and Virginia) have indicated that they expect to submit their SNAP FSAs by December 13, 2022, and one (Mississippi) has proposed alternative language for FNS to consider. *Id.* The other four states (Kentucky, Missouri, South Dakota, and Texas) have not indicated what they plan to do. *Id.* State agencies wishing to participate in SNAP-Ed were required to submit their State Plans of Operation by August 15. Kline Decl. ¶ 10 & Ex. 1. All the Plaintiffs-States did so, and all have been allocated SNAP-Ed funds for Federal Fiscal Year 2023. *Id.*

III. USDA'S ENFORCEMENT OF VIOLATIONS OF SNAP FSAs AND NON-DISCRIMINATION PROVISIONS OF TITLE IX AND THE FNA

A. Enforcement of Violations of SNAP FSAs

In the hypothetical event that a state agency was to violate one of the assurances in its SNAP FSA, there are numerous steps that would need to occur before a suspension and/or disallowance action could be taken under the FNA. *See* 7 U.S.C. §§ 2020(g), 2023; 7 C.F.R. §§ 276.4, 276.7; Kline Decl. ¶ 17. The state agency would receive written advance notice of a potential action that provides a time period in which to remedy the deficiency in a state's administration of SNAP. Kline Decl. ¶ 17 (citing 7 C.F.R. § 276.4(d)(1)). Failure to remedy the deficiency within the prescribed timeframe would result in a formal warning about a possible suspension and/or disallowance action. *Id.* (citing 7 C.F.R. § 276.4(d)(2)). The state agency would then have thirty days to submit either (a) evidence that it had actually complied with the FSA or (b) a corrective action plan laying out how and when the agency could bring itself into compliance. *Id.* (citing 7 C.F.R. § 276.4(d)(2)). A state agency's SNAP funds may be suspended or disallowed only if it fails to respond to the formal complaint, submits insufficient evidence of compliance or an unsatisfactory corrective action plan, or violates an agreed-upon corrective action. *Id.* (citing 7 C.F.R. § 276.4(e)). A disallowance of SNAP funds may be appealed to

the SNAP Appeals Board, and the Board's decision is subject to judicial review. *Id.* ¶ 18 (citing 7 C.F.R. § 276.7).

The Final Rule did not change anything with regard to the manner in which FNS can enforce a prohibition against sex discrimination in SNAP or SNAP-Ed. States were prohibited from considering a person's gender identity or sexual orientation for purposes of SNAP and SNAP-Ed eligibility and participation even before the Final Rule was adopted. *See* 7 C.F.R. Part 273; 7 U.S.C. § 2014(b). Thus, regardless of the Final Rule, FNS can pursue the suspension and/or disallowance of Federal funds pursuant to 7 U.S.C. §§ 2020, 2023, 7 C.F.R. § 276.4(b), (c) as to discriminatory conduct based on a person's gender identity or sexual orientation. Kline Decl. ¶ 16.

B. Civil Rights Enforcement - The May 5 Memo and Related Documents

In addition to its SNAP-specific nondiscrimination enforcement mechanisms under the FNA, USDA also may pursue remedies for violations of specific civil rights laws in programs or activities receiving USDA funds. *See* 20 U.S.C. §§ 1682-1683; 42 U.S.C. § 2000d-1; *see also* Decl. of Roberto Contreras ¶¶ 12-29 ("Contreras Decl."), attached hereto as Ex. B. When USDA receives a complaint of a violation of civil rights laws in a program or activity receiving USDA funds and determines that it has jurisdiction, it notifies the complainant that USDA has accepted the complaint. Contreras Decl. ¶¶ 16-20. At that point, USDA "attempts to resolve the complaint at the lowest possible level through alternative dispute resolution." *Id.* ¶ 22.

In the event those attempts are unsuccessful, USDA will assign an investigator, who will compile sworn statements and documents relating to the issues in the complaint. *Id.* Based on the investigation, USDA decides whether the recipient of federal funds has failed to comply with its civil rights obligations. *Id.* If the recipient is found to be out of compliance, USDA will seek voluntary compliance. *Id.* ¶ 24-25. If the recipient fails to comply voluntarily, the complaint may then be referred to OASCR for consideration of further enforcement pursuant to 7 C.F.R. § 15.8. *Id.* ¶ 25.

Only after completion of these steps might USDA refer the matter to the Department of Justice to pursue judicial action for unlawful discrimination in USDA-administered programs and activities. *See* Contreras Decl. ¶¶ 25-28 (citing 7 C.F.R. § 15.8).

On January 20, 2021, President Biden issued an executive order that instructed federal agencies to evaluate statutes and regulations prohibiting sex discrimination in light of *Bostock v. Clayton County*, 140 S. Ct. 1731 (2020). Executive Order 13988, “Preventing and Combating Discrimination on the Basis of Gender Identity or Sexual Orientation,” 86 Fed. Reg. 7,023 (Jan. 20, 2021). In *Bostock*, the Supreme Court held that Title VII’s prohibition on discrimination “because of sex” included discrimination based on sexual orientation and gender identity because “[gay] and transgender status are inextricably bound up with sex.” 140 S. Ct. at 1737, 1741-42.

In response to the Executive Order, USDA conducted an independent legal analysis that re-examined the non-discrimination provisions of the statutes and regulations governing USDA-funded programs and activities. On May 5, 2022, USDA issued a memorandum to the state and regional directors of FNS programs laying out USDA’s interpretation of the non-discrimination provisions of Title IX and the FNA based on its understanding of *Bostock*. *See* May 5 Memo.² USDA stated that it concurred with the Departments of Justice and Education in concluding that Title VII’s prohibition of discrimination “because of sex,” 42 U.S.C. § 2000e-2(a), and Title IX’s prohibition of discrimination “on the basis of sex,” 20 U.S.C. § 1618(a), were sufficiently similar that *Bostock*’s interpretation should apply to Title IX. *See* May 5 Memo at 2-3. USDA likewise found the FNA’s non-discrimination provision—which prohibits discrimination “by reason of ... sex,” 7 U.S.C. § 2020(c)(1)—was similar enough to Title VII’s language that it was governed by *Bostock* too. The May 5 Memo therefore advised “[s]tate agencies and program operators . . . [to] expeditiously review their program discrimination

² The May 5 Memo was transmitted with a cover letter. Defendants refer to the Memo and its cover letter collectively as the “May 5 Memo.”

complaint procedures and make any changes necessary to ensure complaints alleging discrimination on the basis of gender identity and sexual orientation are processed and evaluated as complaints of discrimination on the basis of sex.” May 5 Memo at 3.

Though the May 5 Memo set out USDA’s understanding of the non-discrimination provisions of Title IX and the FNA, USDA made clear that the Memo “does not determine the outcome in any particular case, which will depend on the specific facts and circumstances of that case.” *Id.* Nor did the Memo address other “legal requirements, including, . . . Title IX’s religious exemption, the Religious Freedom Restoration Act . . . and any other applicable exemptions.” *Id.*

On the same day as the May 5 Memo, USDA issued two additional documents. One document answers anticipated questions about the Memo, *see* Compl., Ex. C, ECF No. 1-3 (“Q&A Memo”), including questions about the updating and placement of “*And Justice for All*” posters. The Q&A Memo discusses poster production and implementation timing, which had not yet been finalized, as well as potential timing for enforcement of noncompliance. *Id.* at 2-3. The second document advises state agencies on how to begin the process of updating the non-discrimination statements in their public-facing materials to reflect the May 5 Memo. Compl., Ex. D, ECF No. 1-4 (“May 5 Memo Supplement”). Neither the Q&A Memo nor the May 5 Memo Supplement purports to have any independent legal effect. *See generally id.*, Ex. C & Ex. D.³

PROCEDURAL HISTORY

Plaintiffs filed their Complaint on July 26, 2022, alleging that the USDA, in issuing the May 5 Memo and the Final Rule, violated the APA and assorted provisions of the Constitution. *See generally* Compl. Plaintiffs filed their motion for preliminary injunction the same day, requesting preliminary injunctive relief and seeking expedited consideration of the Motion. Mot. for Prelim. Inj. at 3, ECF

³ For ease of reference, Defendants will refer primarily to the Final Rule and the May 5 Memo unless the other documents have some additional relevance.

No. 2 (“Motion”). In explaining their purported need for expedition, Plaintiffs cited to the SNAP-Ed-related August 15, 2022, deadline for incorporating the updated USDA non-discrimination statement. *Id.* The Court *sua sponte* denied Plaintiffs’ request for expedited briefing on two grounds. First, the Court explained that it would be improper to consider the Motion before Defendants had been served and had a fair opportunity to respond. Order at 3-4, ECF No. 33. Second, the Court found that no good cause existed for expedition because “Plaintiffs States repeatedly and clearly state that they ‘do not deny benefits based on a household member’s sexual orientation or gender identity’ for purposes of administering SNAP benefits.” *Id.* at 4. Further, the Court noted that Plaintiffs’ briefing “does not explain how incorporating the Rule’s language, regarding only SNAP benefits, would impact their state laws regarding sports participation, restroom use, religious freedom, or free speech.” *Id.*

STANDARD OF REVIEW

A preliminary injunction is an “extraordinary and drastic remedy” that “may only be awarded upon a clear showing that the plaintiff is entitled to such relief.” *Fowler v. Benson*, 924 F.3d 247, 256 (6th Cir. 2019) (citations omitted). The party moving for a preliminary injunction has the burden of proof, *see Overstreet v. Lexington-Fayette Urban Cnty. Gov’t*, 305 F.3d 566, 573 (6th Cir. 2002), and that burden must be met “by a clear showing.” *Mazurek v. Armstrong*, 520 U.S. 968, 972 (1997) (cleaned up). Even then, the final decision of whether a preliminary injunction should issue is within the court’s discretion. *Friendship Materials, Inc. v. Mich. Brick, Inc.*, 679 F.2d 100, 102 (6th Cir. 1982).

In determining whether to issue a preliminary injunction, courts consider four factors: “(1) whether the party moving for the injunction is facing immediate, irreparable harm, (2) the likelihood that the movant will succeed on the merits, (3) the balance of the equities, and (4) the public interest.” *D.T. v. Sumner Cnty. Schs.*, 942 F.3d 324, 326 (6th Cir. 2019). Where the federal government is the defendant, the last two factors merge. *Daunt v. Benson*, 956 F.3d 396, 422 (6th Cir. 2020). And while

the factors may be balanced, “the existence of an irreparable injury is mandatory.” *D.T.*, 942 F.3d at 326–27 (citation omitted). Indeed, parties “requesting a preliminary injunction must demonstrate that irreparable harm is not merely possible, but likely.” *Blair v. Nationwide Ins. Co. of Am.*, No. 121CV00059, 2021 WL 1795163, at *3 (E.D. Tenn. May 5, 2021) (citation omitted).

ARGUMENT

I. THE COURT LACKS JURISDICTION OVER PLAINTIFFS’ CLAIMS

A. Plaintiffs Lack Standing Because Their Injuries Are Either Not Ripe, Not Traceable, Or Not Redressable

A foundational principle of Article III is that “an actual controversy must exist not only at the time the complaint is filed, but through all stages of the litigation.” *Already, LLC v. Nike, Inc.*, 568 U.S. 85, 90–91 (2013) (internal quotation marks omitted). “In an attempt to give meaning to Article III’s ‘case or controversy’ requirement, the courts have developed a series of principles termed ‘justiciability doctrines.’ The Article III doctrine that requires a litigant to have ‘standing’ to invoke the jurisdiction of a federal court is perhaps the most important.” *National Rifle Ass’n of Am. v. Magaw*, 132 F.3d 272, 279 (6th Cir. 1997). A related justiciability doctrine is that of ripeness, which “prevents courts from hearing premature or abstract disagreements.” *Platt v. Bd. of Comm’rs on Grievances & Discipline of Ohio Sup. Ct.*, 769 F.3d 447, 451 (6th Cir. 2014).

To establish standing, Plaintiffs “must have (1) suffered an injury in fact, (2) that is fairly traceable to the challenged conduct of the defendant, and (3) that is likely to be redressed by a favorable judicial decision.” *Spokeo, Inc. v. Robins*, 136 S. Ct. 1540, 1547 (2016). Where a plaintiff seeks prospective relief, as Plaintiffs do here, the “threatened injury must be certainly impending to constitute injury in fact”; “[a]llegations of possible future injury are not sufficient.” *Clapper v. Amnesty Int’l USA*, 568 U.S. 398, 409 (2013) (citation omitted). The prospect of enforcing a purportedly unlawful statutory or regulatory regime against a plaintiff must be “sufficiently imminent” to create a concrete injury. *Platt*, 769 F.3d at 451 (6th Cir. 2014) (citation omitted). A “theory of standing [that]

relies on a highly attenuated chain of possibilities, does not satisfy” this requirement. *Clapper*, 568 U.S. at 410. “The plaintiff . . . bears the burden of establishing these elements,” and therefore “must clearly . . . allege facts demonstrating each element.” *Spokeo*, 136 S. Ct. at 1547.

Ripeness is a justiciability doctrine designed “to prevent the courts, through avoidance of premature adjudication, from entangling themselves in abstract disagreements over administrative policies,” and “also to protect the agencies from judicial interference until an administrative decision has been formalized and its effects felt in a concrete way by the challenging parties.” *Nat’l Park Hosp. Ass’n v. Dep’t of Interior*, 538 U.S. 803, 807–08 (2003) (citation omitted). As the Sixth Circuit has recognized, “[a]nswering difficult legal questions before they arise and before the courts know how they will arise is not the way we typically handle constitutional litigation.” *Warsbak v. United States*, 532 F.3d 521, 526 (6th Cir. 2008). The ripeness test comprises two elements: (1) the fitness of the matter for adjudication, and (2) the hardship to the plaintiffs in withholding relief. *Id.* at 525.

A claim is not fit for review unless it involves a concrete dispute, *Princeton Univ. v. Schmid*, 455 U.S. 100, 102 (1982). In other words, “a general interest in a judicial ruling on the merits does not by itself confer jurisdiction on the federal courts.” *Warsbak*, 532 F.3d at 532. In a pre-enforcement challenge to a statutory scheme, where a court has “no idea whether or when” the statute will be enforced against the plaintiff and “no idea what” the particular factual circumstances of any ultimate dispute will be, a claim is not ripe. *Id.* at 526 (citation omitted). Accordingly, a party’s claim “is not ripe for adjudication if it rests upon contingent future events that may not occur as anticipated, or indeed may not occur at all.” *Texas v. United States*, 523 U.S. 296, 300 (1998) (citation omitted).

Standing and ripeness may be analyzed together where the analyses overlap as they do here. *Platt*, 769 F.3d at 451. Plaintiffs cannot satisfy their burden to demonstrate either.

Plaintiffs argue that they will be imminently harmed for the following three reasons: *First*, they allege that USDA’s actions interfere with their sovereign authority to enforce and administer their

laws, Compl. ¶ 138, because they will be forced to agree to prevent discrimination under the terms established in the Final Rule to enter into any SNAP agreement, *id.* ¶ 123, and will be required to incorporate USDA’s non-discrimination statement and policies in order to use federal funds, *id.* ¶ 125, all of which “at least arguably conflict” with some of the States’ laws, *see id.* ¶¶ 130-31. *Second*, Plaintiffs allege that the enforcement of the policies set forth in the May 5 Memo or their refusal to accept the Final Rule’s terms “could cause Plaintiff States to lose significant federal funds from the USDA,” *id.* ¶ 132, and would “impose immediate administrative and compliance costs and burdens on Plaintiffs,” *id.* ¶ 139. *Third*, they fear that “USDA’s actions could trigger Title IX enforcement action by the Department of Education, which enforces Title IX.” *Id.* ¶ 133.

None of these alleged harms establishes that Plaintiffs’ purported injuries are ripe, traceable, or redressable.

1. Plaintiffs Have Not Plausibly Alleged Harm to Their Sovereignty, or that Such Harm is Ripe, Traceable, or Redressable By Vacating the May 5 Memo and Final Rule

Plaintiffs principally claim that their sovereignty will be infringed by the May 5 Memo and Final Rule. But they cannot show that there is a live controversy ripe for adjudication, that their alleged injury is traceable to those documents as opposed to Title IX and the FNA, or that the Court could redress their injuries by setting aside those documents. In their Complaint, Plaintiffs allege only that the Final Rule and May 5 Memo “at least arguably conflict” with only some of their state laws. *See* Compl. ¶¶ 130-31 (identifying state laws for only thirteen of the twenty-two Plaintiff States). But, as the Court has already noted, the “Plaintiff States’ briefing . . . does not explain how incorporating the Rule’s language, regarding only SNAP benefits, would impact their states laws regarding sports participation, restroom use, religious freedom, or free speech.” Order at 4, ECF No. 33. Indeed, Plaintiffs affirm that they do not engage in discrimination in the administration of SNAP on the basis of gender identity or sexual orientation, *see* Compl. ¶¶ 12, 40; Br. at 1,17, and do not allege that their state laws require them to do so. Plaintiffs have identified no more than an abstract disagreement

with the agencies' interpretation of the law. That is not sufficient to establish standing. *Nat'l Park Hosp. Ass'n*, 538 U.S. at 807–08; *Warsbake*, 532 F.3d at 526; *See Sch. of the Ozarks, Inc. v. Biden*, 41 F.4th 992, 998 (8th Cir. 2022) (holding that plaintiffs did not have standing to challenge an agency memorandum that did not require the agency to “reach [a] specific enforcement decision”). And because Plaintiffs would have a full opportunity to present their claims in a future enforcement proceeding against them, they face no hardship from the withholding of judicial review now.

Defendants acknowledge that another court addressing a similar challenge brought by many of these same Plaintiffs against the Department of Education concluded that the States had alleged a sufficiently ripe injury to their sovereignty. *Tennessee v. U.S. Dep't of Educ.*, No. 3:21-cv-308, 2022 WL 2791450, at *24 (E.D. Tenn. July 15, 2022) (“*Tennessee*”). Defendants respectfully disagree with that decision, which is not binding on this Court. *Ass'n of Cultural Exch. Orgs., Inc. v. Blinken*, 543 F. Supp. 3d 570, 575 n.2 (W.D. Tenn. 2021). Further, that court concluded that the States had adequately alleged that “their sovereign power to enforce their own legal code is hampered by the issuance of [the Department of Education’s] guidance and they face substantial pressure to change their state laws as a result.” *Tennessee*, 2022 WL 2791450, at *12. The same cannot be said here, as this Court has already noted. Order at 4, ECF No. 33. The *Tennessee* court also ruled that the States “have shown a credible threat of enforcement,” and that at least the State of Tennessee faces “considerable financial penalties for violating Title VII’s prohibition on sex discrimination.” *Tennessee*, 2022 WL 2791450, at *12. Here, Plaintiffs have not alleged a credible threat of enforcement or considerable financial penalties for sex discrimination, including discrimination on the basis of sexual orientation and gender identity, given that the States have disavowed any intention of engaging in such conduct.

Furthermore, even if Plaintiffs had identified a concrete, ripe conflict with their laws, any sovereign injury they might suffer would be traceable only to the FNA and Title IX, not to the Final Rule and May 5 Memo. The Final Rule and May 5 Memo’s explanation that discrimination on the

basis of sexual orientation and gender identity is prohibited does not have independent legal significance. It is Title IX and the FNA that prohibit such discrimination on the basis of sex, and they would prohibit it even if the Final Rule and May 5 Memo had never been issued. Indeed, consistent with its interpretations of Title IX and the FNA, USDA's internal regulation, DR 4330-002, requires USDA employees to ensure programs and activities receiving federal financial assistance from USDA are in compliance with applicable civil rights laws, and identifies discrimination on the basis of sexual orientation and gender identity as prohibited conduct. *See* Contreras Decl. ¶ 12. Accordingly, even in the absence of the Final Rule and May 5 Memo, USDA would still be able to enforce the prohibitions on sexual orientation and gender identity discrimination in Title IX and the FNA.

For similar reasons, an injunction invalidating the Final Rule and May 5 Memo and prohibiting Defendants from “enforcing” them would not redress Plaintiffs’ alleged sovereign injury. Those documents are neither the source of any harm nor the source of USDA’s enforcement authority. Plaintiffs ask the Court in part to “hold[] unlawful the Department’s Memoranda and Final Rule,” Compl. at 49 (Prayer for Relief ¶ A), and to issue “preliminary and permanent injunction[s] prohibiting Defendants . . . from enforcing the Memoranda and Final Rule,” *id.* at 50 (Prayer for Relief ¶ I). But such an injunction would not redress any injury, because USDA does not “enforce” the Final Rule or May 5 Memo; USDA enforces Title IX and the FNA. Courts may not “enjoin” an agency’s view of the law. *See Whole Women’s Health v. Jackson*, 142 S. Ct. 522, 535 (2021) (“[A] federal court exercising its equitable authority may enjoin named defendants from taking specified unlawful actions. But . . . no court may . . . purport to enjoin challenged ‘laws themselves.’”).

2. *Plaintiffs Fail to Plausibly Allege a Loss of Federal Funds and Compliance Costs Or that Such Injury Is Sufficiently Imminent or Ripe*

Plaintiffs also allege that they are in imminent danger of a loss of significant federal funds if they fail to comply with the May 5 Memo and the Final Rule, but they have not shown that any action that might lead to such an injury is sufficiently imminent for standing and ripeness purposes. Plaintiffs

allege that they “face an immediate threat that the USDA will enforce the Final Rule against Plaintiffs,” Compl. ¶ 126, because they face “an immediate requirement (‘120 days after the publication of the regulations in final form’) to accept the Final Rule’s terms in SNAP Federal-State Agreements.” *Id.* ¶ 124.⁴ They also allege that they faced “an imminent deadline” of August 15, 2022, for the SNAP-Ed program to “incorporate the new USDA non-discrimination statement and policies to various projects.” *Id.* ¶ 125.⁵ Plaintiffs claim that they are at risk of losing “significant federal funds” if they fail to meet these deadlines. *Id.* ¶ 134.

But Plaintiffs again fail to plausibly allege an imminent injury. Not one Plaintiff-State alleges that it will refuse to sign the new SNAP FSAs if those agreements contain the Final Rule’s updated standard non-discrimination language. In fact, fourteen of the Plaintiffs, including the only two who submitted declarations in support of their Motion—Tennessee and Alaska—have already entered into new SNAP FSAs containing the updated non-discrimination language; three have indicated that they expect to do so by December 13, 2022; and only one, Mississippi, has offered alternative language as permitted by the Final Rule for states concerned about the language in the SNAP FSA, *see* Kline Decl. ¶¶ 14-15 (citing 7 C.F.R. § 272.2(b)(2)). Mississippi, however, does not allege that any of its state laws conflict with the Final Rule or May 5 Memo, *see* Compl. ¶ 131. Accordingly, none of the Plaintiffs plausibly allege in their Complaint or adduce evidence in their Motion that they are in imminent danger

⁴ The Final Rule became effective on August 15, 2022; States must submit their new signed FSA by December 15, 2022. Kline Decl. ¶ 13.

⁵ Plaintiffs allege in their Complaint that the imminence of the enforcement threat posed by these deadlines is established by the Q&A Memo, which Plaintiffs claim “state[s] that ‘there will not be a grace period’ for changing discrimination complaint procedures.” Compl. ¶ 127. But Plaintiffs fail to even mention the “grace period” issue in their Motion. Further, the full sentence in the Q&A Memo states “there will not be a grace period for *accepting and processing discrimination complaints* based on sexual orientation and gender identity in FNS programs.” Q&A Memo at 3 (emphasis added). Plaintiffs do not allege that they will refuse to accept and process complaints, so they fail to allege any reason why USDA would threaten an enforcement action.

of losing significant federal funds. *See Sch. of the Ozarks, Inc.*, 41 F.4th at 998 (concluding that it was speculative that HUD would file a charge of discrimination against the plaintiff and that the plaintiff's claimed injury was based on a "highly attenuated chain of possibilities") (citation omitted).

Moreover, neither the Final Rule nor the May 5 Memo suggests that States will lose their funding immediately in the event of noncompliance. FNS's suspension and disallowance process provides multiple opportunities for the offending state agency to come into compliance. *See* Kline Decl. ¶ 17. Indeed, only after a state agency fails to respond satisfactorily to an Advance Notification, Formal Warning, or corrective action proposal does FNS consider suspending or disallowing funds, *id.*, and the extent of such suspension or disallowance is subject to the Secretary's discretion. *Id.*; *see also* 7 U.S.C. § 2020(g). Further, such a disallowance is appealable to the State SNAP Appeals Board, and ultimately subject to judicial review. *See* Kline Decl. ¶ 18.

FNS's Civil Rights Division ("CRD") likewise has an elaborate enforcement process that aims to resolve a complaint at the lowest possible level. Contreras Decl. ¶¶ 22, 25. If the process does not resolve the complaint, CRD proceeds through an investigative stage, produces a report, and then issues a Final Agency Decision, which is appealable to OASCR. *Id.* ¶ 23. If OASCR affirms the Final Agency Decision, USDA may seek compliance through the procedures set forth at 7 C.F.R. § 15.8 or through other authorized means, including reference to the Department of Justice. *See* Contreras Decl. ¶¶ 26-28 (citing 7 C.F.R. § 15.8). According to CRD's declarant, FNS has never sought to suspend, terminate, or refuse to grant or to continue financial assistance to a State under 7 C.F.R. § 15.8. Contreras Decl. ¶ 30.

In light of these highly reticulated enforcement processes, through which Plaintiffs can present their claims, and the absence of any historical precedent of USDA suspending, terminating, or refusing financial assistance pursuant to those processes, Plaintiffs are unable to show that their alleged fiscal injuries are ripe.

3. *Plaintiffs Do not Plausibly Allege that Any Harm Due to Enforcement by Department of Education Is Ripe, Traceable, or Redressable*

Finally, Plaintiffs' alleged fear that the Final Rule and May 5 Memo "could trigger Title IX enforcement action by the Department of Education, which enforces Title IX," Compl. ¶ 133, is not only unripe, but also untraceable to USDA, and could not be redressed by an order of this Court. First, Plaintiffs fail to identify any imminent enforcement action by the Department of Education, never mind a causal connection between such an enforcement action and USDA's Final Rule and the May 5 Memo. Indeed, the Department of Education is currently enjoined from implementing its analogous interpretive documents as to nearly every Plaintiff State. *See Tennessee*, 2022 WL 2791450, at *24. But even if this were not the case, Plaintiffs fail to allege or identify any actual, impending enforcement action from violations of Title IX, or imminent loss of federal funding. Moreover, the Department of Education similarly attempts to resolve matters by informal means where possible, 20 U.S.C. § 1682; 34 C.F.R. § 100.7(d), allowing Plaintiffs the opportunity to remedy any issues before any loss of federal funds would occur. Finally, the federal government is entitled to enforce violations of Title IX regardless of the existence of the USDA's Final Rule and May 5 Memo, so Plaintiffs' fears of enforcement are neither traceable to nor redressable by the invalidation of USDA's challenged documents. *Cf. Nuclear Info. & Res. Serv. v. Nuclear Regul. Comm'n*, 457 F.3d 941 (9th Cir. 2006) (holding that even if plaintiff was harmed by one agency's regulation, the existence of another agency's unchallenged regulation made the injury unredressable).

B. The Court Lacks Jurisdiction Because Plaintiffs Have an Adequate Alternative Remedy Under Title IX and the FNA, and that Remedy is Exclusive

This Court also lacks jurisdiction over Plaintiffs' claims for two additional reasons: First, the APA's alternative remedy provision precludes them from bringing this action because they can raise their arguments in defense of any future Title IX or FNA enforcement action. Second, Congress

intended Title IX and the FNA to create exclusive avenues for challenging enforcement actions brought by the federal government under those laws.

The APA conditions judicial review on the requirement that there be no other adequate avenue of judicial review. *See* 5 U.S.C. § 704 (permitting judicial review of “final agency action for which there is no other adequate remedy in a court”). To determine whether the APA precludes review of an action where there is an adequate alternative remedy, “the essential inquiry is whether another statutory scheme of judicial review exists so as to preclude review under the more general provisions of the APA.” *Bangura v. Hansen*, 434 F.3d 487, 501 (6th Cir. 2006). Where “Congress did not intend the general grant of review in the APA to duplicate existing procedures for review of agency action” a court lacks subject matter jurisdiction over APA claims. *Bowen v. Massachusetts*, 487 U.S. 879, 903 (1988). Here, for example, if the United States filed suit against one of the Plaintiffs for having violated Title IX or the FNA, that State would “[a]lmost by definition [] have an adequate remedy in a court, that is, the remedy of opposing the . . . motion in . . . court.” *N.A.A.C.P. v. Meese*, 615 F. Supp. 200, 2013 (D.D.C. 1985). Such an opposition brief would afford a judicial forum that would “obviate[e] the need for resort to the APA.” *Id.*

Defendants recognize that the *Tennessee* court rejected a similar argument, but its analysis is flawed and inapt here. The *Tennessee* court concluded that a pre-enforcement challenge is permitted where the alternative would require a respondent to accrue liability while waiting for the government bring an enforcement action. *Tennessee*, 2022 WL 2791450, at *17 (citing *Sackett v. EPA*, 566 U.S. 127 (2012)). The *Tennessee* court relied on the Supreme Court’s decision in *Sackett*, noting that in “*Sackett*, legal consequences flowed from the Government’s compliance order, as it exposed the landowners to increased financial penalties in subsequent civil enforcement proceedings.” *Id.* The *Tennessee* court acknowledged that the plaintiff-states before it did “not face consequences as concrete as those in *Sackett*,” but nevertheless concluded that the Department of Education’s “guidance documents do

impose an immediate hardship on Plaintiffs,” including the “risk of incurring significant financial penalties.” *Id.* Here, USDA’s enforcement regime makes clear that Plaintiffs will not lose funding prior to an enforcement action, which would only occur after informal means of resolution are attempted, so the *Tennessee* court’s conclusion is not warranted here. *See, e.g.,* Kline Decl. ¶¶ 17-18; Contreras Decl. ¶ 26.

Second, Congress did not intend for pre-enforcement judicial review of any USDA action seeking to remedy violations of Title IX or the FNA because it mandated extensive administrative enforcement proceedings culminating in the opportunity for judicial review. *See* 20 U.S.C. § 1682-1683 (Title IX); 7 U.S.C. §§ 2020(g), 2023 (FNA). Where it is “fairly discernable” that an elaborate statutory review scheme was intended to create an exclusive remedy, parallel jurisdiction outside that scheme is precluded. *See Thunder Basin*, 510 U.S. at 207, 216 (citation omitted); *see also Elgin v. Dep’t of Treasury*, 567 U.S. 1 (2012). As in *Thunder Basin*, this Court does not have jurisdiction to consider Plaintiffs’ challenge to the USDA’s interpretation of Title IX or the FNA before the United States has initiated any enforcement proceedings. Plaintiffs style their Complaint as challenging the statutory interpretation announced in Defendants’ documents, but the same was true in *Thunder Basin*. 510 U.S. at 205 (describing plaintiff’s pre-enforcement “challenge [to] the [agency’s] interpretation of” a statute). Courts have long refused to allow funding recipients to circumvent the civil rights laws’ administrative enforcement processes in this manner. *See, e.g., Taylor v. Cohen*, 405 F.2d 277 (4th Cir. 1968) (en banc); *Sch. Dist. of City of Saginaw v. U.S. Dep’t of Health, Educ., & Welfare*, 431 F. Supp. 147 (E.D. Mich. 1977). Indeed, in *Bd. of Educ. of the Highland Local Sch. Dist. v. U.S. Dep’t of Educ.*, 208 F. Supp. 3d 850, 859-64 (S.D. Ohio 2016) (“*Highland*”), another district court in the Sixth Circuit concluded that it lacked jurisdiction over a school district’s challenge to an agency’s guidance documents discussing Title IX’s application to discrimination against transgender students because there was an adequate remedy through Title IX’s administrative process.

The *Tennessee* court rejected this argument as well, but failed to distinguish or even reference *Highland*, choosing instead to cite out-of-circuit or outdated cases. *Tennessee*, 2022 WL 2791450 at *19. Further, the *Tennessee* court mistakenly agreed with Plaintiffs, *see id.*, that their challenge to the agency's rules distinguished their claims from those barred in *Thunder Basin*, despite the fact, as noted above, that the same argument was rejected in *Thunder Basin* itself. Last, the *Tennessee* court did not have the FNA before it. In light of the extensive administrative review scheme Congress established in that statute, *see* 7 U.S.C. §§ 2020(g), 2023, it is more than “fairly discernable” that Congress intended to preclude pre-enforcement challenges in federal court. *Thunder Basin*, 510 U.S. at 216; *Highland*, 208 F. Supp. 3d at 861.

II. PLAINTIFFS' CLAIMS ARE UNLIKELY TO SUCCEED ON THEIR MERITS

A. The May 5 Memo Was Not a Final Agency Action Subject to Judicial Review Under the APA

Plaintiffs challenge the Final Rule and May 5 Memo as being contrary to law, arbitrary and capricious, and issued without the requisite procedure (*i.e.*, notice-and-comment rulemaking). Br. at 9-10, 12. However, Plaintiffs' claims regarding the May 5 Memo and its associated documents are unlikely to succeed because they are challenging an interpretive document that does not constitute final agency action over which courts can exercise judicial review. *See Lincoln v. Vigil*, 508 U.S. 182, 197 (1993). The APA permits judicial review only of “final agency action,” 5 U.S.C. § 704, which is agency action that is (1) “the consummation of the agency’s decisionmaking process” and that (2) also determines “rights or obligations.” *Bennett v. Spear*, 520 U.S. 154, 178 (1997) (citations omitted). The May 5 Memo does not determine anyone’s “rights or obligations”; instead, it is an interpretative document that does not “create new law, rights or duties, . . . [but rather] ‘simply state[s] what the administrative agency thinks the statute means’ and ‘only reminds affected parties of existing duties.’” *Tenn. Hosp. Ass’n v. Azar*, 908 F.3d 1029, 1042 (6th Cir. 2018) (quoting *Michigan v. Thomas*, 805 F.2d

176, 182-83 (6th Cir. 1986)).⁶

Absent a statute to the contrary, the issuance of an agency policy is not ordinarily a final action that can be directly challenged under the APA. *See Lujan v. Nat'l Wildlife Fed'n*, 497 U.S. 871, 891 (1990); *see also Reno v. Cath. Soc. Servs., Inc.*, 509 U.S. 43, 57-61 (1993). Instead, judicial review must wait until “concrete effects” from the policy are felt. *Nat'l Wildlife Fed'n*, 497 U.S. at 891; *see also Ctr. for Auto Safety v. Nat'l Highway Traffic Safety Admin.*, 452 F.3d 798, 811 (D.C. Cir. 2006). By contrast, agency action that constitutes a “substantive rule” may be reviewed if it has an immediate legal or practical coercive effect. *Nat'l Wildlife Fed'n*, 497 U.S. at 891; *Reno*, 509 U.S. at 57.

Substantive rules stand in contrast to interpretative rules or general statements of policy. 5 U.S.C. § 553(b). An agency policy is a substantive (or “legislative”) rule only if it “impose[s] new rights or duties and change[s] the legal status of regulated parties.” *Mann Constr., Inc. v. United States*, 27 F.4th 1138, 1143 (6th Cir. 2022). In contrast, “the critical feature of interpretive rules is that they are ‘issued by an agency to advise the public of the agency’s construction of the statutes and rules which it administers.’” *Perez v. Mortg. Bankers Ass’n*, 575 U.S. 92, 97 (2015), 575 U.S. at 97 (citation omitted); *see also Mann Constr.*, 27 F.4th at 1143 (quoting same from *Perez*); *Tenn. Hosp. Ass’n*, 908 F.3d at 1042 (same). Similarly, a general statement of policy “‘advise[s] the public prospectively of the manner in which the agency proposes to exercise a discretionary power.’” *Lincoln*, 508 U.S. at 197.

Because the May 5 Memo merely announces USDA’s interpretation of Title IX and the FNA, it lacks the requisite legal effect to be a final agency action. *See Mann Constr.*, 27 F.4th at 1143; *Tenn. Hosp. Ass’n*, 908 F.3d at 1042. It is not a substantive rule because it “create[s] no new legal obligations

⁶ The Sixth Circuit appears to have variously treated the absence of a final agency action as a jurisdictional matter, *see also Gaye v. Lynch*, 788 F.3d 519, 528 (6th Cir. 2015), and a merits issue, *see Jama v. Dep’t of Homeland Security*, 760 F.3d 490, 494 & n.4 (6th Cir. 2014). Treating it as a merits question appears to be the more customary approach. *See Trudeau v. Fed. Trade Comm’n*, 456 F.3d 178, 184 (D.C. Cir. 2006) (“[T]he APA’s final agency action requirement is not jurisdictional”). But the proper result is the same under either approach.

beyond those the [statute] already imposed,” *Rhea Lana, Inc. v. Dep’t of Lab.*, 824 F.3d 1023, 1028 (D.C. Cir. 2016); *Mann Constr.*, 27 F.4th at 1143. The May 5 Memo “simply states what the administrative agency thinks the statute[s] mean[.]” *First Nat’l Bank of Lexington v. Sanders*, 946 F.2d 1185, 1188 (6th Cir. 1991).

Plaintiffs’ two arguments that the May 5 Memo and its associated documents set forth a substantive rule are without merit. First, Plaintiffs argue that “legal consequences undoubtedly flow from the” documents because Plaintiffs “collectively risk the loss of over \$28 billion [in SNAP funds] if they do not comply with USDA’s directives to adopt new policies, binding contractual language, and enforcement procedures contained within” those documents. Br. at 7-8. However, the May 5 Memo and its associated documents merely inform the public of the Department’s interpretation of the sex discrimination laws governing USDA-funded programs and activities. Only an action to enforce compliance with that interpretation under particular facts and circumstances could determine a party’s rights or obligations regarding the laws. *FTC v. Standard Oil Co. of Cal.*, 449 U.S. 232, 246 (1980). USDA would have to take numerous steps aimed at achieving compliance before it could even bring an enforcement action. The unquantifiable and speculative “risk” that these steps will occur is not a legal consequence sufficient to make something final agency action.

Rather, “[a]s long as the agency remains free to consider the individual facts in the various cases that arise, then the agency action in question has not established a binding norm” and will not amount to a substantive rule. *Pros. & Patients for Customized Care v. Shalala*, 56 F.3d 592, 594–97 (5th Cir. 1995) (citation omitted). Policies that are “not outcome determinative” cannot have force of law and therefore cannot be substantive rules. *Planned Parenthood of Wis., Inc. v. Azar*, 316 F. Supp. 3d 291, 307-08 (D.D.C. 2018), *vacated as moot*, 942 F.3d 512 (D.C. Cir. 2019). Here, the May 5 Memo provides that its “interpretation . . . does not determine the outcome in any particular case, which will depend on the specific facts and circumstances of that case” as well as “legal requirements, including, where

applicable, Title IX’s religious exemption, the Religious Freedom Restoration Act . . . and any other applicable exemptions.” May 5 Memo at 3. Merely “advis[ing] the public prospectively of the manner in which the agency proposes to exercise a discretionary power” does not create a substantive rule. *Lincoln*, 508 U.S. at 197 (citation omitted).

Second, Plaintiffs argue that the May 5 Memo and its associated documents collectively set forth a substantive rule because they “impos[e] on regulated entities a new obligation not to discriminate on the basis of sexual orientation or gender identity—an obligation that appears nowhere in the Title IX or the Food and Nutrition Act” and “implement a number of duties and other “changes” that “impact [State] operations.” Br. at 11 (citation omitted) (second alteration in original). These arguments are meritless because, as has been reiterated, (a) the obligations flow from Title IX and the FNA, not the documents reflecting USDA’s interpretations of those statutes, and (b) Plaintiffs could only suffer practical or legal consequences from USDA’s interpretations at the conclusion of an enforcement proceeding.

Defendants note that the *Tennessee* court found that the Department of Education’s similar interpretive documents constituted a substantive rule. Respectfully, the court’s decision was in error as it wrongly concluded that reading Title IX in accordance with *Bostock*’s reading of Title VII went “beyond putting the public on notice of pre-existing legal obligations and reminding affected parties of their existing duties.” *Tennessee*, 2022 WL 2791450, at * 21. Even if the *Tennessee* court were correct, the FNA—which was not at issue in that case—would still supply the basis for the pre-existing legal obligations elucidated by the Final Rule.

B. Plaintiffs’ Notice-and-Comment Claim Is Unlikely to Succeed Because the May 5 Memo Is Not Subject to that Requirement and the Final Rule Was Properly Issued After Notice-and-Comment

As laid out above, the May 5 Memo is an interpretive rule that does not require notice-and-comment rulemaking. See *Michigan*, 805 F.2d at 183 (“[An] interpretative rule . . . does not require

notice and comment procedures prior to its adoption.”). Plaintiffs therefore have no likelihood of success on their claims that it was required to go through that rulemaking process. *See* Br. at 9-10.

Plaintiffs’ notice-and-comment challenge to the Final Rule is unlikely to succeed because that policy document went through notice-and-comment rulemaking. Plaintiffs argue that the notice-and-comment process was defective as to the updated discrimination statement in the Final Rule because that statement is purportedly not a logical outgrowth of the Proposed Rule on which the public commented. Br. at 9-10. This argument is unlikely to succeed because USDA’s Proposed Rule gave “a description of the subjects and issues involved” in the rule, as required by 5 U.S.C. § 553(b)(3). The Proposed Rule made clear that it was intended to “update[] FSA language [to] emphasize existing non-discrimination protections for SNAP households to the effect that no person in the United States shall, on the grounds of sex” or other protected traits be the “subject of discrimination under SNAP.” 81 Fed. Reg. at 81,016-17. To do this, the anticipated rule “would incorporate references to additional civil rights legislation[, including Title IX,] into the standard FSA language,” which already included a prohibition on sex discrimination. *Id.* at 81,015, 81,017.

At the time, significant litigation was already pending regarding the meaning of Title IX’s prohibition of discrimination “on the basis of sex,” 20 U.S.C. § 1681, especially in relation to discrimination on the basis of gender identity in schools. *See G.G. ex rel. Grimm v. Gloucester Cnty. Sch. Bd.*, 822 F.3d 709 (4th Cir. 2016); *Whitaker v. Kenosha Unified Sch. Dist. No. 1 Bd. of Educ.*, No. 16-CV-943-PP, 2016 WL 5239829 (E.D. Wis. Sept. 22, 2016); *Highland*, 208 F. Supp. 3d at 859-64; *Texas v. United States*, 201 F. Supp. 3d 810, 826–27 (N.D. Tex. 2016). The public was on notice that USDA was contemplating making the non-discrimination statement in the FSA explicitly incorporate Title IX’s non-discrimination provision and providing more detail about the “existing non-discrimination protections for SNAP households.” 81 Fed. Reg. at 81,016. That USDA might incorporate judicial

decisions regarding the meaning of Title IX's non-discrimination language related to gender identity and sexual orientation was entirely foreseeable.

C. Plaintiffs' Contrary-to-Law Claim Is Unlikely to Succeed

Plaintiffs' Complaint and preliminary injunction motion center on their contention that USDA's interpretation of the phrases "on the basis of sex" in Title IX, 20 U.S.C. § 1681(a), and "by reason of . . . sex" in the FNA, 7 U.S.C. § 2020(c)(1), are unlawful. *See* Compl. ¶¶ 178-97; Br. at 12-19. But that can hardly be the case in light of *Bostock*. Courts have recognized that "Title IX's language closely resembles Title VII's." *Peltier v. Charter Day Sch., Inc.*, 8 F.4th 251, 273 (4th Cir. 2021) (explaining that although *Bostock* involved Title VII rather than Title IX, its reasoning "is consistent with the broadly applicable text of Title IX"), *aff'd in part and vacated in part*, 37 F.4th 104 (4th Cir. 2022); *Wolfe v. Fayetteville, Ark. Sch. Dist.*, 648 F.3d 860, 866 (8th Cir. 2011) (holding that the "Supreme Court's interpretation of Title VII properly informs our examination of Title IX"). The resemblance is particularly notable with respect to the language at issue in *Bostock*. Just as Title VII prohibits discrimination "because of" sex, Title IX prohibits discrimination against that individual "on the basis of sex." *See, e.g., Bostock*, 140 S. Ct. at 1753 (holding "that employers are prohibited from firing employees *on the basis of* [sexual orientation] or transgender status") (emphasis added). Plaintiffs argue that there is significance to the linguistic differences in Title VII's "because of," Title IX's "on the basis of," and FNA's "by reason of." *See* Br. at 16-17. However, in *Bostock*, the Supreme Court used the terms interchangeably. *See* 140 S. Ct. at 1740-41 (stating both that an employer may not intentionally treat "a person worse *because of* sex," and that "it is impossible to discriminate against a person" for reasons related to their gender identity or sexual preference "without discriminating *based on sex*") (emphasis added).

Indeed, because of the similar phrasing, courts have consistently recognized that *Bostock*'s reasoning extends to Title IX, and Plaintiffs have identified no case to the contrary. *See, e.g., Grimm v.*

Gloucester Cnty. Sch. Bd., 972 F.3d 586, 618 (4th Cir. 2020); *Boston All. of Gay, Lesbian, Bisexual & Transgender Youth v. HHS*, 557 F. Supp. 3d 224, 244 (D. Mass. 2021) (holding that “[t]hough *Bostock* was a Title VII case, the Supreme Court’s reasoning applies equally outside of Title VII.”); *Doe v. Univ. of Scranton*, No. 3:19-cv-01486, 2020 WL 5993766, at *5 n.61 (M.D. Pa. Oct. 9, 2020) (finding “persuasive” the argument that *Bostock* extends to Title IX); *see also Walker v. Azar*, 480 F. Supp. 3d 417, 430 (E.D.N.Y. 2020); *Whitman-Walker Clinic, Inc. v. HHS*, 485 F. Supp. 3d 1, 64 (D.D.C. 2020).

Plaintiffs highlight dicta from the Sixth Circuit’s decision in *Meriwether v. Hartop*, 992 F.3d 492 (6th Cir. 2021), that “Title VII differs from Title IX in important respects,” *id.* at 510 n.4, *see* Br. at 13, but the Sixth Circuit did not identify the specific language at issue here as being the differentiating factor between Title VII and Title IX. Indeed, the Sixth Circuit has recognized that “[g]enerally, courts have looked to Title VII, 42 U.S.C. § 2000e, as an analog for the legal standards in both Title IX discrimination and retaliation claims.” *Nelson v. Christian Bros. Univ.*, 226 F. App’x 448, 454 (6th Cir. 2007) (citations omitted).

Further, *Meriwether* did not address the FNA, and it cannot be said that the FNA’s “by reason . . . of sex” is meaningfully different from the language in Title VII or Title IX. In fact, in *Bostock*, the Supreme Court explained in clear terms that “as this Court has previously explained, ‘the ordinary meaning of ‘because of’ is ‘*by reason of*’ or ‘on account of.’” 140 S. Ct. at 1739 (emphasis added) (quoting *Univ. of Tex. Sw. Med. Ctr. v. Nassar*, 570 U.S. 338, 350 (2013)). Plaintiffs also briefly reference *Pelcha v. MW Bancorp., Inc.*, 988 F.3d 318 (6th Cir. 2021), *cert. denied*, 142 S. Ct. 461 (2021); *see* Br. at 13, as relevant to this issue, but that case concerned neither Title IX nor the FNA.

The absence of any substantial linguistic or structural distinction between the non-discrimination mandates in Title VII, Title IX or the FNA renders Plaintiffs’ claims unlikely to succeed. Nevertheless, Plaintiffs argue that *Bostock*’s reasoning was unlawfully applied by USDA to Title IX because “Title IX—unlike Title VII—also expressly authorizes separation based on sex in

certain circumstances,” for example, by allowing “certain single-sex educational institutions and organizations,” and allowing entities to maintain separate living facilities for different sexes. Br. at 13 (citing 20 U.S.C. §§ 1681(a)(1)-(9) & 1686). The Fourth Circuit rejected a similar argument in *Grimm*, where it held that the violation of Title IX is not in maintaining sex-separated facilities; it is in excluding transgender students from the sex-separated facility or program matching their gender identities. 972 F.3d at 618.

Plaintiffs fail in particular to explain how the text of the FNA can be distinguished from Title VII. They argue that “the term ‘sex’ ha[s] the same binary biological meaning” in the FNA as in Title IX. Br. at 15. But that point is irrelevant. In *Bostock*, the Supreme Court assumed, for the sake of argument, “that ‘sex’ signified . . . biological distinctions between male and female.” 140 S. Ct. at 1739. But that was “just a starting point. The question isn’t just what ‘sex’ meant, but what the [statute] says about it.” *Id.* The Supreme Court explained that the statute prohibited discrimination against individuals “based on sex.” *Id.* at 1741. The Supreme Court placed great significance on the fact that Title VII’s anti-discrimination provision was focused on individuals—it meant that the law was focused on preventing employers from treating an “individual worse than others who are similarly situated,” *id.* at 1740, and was not written so as to focus “on differential treatment between the two sexes as groups.” *Id.* at 1741. With that focus in mind, the Court concluded that “it is impossible to discriminate against a person for being [gay] or transgender without discriminating against that individual based on sex.” *Id.*

Likewise, the FNA’s anti-discrimination language “focuses on protecting individuals from discrimination.” May 5 Memo. at 2. The Act “focuses on individual households . . . as opposed to program applicants as a whole,” *id.* at 2-3 (citing 7 U.S.C. § 2020(c)(1)). As USDA explained, “the focus on individual households and the prohibition of discrimination ‘by reason of’ sex under the [FNA] is sufficiently similar to Title VII such that the *Bostock* analysis applies to the [FNA].” *Id.* at 3.

Plaintiffs have not identified any textual provision in the FNA that suggests otherwise. Instead, they argue that “[e]ven if the Title VII reasoning of *Bostock* applied to [the FNA], [that law] would merely prohibit denying certification [for SNAP beneficiaries] because a household member is homosexual or transgender—a practice the States do not engage in”; it would “not prohibit States from maintaining sex-separated bathrooms or engaging in other non-certification practices that USDA . . . ha[s] apparently targeted.” Br. at 17-18. But neither the May 5 Memo nor the Final Rule bear on issues related to “maintaining sex separated bathrooms and locker rooms, offering sex-separated athletic teams, or using biologically accurate pronouns,” Br. at 19, and neither does the FNA. Kline Decl. ¶¶ 8-9. Plaintiffs have conjured up a fear of their own imagining, ignoring the reality of what the May 5 Memo and Final Rule do and do not do.

D. Plaintiffs’ Arbitrary-and-Capricious Claim Is Unlikely to Succeed

Plaintiffs’ arbitrary-and-capricious argument is likewise unfounded. Br. at 12. To the extent it is not duplicative of its notice-and-comment and contrary-to-law claims, addressed above, it rests on the premise that “USDA intends to use the Final Rule or Memoranda as a mechanism to enforce its bathroom policy.” Br. at 12. But there is no mention of any such school-related policy in the Final Rule or the May 5 Memo. *See* Kline Decl. ¶¶ 8-9.

The Final Rule and May 5 Memo clearly explain USDA’s rationale for interpreting Title IX and the FNA to include prohibitions on discrimination against individuals on the basis of their sexual orientation or gender identity. *See* May 5 Memo at 1-3; 87 Fed. Reg. at 35,855-56. USDA’s reasoning follows that of the Court in *Bostock*, and accounting for and employing the Supreme Court’s rationale cannot be arbitrary and capricious. *Cf. Whitman-Walker Clinic, Inc. v. HHS*, 485 F. Supp. 3d 1 (D.D.C. 2020) (finding Title IX rule arbitrary and capricious where agency failed to consider *Bostock*’s reasoning); *see generally FCC v. Fox Television Stations, Inc.*, 556 U.S. 502, 515 (2009) (an agency need not demonstrate “that the reasons for the new policy are *better* than the reasons for the old one,” but only

that “the new policy is permissible under the statute, that there are good reasons for it, and that the agency *believes* it to be better.”).

E. Plaintiffs’ Assorted Constitutional Claims Are Unlikely to Succeed

Plaintiffs also set forth a smorgasbord of constitutional arguments under the Spending Clause, the Tenth Amendment, the First Amendment, and various doctrines such as the Anti-Commandeering Doctrine, the Non-Delegation Doctrine, and the Major Questions Doctrine. All fail because USDA’s Final Rule and May 5 Memo are based on a straightforward interpretation of Title IX and the FNA as confirmed by the Supreme Court in *Bostock*.

1. Spending Clause

The Supreme Court has long acknowledged—and the Constitution expressly provides—that “Congress has authority under the Spending Clause to appropriate federal moneys to promote the general welfare” and “to see to it that taxpayer dollars appropriated under that power are in fact spent for the general welfare.” *Sabri v. United States*, 541 U.S. 600, 605 (2004). Congress’s power to impose conditions on the acceptance of federal funds applies regardless of whether Congress legislates “in an area historically of state concern.” *Id.* at 608 n.*.

Plaintiffs contend that they lacked constitutionally adequate notice of the Final Rule and May 5 Memo, because neither of the statutes interpreted therein “unambiguously prohibit discrimination based on sexual orientation or transgender status.” Br. at 19 (citing *Pennhurst State Sch. & Hosp. v. Halderman*, 451 U.S. 1, 17 (1981)). This claim is meritless. As the Supreme Court made clear in *Bostock* after reviewing analogous language in Title VII, the “express terms of [the] . . . statute give us [the] . . . answer,” 140 S. Ct. at 1737, which is that “it is impossible to discriminate against a person for being [gay] or transgender without discriminating against that individual based on sex.” 140 S. Ct. at 1741. The Court noted that “Title VII’s broad language,” *id.* at 1747, encompassed other forms of discrimination, including “sexual harassment” and “motherhood discrimination,” *id.* (internal

quotation marks omitted), and generally “all forms of discrimination because of sex, however they may manifest themselves or whatever labels might attach to them.” *Id.* It has been two years since the *Bostock* decision was issued, and six years since the Sixth Circuit’s decision in *Dodds v. Department of Education*, 845 F.3d 217, 221-22 (6th Cir. 2015) (per curiam), which found that Title IX prohibits discrimination based on sex stereotyping and gender nonconformity. Plaintiffs cannot say that they lacked notice that USDA, which already conditions its SNAP and SNAP-Ed funding on compliance with Title IX and the FNA, would inform states that compliance would need to be consistent with the agency’s interpretation of those statutes in light of *Bostock*.

Plaintiffs further argue that the Final Rule and May 5 Memo violate the Spending Clause in that they are improperly coercive under *Nat’l Fed’n of Indep. Business v. Sebelius*, 567 U.S. 519, 584 (2012) (“*NFIB*”). In that case, the Supreme Court held that Congress could not make the entirety of a State’s traditional Medicaid funding contingent on participation in a new program to provide health coverage for all low-income adults. But here, the Secretary is not “enlisting the States in a new . . . care program.” *Id.* See *Gruver v. La. Bd. of Supervisors for La. State Univ. Agric. & Mech. Coll.*, 959 F.3d 178, 184 (5th Cir.), *cert. denied*, 141 S. Ct. 901 (2020) (“The problem in *NFIB* was that Congress had conditioned all of a state’s Medicaid funding on accepting significant obligations that created a new program entirely different than the original one the state had opted in to.”); see also *Tennessee v. U.S. Dep’t of State*, 329 F. Supp. 3d 597, 629 (W.D. Tenn. 2018), *aff’d sub nom. State by & through Tenn. Gen. Assembly v. U.S. Dep’t of State*, 931 F.3d 499 (6th Cir. 2019), *cert. denied*, 141 S. Ct. 549 (2020) (“The State must also show that Congress has created a new condition that is different from the original program Congress is purporting to modify and is using that program’s funding as leverage to force the states to accept the new condition.”). Here, the Secretary is simply applying the existing provisions of Title IX and the FNA to its longstanding nutrition programs, including SNAP and SNAP-Ed, based on an interpretation of those statutes that has been recognized as valid under analogous circumstances in

Bostock. This does not constitute unlawful coercion under *NFIB*. Thus, Plaintiffs’ Spending Clause claim is not likely to succeed.

2. *Tenth Amendment and Anticommandeering Doctrine*

Because the USDA’s Final Rule and May 5 Memo are permissible under the Spending Clause, they do not constitute an impermissible “commandeering” of state-run institutions. As the Supreme Court has explained, valid conditions on the receipt of federal funds do not constitute commandeering. *See New York v. United States*, 505 U.S. 144, 167, 173 (1992) (contrasting funding conditions with commandeering).

3. *Separation of Powers and Non-Delegation Doctrine*

Plaintiffs further argue that USDA’s Final Rule and May 5 Memo violate the major questions doctrine and the non-delegation doctrine. Br. at 23-24. Neither position has any merit. This is not one of those rare, extraordinary cases that raises the major questions doctrine. *See West Virginia v. EPA*, 142 S. Ct. 2587, 2608 (2022) (explaining that such cases are ones “in which the history and the breadth of the authority that [the agency] has asserted, and the economic and political significance of that assertion, provide a reason to hesitate before concluding that Congress meant to confer such authority” (citations omitted)). USDA is not exercising any vast new authority to implement policies that Congress could not have intended. Congress clearly intended to prohibit sex discrimination against individuals under both Title IX and the FNA. Even if the drafters “weren’t thinking about many of the [statutes’] consequences, . . . the limits of the drafters’ imagination supply no reason to ignore the law’s demands.” *Bostock*, 140 S. Ct. at 1737. The Supreme Court made clear in *Bostock* that “Title VII’s prohibition of sex discrimination in employment is a major piece of federal civil rights litigation,” written in “starkly broad terms,” that encompasses conduct in which employers “fir[e] employees *on the basis of* [sexual orientation] or transgender status.” *Id.* at 1753 (emphasis added). This was why the Supreme Court found that opponents of this reading of Title VII could not “hide behind

the no-elephants-in-mouseholes cannon,” *id.*; the expanse of the prohibition “has been standing before us all along.” *Id.* See also *West Virginia v. EPA*, 142 S. Ct. at 2622 (Gorsuch, J., concurring) (identifying the elephants-in-mouseholes canon as part of the major questions analysis).

The States’ nondelegation doctrine challenge is equally deficient. A “nondelegation inquiry always begins (and often almost ends) with statutory interpretation. The constitutional question is whether Congress has supplied an intelligible principle to guide the delegatee’s use of discretion.” *Gundy v. United States*, 139 S. Ct. 2116, 2123 (2019). “[T]he answer requires construing the challenged statute to figure out what task it delegates and what instructions it provides.” *Id.* Here, as in *Bostock*, “the express terms of [the statutes] give us one answer,” 140 S. Ct. at 1737, which is that administrators of USDA-funded programs may not discriminate against individuals “on the basis of [sex, including . . . sexual orientation] or transgender status.” *Id.* at 1753. Nothing more is required under the nondelegation inquiry.

4. First Amendment

Plaintiffs’ First Amendment arguments are unlikely to succeed because they are based on unsupported speculation. For example, Plaintiffs contend that “USDA appears to have imposed the Department of Education’s position that the use of biologically accurate pronouns could constitute unlawful discrimination.” Br. at 20. But neither the Final Rule nor the May 5 Memo says anything of the sort. Plaintiffs suggest that such a position would violate the free speech rights of teachers and professors, citing, for example, *Meriwether v. Hartop*, 992 F.3d 492 (6th Cir. 2021). But *Meriwether* involved an individual’s free speech rights, not a state’s, and USDA has not addressed pronoun usage in the challenged documents. Nor does this case present the sort of fact-intensive dispute that was at issue in *Meriwether*. USDA has not received a complaint, has not conducted any specific investigation, and has not made any determination that an individual’s use of incorrect pronouns constitutes discrimination. This further underscores why Plaintiffs’ challenge is not ripe.

Next, Plaintiffs inaccurately contend that the Final Rule and May 5 Memo conflict with religious liberty guarantees under the First Amendment, the Religious Freedom Restoration Act, and federal antidiscrimination laws. Br. at 20-21. Plaintiffs note that those authorities provide “robust protections for religious employers and employees.” Br. at 20. But whatever those protections maybe be, they do not belong to the States, and the States lacks standing to assert them on behalf of religious employers and employees. See, e.g., *Massachusetts v. Mellon*, 262 U.S. 447, 485–86 (1923) (“While the state, under some circumstances, may sue in that capacity for the protection of its citizens, it is no part of its duty or power to enforce their rights in respect of their relations with the federal government.”); *Kentucky v. Biden*, 23 F.4th 585, 597 (6th Cir. 2022) (same); *New Mexico v. McAleenan*, 450 F. Supp. 3d 1130, 1208 (D.N.M. 2020) (noting general consensus “that the First Amendment works in one direction: it protects people and private entities, not governments”).

Moreover, the States fail to acknowledge that Title IX and USDA’s own regulations contain a religious exemption. Since its enactment, Title IX has exempted educational institutions that are controlled by religious organizations from complying with Title IX’s prohibitions that conflict with its religious tenets. See 20 U.S.C. § 1681(a)(3). Since April 1979, USDA’s Title IX regulations have made clear that they do “not apply to an educational institution which is controlled by a religious organization to the extent application of this part would not be consistent with the religious tenets of such organization.” See 44 Fed. Reg. 21,610, 21,613 (Apr. 11, 1979). On October 6, 2017, USDA updated its Title IX regulations but the language of the religious exemption in the new regulation, 7 C.F.R. § 15a.205, provides the same exemption for religious organizations as the 1979 language (“This part does not apply to any operation of an educational institution or other entity that is controlled by a religious organization to the extent that application of this part would not be consistent with the religious tenets of such organization.”). See 82 Fed. Reg. 46,655, 46,659 (Oct. 6, 2017); 7 C.F.R. § 15a.205(a). The States do not identify any specific religious employer or employee who will be

harm by the Final Rule or May 5 Memo, nor could they in light of these exemptions.

Finally, the States argue that the USDA's actions violate their own First Amendment rights. Br. at 21. But, of course, States do not have First Amendment rights.⁷ See *Columbia Broad. Sys., Inc. v. Democratic Nat'l Comm.*, 412 U.S. 94, 139 (1973) (Stewart, J., concurring); *New Mexico v. McAleenan*, 450 F. Supp. 3d at 1208.

The First Amendment protects the rights of individuals against infringement by the government, not the rights of States against the federal government. That work is done by the Tenth Amendment, under which, as described above, the States' arguments also fail.

III. THE OTHER EQUITABLE FACTORS FAVOR DEFENDANTS

A. Plaintiffs Have Not Demonstrated an Irreparable Harm from the Denial of Injunctive Relief

Plaintiffs have failed to meet their burden to show that they will suffer irreparable harm in the absence of a preliminary injunction. Plaintiffs have “the burden of establishing a clear case of irreparable injury,” *Garlock, Inc. v. United Seal, Inc.*, 404 F.2d 256, 257 (6th Cir. 1968) (per curiam), and their burden to show irreparable harm is higher than what is required to establish standing. See *Ohio v. Yellen*, 539 F. Supp. 3d 802, 820-21 (S.D. Ohio 2021). To satisfy the “high standard” for establishing irreparable harm, Plaintiffs must show that their asserted injuries are “real,” “substantial,” and “immediate,” not speculative or conjectural. *City of L.A. v. Lyons*, 461 U.S. 95, 111 (1983); see also *Memphis A. Philip Randolph Inst. v. Hargett*, 978 F.3d 378, 391 (6th Cir. 2020). And, as relevant here, “[a]n injunction against [even] threatened legal action will not issue if the party will have an adequate opportunity to fully present his defenses and objections in the legal action he seeks to enjoin.” *Travis v. Pennyryle Rural Elec. Co-op.*, 399 F.2d 726, 729 (6th Cir. 1968); *Thunder Basin*, 510 U.S. at 217-18.

⁷ Plaintiffs cite *Walker v. Tex. Div., Sons of Confederate Veterans, Inc.*, 576 U.S. 200 (2015), and *Kennedy v. Bremerton School District*, 142 S. Ct. 2407 (2022). Br. at 21. Neither case is applicable here because they did not address the constitutional rights of states.

Here, Plaintiffs seek to preemptively enjoin USDA’s interpretations of Title IX and the FNA in the absence of any particular enforcement action. Even if USDA were to bring an enforcement action under Title IX or the FNA against Plaintiffs consistent with the challenged interpretations—a possibility that seems highly speculative given that Plaintiffs disavow discrimination on the basis of sexual orientation and gender identity in relation to the USDA’s programs—Plaintiffs would have “an adequate opportunity to fully present [their] defenses and objections” in any such enforcement proceeding. *Id.* See *supra* at 7-9 (describing procedures). Accordingly, Plaintiffs cannot show irreparable harm in the absence of the injunction they seek.

Plaintiffs allege that their sovereign interests would be infringed if the Defendants were permitted to enforce their interpretations of Title IX and the FNA. But, as discussed previously, Plaintiffs allege only that certain state laws may “arguably” conflict with Defendants’ interpretations of Title IX and the FNA. Compl. ¶¶ 130-31; see also Br. at 8. Particularly where they identify no pending enforcement action against them, this is a far cry from the “certain and immediate” harm that would merit a preliminary injunction. *Memphis A. Philip Randolph Inst.*, 978 F.3d at 391.

B. The Public Interest and Balance of the Equities Favor Defendants

An injunction is also improper because the balance of the equities and the public interest are in Defendants’ favor. As a reminder, where the federal government is the defendant, these two factors merge. *Danmt*, 956 F.3d at 422. Plaintiffs cannot establish that their alleged injury to their sovereignty outweighs any harm that an injunction would cause the government and unrepresented third parties, or that granting the injunction would not be adverse to the public interest. *McNeilly v. Land*, 684 F.3d 611, 621 (6th Cir. 2012).

This is particularly so in light of the substantial public interest in achieving Title IX’s and the FNA’s goals of eliminating sex discrimination. Indeed, the Plaintiffs themselves forswear such discrimination. Violations of federal civil rights statutes constitute irreparable harm as a matter of law.

Silver Sage Partners, Ltd. v. City of Desert Hot Springs, 251 F.3d 814, 827 (9th Cir. 2001); *Roberts v. Colo. State Bd. of Agric.*, 998 F.2d 824, 833 (10th Cir. 1993); *Rogers v. Windmill Pointe Vill. Club Ass’n*, 967 F.2d 525, 528 (11th Cir. 1992). An injunction prohibiting USDA from making clear that Title IX and the FNA prohibit discrimination on the basis of sexual orientation or gender identity would have a severe impact on a vulnerable population. *Dodds*, 845 F.3d at 222 (holding that the public interest weighed heavily against a stay of an injunction where the injunction sought to protect a transgender student’s constitutional and civil rights, “a purpose that is always in the public interest”). Given that Plaintiffs are not in imminent danger of losing funds from USDA and have not shown how their state laws are impacted by the Final Rule and May 5 Memo, they have not identified a sufficiently serious irreparable harm that would justify inflicting these injuries.

C. Any Injunctive Relief Should Be Limited

If this Court were to enjoin any aspect of the challenged documents (and it should not), its injunction should apply only to Plaintiffs, excluding those in the Fourth and Seventh Circuits where the courts of appeals have already concluded that Title IX prohibits discrimination based on sexual orientation or gender identity. Injunctions must be no broader than “necessary to provide complete relief to the plaintiffs.” *Madsen v. Women’s Health Ctr., Inc.*, 512 U.S. 753, 765 (1994) (citation omitted); *see also Arizona v. Biden*, 40 F.4th 375, 396 (6th Cir. 2022) (Sutton, C.J., concurring) (criticizing injunctions that apply beyond the parties to the suit). This is particularly true in matters involving injunctive relief against the federal government. *Id.* (“[A] district court should think twice—and perhaps twice again—before granting universal anti-enforcement injunctions against the federal government.”). Accordingly, nonplaintiff States should not be subject to injunctive relief here.

Furthermore, in the Fourth and Seventh Circuits that have held that Title IX precludes discrimination based on gender identity, it would be inappropriate for this Court to enjoin the federal government from enforcing that view of the law. *See, e.g., Grimm*, 972 F.3d at 618-19; *Whitaker by*

Whitaker v. Kenosha Unified Sch. Dist. No. 1 Bd. of Educ., 858 F.3d 1034, 1049 (7th Cir. 2017), *abrogation on other grounds as recognized by Ill. Rep. Party v. Prtizker*, 973 F.3d 760 (7th Cir. 2020); *see also United States v. AMC Ent., Inc.*, 549 F.3d 760, 773 (9th Cir. 2008) (“[p]rinciples of comity require that, once a sister circuit has spoken to an issue, that pronouncement is the law of that geographical area”). This would include Plaintiffs Indiana, South Carolina, Virginia, and West Virginia.

CONCLUSION

For all these reasons, the Court should deny Plaintiffs’ motion for preliminary injunction.

Dated: September 9, 2022

Respectfully submitted,

BRIAN M. BOYNTON
Principal Deputy Assistant Attorney General

CARLOTTA WELLS
Assistant Branch Director, Federal Programs
Branch

/s/ JONATHAN D. KOSSAK
JONATHAN D. KOSSAK
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Counsel for Defendants

Exhibit A

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TENNESSEE
KNOXVILLE DIVISION

THE STATE OF TENNESSEE, *et al.*

Plaintiffs,

v.

UNITED STATES DEPARTMENT OF
AGRICULTURE, *et al.*

Defendants.

Case No. 3:22-cv-00257

District Judge Travis R. McDonough
Magistrate Judge Debra C. Poplin

DECLARATION OF ANGELA KLINE

I, Angela Kline, do hereby state and declare as follows:

1. I am a Deputy Associate Administrator for the Supplemental Nutrition Assistance Program (“SNAP”) at the United States Department of Agriculture (“USDA” or “the Department”) Food and Nutrition Service (“FNS”), Alexandria, Virginia. I have held my current position since December 2021.

2. As the Deputy Associate Administrator for SNAP, I am responsible for the administration of SNAP by the Office Employment and Training, Program Development and Program Divisions of SNAP at the FNS National Office. In that role, I oversee SNAP recipient and State administration matters, as well as the rulemaking process for the entirety of SNAP.

3. The statements made in this declaration are based on knowledge that I have acquired in the performance of my official duties, information provided to me by FNS’s SNAP staff, and my knowledge of the issues being litigated in the above-captioned matter.

4. FNS administers the nutrition assistance programs of USDA. The mission of FNS is to provide children and needy families with better access to food and a more healthful diet through its food assistance programs and comprehensive nutrition education efforts.

5. The mission of SNAP is “to safeguard the health and well-being of the Nation’s population by raising the levels of nutrition among low-income households.” 7 U.S.C. § 2011. The program is administered by FNS. 7 C.F.R. § 271.3. Assistance is focused on increasing the food purchasing power of eligible households by supplementing the funds those households have to spend on food with SNAP benefits. 7 U.S.C. § 2013.

6. SNAP’s administration is accomplished through partnerships with State Agencies. “State Agency” refers to the agency of State government, including its local offices, which has “the responsibility for the administration of the federally aided public assistance programs within such State.” 7 U.S.C. § 2012(s)(1). For SNAP, the State Agencies serve as the administrators of the program. It is the State Agency that conducts eligibility determinations for applicant households. Schools do not serve as State Agencies for SNAP administration purposes.

7. A household that meets SNAP eligibility requirements, which are predominantly income and asset-focused, is provided an Electronic Benefit Transfer (EBT) card they can then use to access their SNAP benefits. The SNAP benefits are loaded onto the EBT card monthly and may only be used to purchase eligible food at SNAP-authorized retailers, such as a grocery store. Further, hot and prepared food or meals, such as those provided in school cafeterias, are not considered eligible food for purposes of SNAP. *See* 7 U.S.C. § 2012(k). Additionally, schools do not meet the statutory definition of a “retail food store,” and therefore do not participate in SNAP as authorized retailers. *See* 7 U.S.C. § 2012(o). This means that a SNAP

recipient cannot use their SNAP benefits to purchase food at a school.

8. Further, SNAP's purpose and scope do not concern bathrooms, locker rooms, athletics, dress codes, or other such areas of concern referenced in Plaintiffs' complaint.

9. Supplemental Nutrition Assistance Program Education (SNAP-Ed) is a federally funded, evidence-based grant program that helps people lead healthy, active lives by partnering with state and local organizations. The goal of SNAP-Ed is to implement a nutrition education and obesity prevention program for eligible individuals that promotes healthy food choices and physical activity consistent with the most recent Dietary Guidelines for Americans. All fifty States, the District of Columbia, Guam, and the Virgin Islands currently receive funding for SNAP-Ed. Those States, in turn, distribute funds to implementing agencies, which then provide SNAP-Ed projects and activities according to approved annual or multi-year plans. While there are many types of SNAP-Ed projects, some implementing agencies work with schools and school districts to reach SNAP-eligible students and their families with direct education in the school setting. An example of such efforts is the "Pick a Better Snack" program which provides monthly lessons in select elementary school classrooms. In the lessons, students learn from a nutrition educator about a fruit or vegetable, taste it, and receive materials to share with their families that reinforce the lesson and invite further family engagement. Additionally, schools, such as public universities, may participate as an implementing agency. Regardless of whether a school is involved with SNAP-Ed as an implementing agency or as a site for the Program, the SNAP-Ed grant is awarded to the States, and the States are considered the program operators. FNS's concern with any school involved with SNAP-Ed, either as an implementing agency or as a Program site, is limited strictly to the scope of the SNAP-Ed Program and ensuring individuals

eligible for participation in SNAP-Ed have access to the program. SNAP-Ed's purpose and scope does not concern school bathrooms, school sports teams, school dress codes, or other such areas of concern referenced in Plaintiffs' complaint.

10. To participate in SNAP, a State Agency must first submit a State Plan of Operation. 7 U.S.C. § 2020(d); *see* 7 C.F.R. § 272.2. The State Plan of Operation is comprised of three core components; the Federal/State Agreement ("FSA"), the Budget Projection Statement, and the Program Activity Statement; and various attachments. 7 C.F.R. § 272.2(a)(2). One such attachment is the optional Nutrition Education Plan. State Agencies must submit State plans and their components, including the Nutrition Education Plan, to FNS by August 15th, if they wish to participate in SNAP-Ed in the next Federal Fiscal Year (FFY). All Plaintiff-States submitted their Nutrition Education Plans by August 15, 2022 and have been allocated SNAP-Ed funds for FFY 23. *See* Exh. 1.

11. The FSA is the legal agreement between the State and USDA by which the State elects to operate and administer SNAP in accordance with the Food and Nutrition Act of 2008, as amended ("the Act"), the regulations issued pursuant to the Act, and the FNS-approved State Plan of Operation. 7 C.F.R. § 272(a)(2).

12. On June 14, 2022, FNS published a final rule entitled, "Supplemental Nutrition Assistance Program: Civil Rights Update to the Federal-State Agreement" ("SNAP Final Rule") which updated the templated language of the FSA found at 7 C.F.R. § 272.2(b)(1). In relevant part, the regulation was updated to include an assurance that (a) a State receiving SNAP funds would comply with Title IX of the Education Amendments of 1972 (20 U.S.C. 1681 *et seq.*), and (b) that no person within the United States would "be excluded from participation in, be denied

the benefits of, or be otherwise subject to discrimination under SNAP,” on the basis of their gender identity and sexual orientation. Consideration of such factors within SNAP was already prohibited by the Act and corresponding regulations. *See* 7 U.S.C. 2014(b) (“[USDA] shall establish uniform national standards of eligibility for participation by households in [SNAP]. No plan of operation submitted by a State agency shall be approved unless the standards of eligibility meet those established by the Secretary, and no State agency shall impose any other standards of eligibility as a condition for participating in the program.”); 7 C.F.R. Part 273 (establishing uniform national standards of eligibility for participation in SNAP).

13. The SNAP Final Rule became effective as of August 15, 2022, and provides, consistent with 7 C.F.R. § 272.2(e)(1), that the new FSA must be signed and submitted to FNS within 120 days after the publication of the regulations in final form. This means that States must submit their new signed FSA to FNS by December 15, 2022. Once signed by a State’s chief executive officer or authorized designee, the FSA is valid until terminated. In the interim, a State’s currently effective FSAs remain in place, meaning it can continue to participate in SNAP.

14. If a State does not wish to sign the FSA with the language as written in 7 C.F.R. § 272.2(b)(1), the State may, pursuant to 7 C.F.R. § 272.2(b)(2), “propose alternative language to any or all the provisions.” Any proposed alternative language is subject to approval by the State and FNS before signature.

15. As of September 8, 2022, fourteen Plaintiff-States (Alaska, Arizona, Arkansas, Georgia, Kansas, Louisiana, Montana, Nebraska, Ohio, Oklahoma, South Carolina, Tennessee, Utah, and West Virginia) have already finalized their new FSA, adopting the exact language promulgated in the SNAP Final Rule. Exhs. 2-15. The other eight Plaintiff-States (Alabama,

Indiana, Kentucky, Mississippi, Missouri, South Dakota, Texas, and Virginia) have not informed FNS that they will not sign a new FSA by December 15, 2022. In fact, three of those eight Plaintiff-States (Alabama, Indiana, and Virginia) have indicated that they expect to submit their FSAs by December 13, 2022, and another (Mississippi) has proposed alternative language for FNS to consider.

16. Because States were already prohibited from considering a person's gender identity or sexual orientation for purposes of SNAP and SNAP-Ed eligibility and participation, any future discovery of such conduct—whether through information received from Performance Reporting System reviews, Federal reviews, audits, investigations, management evaluations, the public, etc.—would be handled in the same manner as it would have been prior to the effective date of the SNAP final rule; namely, FNS may pursue an enforcement process suspension and/or disallowance of Federal funds pursuant to 7 C.F.R. § 276.4.

17. The suspension and disallowance process provides for multiple steps before a suspension and/or disallowance action can be taken. Prior to taking a suspension and/or disallowance action, FNS must first provide the State Agency with written Advance Notification that such action is being considered. 7 C.F.R. § 276.4(d)(1), *see* 7 U.S.C. § 2020(g). The Advance Notification details the deficiency in the State Agency's administration of SNAP and provides a set period of time to correct the deficiency, which will vary based on the nature of the deficiency. *Id.* If the State Agency does not correct the deficiency noted in the Advance Notification to FNS's satisfaction within the time period provided, FNS must then provide the State Agency with a Formal Warning of the possibility of suspension and/or disallowance action consistent with 7 C.F.R. § 276.4(d)(2). *See* 7 U.S.C. § 2020(g). The Formal Warning provides

the State Agency an additional 30 days to either submit evidence that it is in compliance or to submit a corrective action proposal (CAP) that includes the date the State Agency will be in compliance. 7 C.F.R. § 276.4(d)(2); *see* 7 U.S.C. § 2020(g). If the deficiency cannot be addressed in 30 days but the State Agency submits a satisfactory CAP, the Formal Warning is held in abeyance until the completion of the actions in outlined in the CAP by the specified completion date. *Id.* The Formal Warning is cancelled if sufficient evidence is submitted to show the deficiency has been eliminated. *Id.* Only if the State Agency fails to respond to the Formal Warning, responds unsatisfactorily to the Formal Warning, or fails to meet its commitments in the CAP does FNS then suspend and/or disallow funds. 7 C.F.R. § 276.4(e); *see* 7 U.S.C. § 2020(g).

18. A disallowance of Federal funds may be appealed to the State SNAP Appeals Board pursuant to 7 C.F.R. § 276.7. States aggrieved by the decision of the State SNAP Appeals Board may then obtain judicial review of the decision pursuant to 7 U.S.C. § 2023 and 7 C.F.R. § 276.7(j).

19. FNS strives to ensure those who are eligible have access to USDA's nutrition assistance programs, free from discrimination, and recognizes the important role its State partners play in the programs' success. All efforts are made to resolve compliance issues with States at the earliest opportunity, well before beginning the suspension and disallowance process.

I declare under penalty of perjury, pursuant to 28 U.S.C. § 1746, that the foregoing is true and correct.

ANGELA KLINE
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Date: 2022.09.09 14:25:44 -04'00'

ANGELA KLINE
Deputy Associate Administrator for SNAP, USDA
Alexandria, Virginia

Exhibit 1



Food and
Nutrition
Service

1320 Braddock Place
Alexandria, VA
22314

Date: September 7, 2022

Subject: Fiscal Year (FY) 2022 Supplemental Nutrition Assistance Program
Nutrition Education (SNAP-Ed) Final Allocations

To: All SNAP State Agencies
All Regions

The Food and Nutrition Service (FNS) is pleased to announce the release of the FY 2022 final SNAP-Ed allocations totaling \$506,000,000. The SNAP-Ed allocation is 100 percent Federally funded and is calculated annually based on a ratio of a State's share of historical national SNAP-Ed expenditures in FY 2009, and a State's current SNAP participation as compared to national SNAP participation. These allocations are subject to the availability of Federal funds.

Attached are the FY 2023 allocations for each State. Funding for FY 2023 and prior year allocations are available on the SNAP-Ed Connection page at <https://snaped.fns.usda.gov/program-administration/snap-ed-funding-allocations> under the Program Administration tab.

Information provided in this memo supersedes all previous communication. Thank you for your continued support of the SNAP-Ed Program. State agencies with questions should contact their respective Regional Office representatives.

Sincerely,

Rachel Frisk

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Frisk
Date: 2022.09.07
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Rachel Frisk
Director
Program Administration and Nutrition Division

Attachment: SNAP-Ed Final Allocations for FY 2023

Final SNAP-Ed Allocations for FY 2023

State/Territory	Final FY 2023 Allocation
Alaska	\$ 836,827
Alabama	\$ 6,802,851
Arkansas	\$ 3,078,674
Arizona	\$ 14,552,794
California	\$ 119,770,635
Colorado	\$ 5,669,889
Connecticut	\$ 4,296,280
District of Columbia	\$ 1,935,049
Delaware	\$ 1,246,891
Florida	\$ 21,291,117
Georgia	\$ 10,773,629
Guam	\$ 232,847
Hawaii	\$ 1,655,097
Iowa	\$ 3,041,925
Idaho	\$ 1,395,094
Illinois	\$ 18,629,323
Indiana	\$ 7,155,730
Kansas	\$ 2,776,178
Kentucky	\$ 10,691,747
Louisiana	\$ 6,822,299
Massachusetts	\$ 7,810,537
Maryland	\$ 7,193,938
Maine	\$ 4,570,527
Michigan	\$ 25,025,590
Minnesota	\$ 8,964,760
Missouri	\$ 10,973,388
Mississippi	\$ 4,451,630
Montana	\$ 1,098,654
North Carolina	\$ 11,020,165
North Dakota	\$ 1,091,348
Nebraska	\$ 1,978,885
New Hampshire	\$ 1,072,239
New Jersey	\$ 9,923,123
New Mexico	\$ 5,445,501
Nevada	\$ 3,629,877
New York	\$ 28,139,593
Ohio	\$ 11,437,352
Oklahoma	\$ 7,231,043
Oregon	\$ 8,807,168
Pennsylvania	\$ 27,368,049
Rhode Island	\$ 1,480,596
South Carolina	\$ 3,918,707
South Dakota	\$ 743,760
Tennessee	\$ 6,298,418
Texas	\$ 24,435,423
Utah	\$ 1,592,097
Virginia	\$ 8,460,586
Virgin Islands	\$ 174,383
Vermont	\$ 444,500
Washington	\$ 11,325,298
Wisconsin	\$ 11,561,164
West Virginia	\$ 3,973,485
Wyoming	\$1,703,340
US	\$506,000,000

Exhibit 2

Federal-State Agreement

The SNAP State agency of Alaska and the Food and Nutrition Service (FNS), U.S. Department of Agriculture (USDA), hereby agree to act in accordance with the provisions of the Food and Nutrition Act of 2008, as amended, implementing regulations and the FNS approved State Plan of Operation. The State agency and FNS USDA further agree to fully comply with any changes in Federal law and regulations. This agreement may be modified with the mutual written consent of both parties.

PROVISIONS

The State agrees to:

1. Administer the program in accordance with the provisions contained in the Food and Nutrition Act of 2008, as amended, and in the manner prescribed by regulations issued pursuant to the Act; and to implement the FNS-approved State Plan of Operation.
2. Assurance of Civil Rights Compliance: 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.](#)), section 11(c) of the Food and Nutrition Act of 2008, as amended ([7 U.S.C. 2020](#)), Title II and Title III of the Americans with Disabilities Act (ADA) of 1990 as amended by the ADA Amendments Act of 2008 ([42 U.S.C. 12131-12189](#)) as implemented by Department of Justice regulations at [28 CFR part 35](#) and [36, Executive Order 13166](#), "Improving Access to Services for Persons with Limited English Proficiency" (August 11, 2000), and all requirements imposed by the regulations issued by the Department of Agriculture to the effect that, no person in the United States shall, on the grounds of sex, including gender identity and sexual orientation, race, color, age, political belief, religious creed, disability, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subject to discrimination under SNAP. This includes program-specific requirements found at [7 CFR part 15 et seq.](#) and [7 CFR 272.6](#).

This assurance is given in consideration of and for the purpose of obtaining any and all Federal assistance extended to the State by USDA under the authority of the Food and Nutrition Act of 2008, as amended. Federal financial assistance includes grants, and loans of Federal funds; reimbursable expenditures, grants, or donations of Federal property and interest in property; the detail of Federal personnel; the sale, lease of, or permission to use Federal property or interest in such property; 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 State by USDA.

This assistance also 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, 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 State agency agrees to compile data, maintain records, and submit records

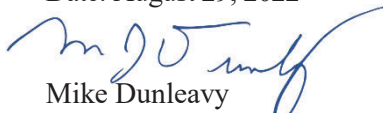
and reports as required, to permit effective enforcement of nondiscrimination laws and permit authorized USDA personnel during hours of program operation to review and copy such records, books, and accounts, access such facilities and interview such personnel as needed to ascertain compliance with the nondiscrimination laws. If there are any violations of this assurance, USDA, FNS, shall have the right to seek judicial enforcement of this assurance. This assurance is binding on the State agency, 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 behalf of the State agency.

3. (For States with Indian Reservations only). Implement the Program in a manner that is responsive to the special needs of American Indians on reservations and consult in good faith with tribal organizations about that portion of the State's Plan of Operation pertaining to the implementation of the Program for members of the tribe on reservations.

FNS agrees to: 1. Pay administrative costs in accordance with the Food Stamp Act, implementing regulations, and an approved Cost Allocation Plan.

2. Carry-out any other responsibilities delegated by the Secretary in the Food and Nutrition Act of 2008, as amended.

Date: August 29, 2022


Mike Dunleavy
Governor, State of Alaska

Date: August 30, 2022

JESUS

MENDOZA

Jesus Mendoza, Jr.
Regional Administrator
Western Regional Office

Digitally signed by
JESUS MENDOZA
Date: 2022.08.30
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Addendum

Clarification of SNAP Civil Rights Requirements - Executive Order 13166, “Improving Access to Services for Persons with Limited English Proficiency (LEP),” and Title II and III of the Americans with Disabilities Act

This addendum clarifies core civil rights requirements to ensure meaningful access to programs, services, and information for persons with Limited English Proficiency (LEP) and persons with disabilities in accordance with Federal law, regulations and current guidance from the Department of Justice (DOJ) and the U.S. Department of Agriculture (USDA).

Meaningful Access for LEP Individuals

State agencies that participate in the Supplemental Nutrition Assistance Program (SNAP) must take reasonable steps to ensure that LEP persons have meaningful access to programs, services, and benefits. This includes the requirement to provide bilingual program information and certification materials and interpretation services to single-language minorities in certain project areas. SNAP State agencies that do not provide meaningful access for LEP individuals risk violating prohibitions against discrimination based on National Origin in the Food and Nutrition Act of 2008, as amended, Title VI of the Civil Rights Act of 1964 (Title VI), and SNAP program regulations.

Federal LEP regulations and guidance include:

- SNAP regulations provided by 7 CFR Part 272.4(b), “Bilingual requirements”;
- Executive Order 13166 of August 11, 2000, “Improving Access to Services for Persons with Limited English Proficiency,” reprinted in 65 FR 50121, 50122 (August 16, 2000);
- DOJ policy guidance titled, “Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons,” published in 67 FR 41455, 41457 (June 18, 2002); and
- USDA policy guidance titled, “Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons,” published in 79 FR 70771 - 70784 (November 28, 2014).

Four Factor Analysis for Assessing LEP Needs

To be in compliance, the Title VI guidance provided by DOJ and USDA instructs State Agencies to assess the LEP needs of the population served and determine the LEP services required by balancing four factors:

1. The number or proportion of LEP persons eligible to be served or likely to be encountered within the area serviced by the recipient;
2. The frequency with which LEP individuals come in contact with the program;
3. The nature and importance of the program, activity, or service to people’s lives; and
4. The resources available to the recipient and costs.

SNAP State Agencies must also comply with the specific requirements established by 7 CFR Part 272.4(b) and should include these obligations in the LEP assessment.

Developing an LEP Plan

After completing an assessment of LEP needs, SNAP state agencies should develop an implementing plan to address the LEP needs of the population served. This may include contracting for oral interpretation services, hiring bilingual staff, arranging telephone interpreters and/or language lines, coordinating community volunteers, translating vital documents, and providing written notice that language services are available in appropriate languages. Quality and accuracy of the language service is critical in order to avoid serious consequences to the LEP person and to the recipient. LEP needs should be considered in developing State and local budgets and front line staff should understand how to obtain LEP services.

USDA's 2014 policy guidance includes detailed information on assessing LEP needs, identifying practices for translating documents that will be seen as strong evidence of compliance. For additional assistance and information regarding LEP matters, please also visit <http://www.lep.gov>. The website includes online LEP mapping tools designed to help assess the language needs of the population served by a particular program or facility.

Ensuring Equal Opportunity Access for Persons with Disabilities

SNAP State agencies must also ensure equal opportunity access for persons with disabilities. This includes ensuring that communications with applicants, participants, members of the public, and companions with disabilities are as effective as communications with people without disabilities. State Agencies that do not provide persons with disabilities equal opportunity access to programs may risk violating prohibitions against disability discrimination in the Rehabilitation Act of 1978, the American with Disabilities Act (ADA), and SNAP program regulations.

DOJ published revised final regulations implementing Title II and Title III of the ADA on September 15, 2010. These regulations are codified at 28 CFR Part 35 "Nondiscrimination on the Basis of Disability in State and Local Government Services" and 28 CFR Part 36, "Nondiscrimination on the Basis of Disability in Public Accommodations and Commercial Facilities". In accordance with the implementing regulations, State Agencies must provide auxiliary aids and services where necessary to ensure effective communication and equal opportunity access to program benefits for individuals with disabilities. The type of auxiliary aids and services required will vary, but a State agency may not require an individual with a disability to bring another individual to interpret, and may rely on a person accompanying a disabled individual only in limited circumstances. When a State agency communicates with applicants and beneficiaries by telephone, it must provide text telephone services (TTY) or an equally effective electronic telecommunications system to communicate with individuals who are deaf, hard of hearing, or hearing impaired. State agencies must also ensure that interested persons, including persons with impaired vision or hearing, can obtain information as to the existence and location of accessible services, activities, and facilities. For more information, please visit the ADA website: <http://www.ada.gov>.

Exhibit 3

IV. **UPDATED** FEDERAL-STATE AGREEMENT TEMPLATE

Below is the Federal-State Agreement template that includes the civil rights policy guidance clarification. A file name for this document should be: "FY23 STATE INITIAL 1 Fed State Agreement.pdf"

Federal-State Agreement

The SNAP State agency of Arkansas and the Food and Nutrition Service (FNS), U.S. Department of Agriculture (USDA), hereby agree to act in accordance with the provisions of the Food and Nutrition Act of 2008, as amended, implementing regulations and the FNS approved State Plan of Operation. The State agency and FNS USDA further agree to fully comply with any changes in Federal law and regulations. This agreement may be modified with the mutual written consent of both parties.

PROVISIONS

The State agrees to:

1. Administer the program in accordance with the provisions contained in the Food and Nutrition Act of 2008, as amended, and in the manner prescribed by regulations issued pursuant to the Act; and to implement the FNS-approved State Plan of Operation.
2. Assurance of Civil Rights Compliance: 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.](#)), section 11(c) of the Food and Nutrition Act of 2008, as amended ([7 U.S.C. 2020](#)), Title II and Title III of the Americans with Disabilities Act (ADA) of 1990 as amended by the ADA Amendments Act of 2008 ([42 U.S.C. 12131-12189](#)) as implemented by Department of Justice regulations at [28 CFR part 35](#) and [36](#), [Executive Order 13166](#), "Improving Access to Services for Persons with Limited English Proficiency" (August 11, 2000), and all requirements imposed by the regulations issued by the Department of Agriculture to the effect that, no person in the United States shall, on the grounds of sex, including gender identity and sexual orientation, race, color, age, political belief, religious creed, disability, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subject to discrimination under SNAP. This includes program-specific requirements found at [7 CFR part 15 et seq.](#) and [7 CFR 272.6](#).

This assurance is given in consideration of and for the purpose of obtaining any and all Federal assistance extended to the State by USDA under the authority of the Food and Nutrition Act of 2008, as amended. Federal financial assistance includes grants, and loans of Federal funds; reimbursable expenditures, grants, or donations of Federal property and interest in property; the detail of Federal personnel; the sale, lease of, or permission to use Federal property or interest in such property; 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 State by USDA. This assistance also 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, 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 State agency agrees to compile data, maintain records, and submit records

and reports as required, to permit effective enforcement of nondiscrimination laws and permit authorized USDA personnel during hours of program operation to review and copy such records, books, and accounts, access such facilities and interview such personnel as needed to ascertain compliance with the nondiscrimination laws. If there are any violations of this assurance, USDA, FNS, shall have the right to seek judicial enforcement of this assurance. This assurance is binding on the State agency, 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 behalf of the State agency.

3. (For States with Indian Reservations only). Implement the Program in a manner that is responsive to the special needs of American Indians on reservations and consult in good faith with tribal organizations about that portion of the State's Plan of Operation pertaining to the implementation of the Program for members of the tribe on reservations.

FNS agrees to: 1. Pay administrative costs in accordance with the Food Stamp Act, implementing regulations, and an approved Cost Allocation Plan.

2. Carry-out any other responsibilities delegated by the Secretary in the Food and Nutrition Act of 2008, as amended.

Date 08/10/2022

Signature

Mary Franklin

Arkansas Department of Human
Services, Division of County
Operations Director

Date LESLIE
Signature LANKSTER
(On behalf of Regional
Administrator, FNS)

Digitally signed by LESLIE
LANKSTER
Date: 2022.09.08 10:03:55
-05'00'

Exhibit 4



DEPARTMENT OF ECONOMIC SECURITY

Your Partner For A Stronger Arizona

Douglas A. Ducey
Governor

Michael Wisehart
Director

Federal-State Agreement

The Arizona Department of Economic Security (ADES), the SNAP agency of Arizona, and the Food and Nutrition Service (FNS), U.S. Department of Agriculture (USDA), hereby agree to act in accordance with the provisions of the Food and Nutrition Act of 2008, as amended, implementing regulations and the FNS approved State Plan of Operation. ADES and FNS USDA further agree to fully comply with any changes in Federal law and regulations. This agreement may be modified with the mutual written consent of both parties.

PROVISIONS

The State agrees to:

1. Administer the program in accordance with the provisions contained in the Food and Nutrition Act of 2008, as amended, and in the manner prescribed by regulations issued pursuant to the Act; and to implement the FNS-approved State Plan of Operation.
2. Assurance of Civil Rights Compliance: 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.](#)), section 11(c) of the Food and Nutrition Act of 2008, as amended ([7 U.S.C. 2020](#)), Title II and Title III of the Americans with Disabilities Act (ADA) of 1990 as amended by the ADA Amendments Act of 2008 ([42 U.S.C. 12131-12189](#)) as implemented by Department of Justice regulations at [28 CFR part 35](#) and [36](#), [Executive Order 13166](#), "Improving Access to Services for Persons with Limited English Proficiency" (August 11, 2000), and all requirements imposed by the regulations issued by the Department of Agriculture to the effect that, no person in the United States shall, on the grounds of sex, including gender identity and sexual orientation, race, color, age, political belief, religious creed, disability, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subject to discrimination under SNAP. This includes program-specific requirements found at [7 CFR part 15 et seq.](#) and [7 CFR 272.6](#). This assurance is given in consideration of and for the purpose of obtaining any and all Federal assistance extended to the State by USDA under the authority of the Food and Nutrition Act of 2008, as amended. Federal financial assistance includes grants, and loans of Federal funds; reimbursable expenditures, grants, or donations of Federal property and interest in property; the detail of Federal personnel; the sale, lease of, or permission to use Federal property or interest in such property; 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 State by USDA. This assistance also 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, 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, ADES agrees to compile data, maintain records, and submit records and reports as required, to permit effective enforcement of nondiscrimination laws and permit authorized USDA personnel during hours of program operation to review and copy such records, books, and accounts, access such facilities and interview such personnel as needed to ascertain compliance with the nondiscrimination laws. If there are any violations of this assurance, USDA, FNS, shall have the right to seek judicial enforcement of this assurance. This assurance is binding on the State agency, its successors,

transferees and assignees as long as it receives assistance or retains possession of any assistance from USDA.

3. Implement the Program in a manner that is responsive to the special needs of American Indians on reservations and consult in good faith with tribal organizations about that portion of the State's Plan of Operation pertaining to the implementation of the Program for members of the tribe on reservations.

FNS agrees to:

1. Pay administrative costs in accordance with the Food Stamp Act, implementing regulations, and an approved Cost Allocation Plan.
2. Carry-out any other responsibilities delegated by the Secretary in the Food and Nutrition Act of 2008, as amended.

The person or persons whose signatures appear below are authorized to sign this assurance on behalf of the State agency.


Jeffrey Morley (Aug 5, 2022 12:57 PDT)

Signature
Jeffrey W. Morley
Assistant Director
Arizona Department of Economic Security

8/5/2022

Date

LESLIE LANKSTER Digitally signed by LESLIE LANKSTER
Date: 2022.09.08 10:06:44 -05'00'

Signature
On behalf of the Regional Administrator, FNS

Date

Addendum

Clarification of SNAP Civil Rights Requirements - Executive Order 13166, “Improving Access to Services for Persons with Limited English Proficiency (LEP),” and Title II and III of the Americans with Disabilities Act.

This addendum clarifies core civil rights requirements to ensure meaningful access to programs, services, and information for persons with Limited English Proficiency (LEP) and persons with disabilities in accordance with Federal law, regulations and current guidance from the Department of Justice (DOJ) and the U.S. Department of Agriculture (USDA).

Meaningful Access for LEP Individuals

State agencies that participate in the Supplemental Nutrition Assistance Program (SNAP) must take reasonable steps to ensure that LEP persons have meaningful access to programs, services, and benefits. This includes the requirement to provide bilingual program information and certification materials and interpretation services to single-language minorities in certain project areas. SNAP State agencies that do not provide meaningful access for LEP individuals risk violating prohibitions against discrimination based on National Origin in the Food and Nutrition Act of 2008, as amended, Title VI of the Civil Rights Act of 1964 (Title VI), and SNAP program regulations.

Federal LEP regulations and guidance include:

- SNAP regulations provided by 7 CFR Part 272.4(b), “Bilingual requirements”;
- Executive Order 13166 of August 11, 2000, “Improving Access to Services for Persons with Limited English Proficiency,” reprinted in 65 FR 50121, 50122 (August 16, 2000);
- DOJ policy guidance titled, “Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons,” published in 67 FR 41455, 41457 (June 18, 2002); and
- USDA policy guidance titled, “Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons,” published in 79 FR 70771 - 70784 (November 28, 2014).

Four Factor Analysis for Assessing LEP Needs

To be in compliance, the Title VI guidance provided by DOJ and USDA instructs State Agencies to assess the LEP needs of the population served and determine the LEP services required by balancing four factors:

1. The number or proportion of LEP persons eligible to be served or likely to be encountered within the area serviced by the recipient;
2. The frequency with which LEP individuals come in contact with the program;
3. The nature and importance of the program, activity, or service to people’s lives; and
4. The resources available to the recipient and costs.

SNAP State Agencies must also comply with the specific requirements established by 7 CFR Part 272.4(b) and should include these obligations in the LEP assessment.

Developing an LEP Plan

After completing an assessment of LEP needs, SNAP state agencies should develop an implementing plan to address the LEP needs of the population served. This may include contracting for oral interpretation services, hiring bilingual staff, arranging telephone interpreters and/or language lines, coordinating community volunteers, translating vital documents, and providing written notice that language services are available in appropriate languages. Quality and accuracy of the language service is critical in order to avoid serious consequences to the LEP person and to the recipient. LEP needs should be considered in developing State and local budgets and front line staff should understand how to obtain LEP services.

USDA's 2014 policy guidance includes detailed information on assessing LEP needs, identifying practices for translating documents that will be seen as strong evidence of compliance. For additional assistance and information regarding LEP matters, please also visit <http://www.lep.gov>. The website includes online LEP mapping tools designed to help assess the language needs of the population served by a particular program or facility.

Ensuring Equal Opportunity Access for Persons with Disabilities

SNAP State agencies must also ensure equal opportunity access for persons with disabilities. This includes ensuring that communications with applicants, participants, members of the public, and companions with disabilities are as effective as communications with people without disabilities. State Agencies that do not provide persons with disabilities equal opportunity access to programs may risk violating prohibitions against disability discrimination in the Rehabilitation Act of 1978, the American with Disabilities Act (ADA), and SNAP program regulations.

DOJ published revised final regulations implementing Title II and Title III of the ADA on September 15, 2010. These regulations are codified at 28 CFR Part 35 "Nondiscrimination on the Basis of Disability in State and Local Government Services" and 28 CFR Part 36, "Nondiscrimination on the Basis of Disability in Public Accommodations and Commercial Facilities". In accordance with the implementing regulations, State Agencies must provide auxiliary aids and services where necessary to ensure effective communication and equal opportunity access to program benefits for individuals with disabilities. The type of auxiliary aids and services required will vary, but a State agency may not require an individual with a disability to bring another individual to interpret, and may rely on a person accompanying a disabled individual only in limited circumstances. When a State agency communicates with applicants and beneficiaries by telephone, it must provide text telephone services (TTY) or an equally effective electronic telecommunications system to communicate with individuals who are deaf, hard of hearing, or hearing impaired. State agencies must also ensure that interested persons, including persons with impaired vision or hearing, can obtain information as to the existence and location of accessible services, activities, and facilities. For more information, please visit the ADA website:

<http://www.ada.gov>.

Exhibit 5

Federal-State Agreement

The SNAP State agency of Georgia and the Food and Nutrition Service (FNS), U.S. Department of Agriculture (USDA), hereby agree to act in accordance with the provisions of the Food and Nutrition Act of 2008, as amended, implementing regulations and the FNS approved State Plan of Operation. The State agency and FNS USDA further agree to fully comply with any changes in Federal law and regulations. This agreement may be modified with the mutual written consent of both parties.

PROVISIONS

The State agrees to:

1. Administer the program in accordance with the provisions contained in the Food and Nutrition Act of 2008, as amended, and in the manner prescribed by regulations issued pursuant to the Act; and to implement the FNS-approved State Plan of Operation.
2. Assurance of Civil Rights Compliance: 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.](#)), section 11(c) of the Food and Nutrition Act of 2008, as amended ([7 U.S.C. 2020](#)), Title II and Title III of the Americans with Disabilities Act (ADA) of 1990 as amended by the ADA Amendments Act of 2008 ([42 U.S.C. 12131-12189](#)) as implemented by Department of Justice regulations at [28 CFR part 35](#) and [36, Executive Order 13166](#), "Improving Access to Services for Persons with Limited English Proficiency" (August 11, 2000), and all requirements imposed by the regulations issued by the Department of Agriculture to the effect that, no person in the United States shall, on the grounds of sex, including gender identity and sexual orientation, race, color, age, political belief, religious creed, disability, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subject to discrimination under SNAP. This includes program-specific requirements found at [7 CFR part 15 et seq.](#) and [7 CFR 272.6](#).

This assurance is given in consideration of and for the purpose of obtaining any and all Federal assistance extended to the State by USDA under the authority of the Food and Nutrition Act of 2008, as amended. Federal financial assistance includes grants, and loans of Federal funds; reimbursable expenditures, grants, or donations of Federal property and interest in property; the detail of Federal personnel; the sale, lease of, or permission to use Federal property or interest in such property; 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 State by USDA.

This assistance also 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, 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 State agency agrees to compile data, maintain records, and submit records

and reports as required, to permit effective enforcement of nondiscrimination laws and permit authorized USDA personnel during hours of program operation to review and copy such records, books, and accounts, access such facilities and interview such personnel as needed to ascertain compliance with the nondiscrimination laws. If there are any violations of this assurance, USDA, FNS, shall have the right to seek judicial enforcement of this assurance. This assurance is binding on the State agency, 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 behalf of the State agency.

3. (For States with Indian Reservations only). Implement the Program in a manner that is responsive to the special needs of American Indians on reservations and consult in good faith with tribal organizations about that portion of the State's Plan of Operation pertaining to the implementation of the Program for members of the tribe on reservations.

FNS agrees to: 1. Pay administrative costs in accordance with the Food Stamp Act, implementing regulations, and an approved Cost Allocation Plan.

2. Carry-out any other responsibilities delegated by the Secretary in the Food and Nutrition Act of 2008, as amended.

Date: August 11, 2022

Signature: 
(Chief Executive Officer of a State
or Authorized Designee)

Date 8/18/22

Signature 
(Regional Administrator, FNS)

Addendum

Clarification of SNAP Civil Rights Requirements - Executive Order 13166, “Improving Access to Services for Persons with Limited English Proficiency (LEP),” and Title II and III of the Americans with Disabilities Act

This addendum clarifies core civil rights requirements to ensure meaningful access to programs, services, and information for persons with Limited English Proficiency (LEP) and persons with disabilities in accordance with Federal law, regulations and current guidance from the Department of Justice (DOJ) and the U.S. Department of Agriculture (USDA).

Meaningful Access for LEP Individuals

State agencies that participate in the Supplemental Nutrition Assistance Program (SNAP) must take reasonable steps to ensure that LEP persons have meaningful access to programs, services, and benefits. This includes the requirement to provide bilingual program information and certification materials and interpretation services to single-language minorities in certain project areas. SNAP State agencies that do not provide meaningful access for LEP individuals risk violating prohibitions against discrimination based on National Origin in the Food and Nutrition Act of 2008, as amended, Title VI of the Civil Rights Act of 1964 (Title VI), and SNAP program regulations.

Federal LEP regulations and guidance include:

- SNAP regulations provided by 7 CFR Part 272.4(b), “Bilingual requirements”;
- Executive Order 13166 of August 11, 2000, “Improving Access to Services for Persons with Limited English Proficiency,” reprinted in 65 FR 50121, 50122 (August 16, 2000);
- DOJ policy guidance titled, “Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons,” published in 67 FR 41455, 41457 (June 18, 2002); and
- USDA policy guidance titled, “Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons,” published in 79 FR 70771 - 70784 (November 28, 2014).

Four Factor Analysis for Assessing LEP Needs

To be in compliance, the Title VI guidance provided by DOJ and USDA instructs State Agencies to assess the LEP needs of the population served and determine the LEP services required by balancing four factors:

1. The number or proportion of LEP persons eligible to be served or likely to be encountered within the area serviced by the recipient;
2. The frequency with which LEP individuals come in contact with the program;
3. The nature and importance of the program, activity, or service to people’s lives; and
4. The resources available to the recipient and costs.

SNAP State Agencies must also comply with the specific requirements established by 7 CFR Part 272.4(b) and should include these obligations in the LEP assessment.

Developing an LEP Plan

After completing an assessment of LEP needs, SNAP state agencies should develop an implementing plan to address the LEP needs of the population served. This may include contracting for oral interpretation services, hiring bilingual staff, arranging telephone interpreters and/or language lines, coordinating community volunteers, translating vital documents, and providing written notice that language services are available in appropriate languages. Quality and accuracy of the language service is critical in order to avoid serious consequences to the LEP person and to the recipient. LEP needs should be considered in developing State and local budgets and front line staff should understand how to obtain LEP services.

USDA's 2014 policy guidance includes detailed information on assessing LEP needs, identifying practices for translating documents that will be seen as strong evidence of compliance. For additional assistance and information regarding LEP matters, please also visit <http://www.lep.gov>. The website includes online LEP mapping tools designed to help assess the language needs of the population served by a particular program or facility.

Ensuring Equal Opportunity Access for Persons with Disabilities

SNAP State agencies must also ensure equal opportunity access for persons with disabilities. This includes ensuring that communications with applicants, participants, members of the public, and companions with disabilities are as effective as communications with people without disabilities. State Agencies that do not provide persons with disabilities equal opportunity access to programs may risk violating prohibitions against disability discrimination in the Rehabilitation Act of 1978, the American with Disabilities Act (ADA), and SNAP program regulations.

DOJ published revised final regulations implementing Title II and Title III of the ADA on September 15, 2010. These regulations are codified at 28 CFR Part 35 "Nondiscrimination on the Basis of Disability in State and Local Government Services" and 28 CFR Part 36, "Nondiscrimination on the Basis of Disability in Public Accommodations and Commercial Facilities". In accordance with the implementing regulations, State Agencies must provide auxiliary aids and services where necessary to ensure effective communication and equal opportunity access to program benefits for individuals with disabilities. The type of auxiliary aids and services required will vary, but a State agency may not require an individual with a disability to bring another individual to interpret, and may rely on a person accompanying a disabled individual only in limited circumstances. When a State agency communicates with applicants and beneficiaries by telephone, it must provide text telephone services (TTY) or an equally effective electronic telecommunications system to communicate with individuals who are deaf, hard of hearing, or hearing impaired. State agencies must also ensure that interested persons, including persons with impaired vision or hearing, can obtain information as to the existence and location of accessible services, activities, and facilities. For more information, please visit the ADA website: <http://www.ada.gov>.

Exhibit 6

Federal-State Agreement

The SNAP State agency of KS and the Food and Nutrition Service (FNS), U.S. Department of Agriculture (USDA), hereby agree to act in accordance with the provisions of the Food and Nutrition Act of 2008, as amended, implementing regulations and the FNS approved State Plan of Operation. The State agency and FNS USDA further agree to fully comply with any changes in Federal law and regulations.

This agreement may be modified with the mutual written consent of both parties.

PROVISIONS

The State agrees to:

1. Administer the program in accordance with the provisions contained in the Food and Nutrition Act of 2008, as amended, and in the manner prescribed by regulations issued pursuant to the Act; and to implement the FNS-approved State Plan of Operation.
2. Assurance of Civil Rights Compliance: 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.](#)), section 11(c) of the Food and Nutrition Act of 2008, as amended ([7 U.S.C. 2020](#)), Title II and Title III of the Americans with Disabilities Act (ADA) of 1990 as amended by the ADA Amendments Act of 2008 ([42 U.S.C. 12131-12189](#)) as implemented by Department of Justice regulations at [28 CFR part 35](#) and [36, Executive Order 13166](#), "Improving Access to Services for Persons with Limited English Proficiency" (August 11, 2000), and all requirements imposed by the regulations issued by the Department of Agriculture to the effect that, no person in the United States shall, on the grounds of sex, including gender identity and sexual orientation, race, color, age, political belief, religious creed, disability, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subject to discrimination under SNAP. This includes program-specific requirements found at [7 CFR part 15 et seq.](#) and [7 CFR 272.6](#).

This assurance is given in consideration of and for the purpose of obtaining any and all Federal assistance extended to the State by USDA under the authority of the Food and Nutrition Act of 2008, as amended. Federal financial assistance includes grants, and loans of Federal funds; reimbursable expenditures, grants, or donations of Federal property and interest in property; the detail of Federal personnel; the sale, lease of, or permission to use Federal property or interest in such property; 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 State by USDA.

This assistance also 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, 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 State agency agrees to compile data, maintain records, and submit records

and reports as required, to permit effective enforcement of nondiscrimination laws and permit authorized USDA personnel during hours of program operation to review and copy such records, books, and accounts, access such facilities and interview such personnel as needed to ascertain compliance with the nondiscrimination laws. If there are any violations of this assurance, USDA, FNS, shall have the right to seek judicial enforcement of this assurance. This assurance is binding on the State agency, 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 behalf of the State agency.

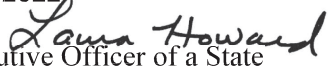
3. (For States with Indian Reservations only). Implement the Program in a manner that is responsive to the special needs of American Indians on reservations and consult in good faith with tribal organizations about that portion of the State's Plan of Operation pertaining to the implementation of the Program for members of the tribe on reservations.

FNS agrees to: 1. Pay administrative costs in accordance with the Food Stamp Act, implementing regulations, and an approved Cost Allocation Plan.

2. Carry-out any other responsibilities delegated by the Secretary in the Food and Nutrition Act of 2008, as amended.

Date 08/11/2022

Signature


(Chief Executive Officer of a State
or Authorized Designee)

Date

Signature

(Regional Administrator, FNS)

CHERYL KENNEDY

Digitally signed by CHERYL KENNEDY
Date: 2022.09.08 09:32:34 -06'00'

Exhibit 7

II. **UPDATED** FEDERAL-STATE AGREEMENT TEMPLATE

Below is the Federal-State Agreement template that includes the civil rights policy guidance clarification. A file name for this document should be: "FY23 STATE INITIAL 1 Fed StateAgreement.pdf"

Federal-State Agreement

The SNAP State agency of Louisiana Department of Children and Family Services and the Food and Nutrition Service (FNS), U.S. Department of Agriculture (USDA), hereby agree to act in accordance with the provisions of the Food and Nutrition Act of 2008, as amended, implementing regulations and the FNS approved State Plan of Operation. The State agency and FNS USDA further agree to fully comply with any changes in Federal law and regulations. This agreement may be modified with the mutual written consent of both parties.

PROVISIONS

The State agrees to:

1. Administer the program in accordance with the provisions contained in the Food and Nutrition Act of 2008, as amended, and in the manner prescribed by regulations issued pursuant to the Act; and to implement the FNS-approved State Plan of Operation.
2. Assurance of Civil Rights Compliance: 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.](#)), section 11(c) of the Food and Nutrition Act of 2008, as amended ([7 U.S.C. 2020](#)), Title II and Title III of the Americans with Disabilities Act (ADA) of 1990 as amended by the ADA Amendments Act of 2008 ([42 U.S.C. 12131-12189](#)) as implemented by Department of Justice regulations at [28 CFR part 35](#) and [36](#), [Executive Order 13166](#), "Improving Access to Services for Persons with Limited English Proficiency" (August 11, 2000), and all requirements imposed by the regulations issued by the Department of Agriculture to the effect that, no person in the United States shall, on the grounds of sex, including gender identity and sexual orientation, race, color, age, political belief, religious creed, disability, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subject to discrimination under SNAP. This includes program-specific requirements found at [7 CFR part 15 et seq.](#) and [7 CFR 272.6](#).

This assurance is given in consideration of and for the purpose of obtaining any and all Federal assistance extended to the State by USDA under the authority of the Food and Nutrition Act of 2008, as amended. Federal financial assistance includes grants, and loans of Federal funds; reimbursable expenditures, grants, or donations of Federal property and interest in property; the detail of Federal personnel; the sale, lease of, or permission to use Federal property or interest in such property; 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 State by USDA. This assistance also 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, 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 State agency agrees to compile data, maintain records, and submit records and reports as required, to permit effective enforcement of nondiscrimination laws and permit authorized USDA personnel during hours of program operation to review and copy such records, books, and accounts, access such facilities and interview such personnel as needed to ascertain compliance with the nondiscrimination laws. If there are any violations of this assurance, USDA, FNS, shall have the right to seek judicial enforcement of this assurance. This assurance is binding on the State agency, 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 behalf of the State agency.

3. (For States with Indian Reservations only). Implement the Program in a manner that is responsive to the special needs of American Indians on reservations and consult in good faith with tribal organizations about that portion of the State's Plan of Operation pertaining to the implementation of the Program for members of the tribe on reservations.

FNS agrees to: 1. Pay administrative costs in accordance with the Food Stamp Act, implementing regulations, and an approved Cost Allocation Plan.

2. Carry-out any other responsibilities delegated by the Secretary in the Food and Nutrition Act of 2008, as amended.

Date 7/26/2012

Signature 
(Chief Executive Officer of a
State or Authorized Designee)

Date LESLIE LANKSTER

Signature
(On behalf of Regional
Administrator, FNS)

Digitally signed by LESLIE
LANKSTER
Date: 2022.09.08 09:59:34 -05'00'

Exhibit 8

IV. **UPDATED** FEDERAL-STATE AGREEMENT TEMPLATE

Below is the Federal-State Agreement template that includes the civil rights policy guidance clarification. A file name for this document should be: "FY23 STATE INITIAL 1 Fed State Agreement.pdf"

Federal-State Agreement

The SNAP State agency of ____ and the Food and Nutrition Service (FNS), U.S. Department of Agriculture (USDA), hereby agree to act in accordance with the provisions of the Food and Nutrition Act of 2008, as amended, implementing regulations and the FNS approved State Plan of Operation. The State agency and FNS USDA further agree to fully comply with any changes in Federal law and regulations. This agreement may be modified with the mutual written consent of both parties.

PROVISIONS

The State agrees to:

1. Administer the program in accordance with the provisions contained in the Food and Nutrition Act of 2008, as amended, and in the manner prescribed by regulations issued pursuant to the Act; and to implement the FNS-approved State Plan of Operation.
2. Assurance of Civil Rights Compliance: 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.](#)), section 11(c) of the Food and Nutrition Act of 2008, as amended ([7 U.S.C. 2020](#)), Title II and Title III of the Americans with Disabilities Act (ADA) of 1990 as amended by the ADA Amendments Act of 2008 ([42 U.S.C. 12131-12189](#)) as implemented by Department of Justice regulations at [28 CFR part 35](#) and [36, Executive Order 13166](#), "Improving Access to Services for Persons with Limited English Proficiency" (August 11, 2000), and all requirements imposed by the regulations issued by the Department of Agriculture to the effect that, no person in the United States shall, on the grounds of sex, including gender identity and sexual orientation, race, color, age, political belief, religious creed, disability, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subject to discrimination under SNAP. This includes program-specific requirements found at [7 CFR part 15 et seq.](#) and [7 CFR 272.6](#).

This assurance is given in consideration of and for the purpose of obtaining any and all Federal assistance extended to the State by USDA under the authority of the Food and Nutrition Act of 2008, as amended. Federal financial assistance includes grants, and loans of Federal funds; reimbursable expenditures, grants, or donations of Federal property and interest in property; the detail of Federal personnel; the sale, lease of, or permission to use Federal property or interest in such property; 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 State by USDA.

This assistance also 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, 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 State agency agrees to compile data, maintain records, and submit records

and reports as required, to permit effective enforcement of nondiscrimination laws and permit authorized USDA personnel during hours of program operation to review and copy such records, books, and accounts, access such facilities and interview such personnel as needed to ascertain compliance with the nondiscrimination laws. If there are any violations of this assurance, USDA, FNS, shall have the right to seek judicial enforcement of this assurance. This assurance is binding on the State agency, 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 behalf of the State agency.

3. (For States with Indian Reservations only). Implement the Program in a manner that is responsive to the special needs of American Indians on reservations and consult in good faith with tribal organizations about that portion of the State's Plan of Operation pertaining to the implementation of the Program for members of the tribe on reservations.

FNS agrees to: 1. Pay administrative costs in accordance with the Food Stamp Act, implementing regulations, and an approved Cost Allocation Plan.

2. Carry-out any other responsibilities delegated by the Secretary in the Food and Nutrition Act of 2008, as amended.

Date 7-18-22
Signature 
(Chief Executive Officer of a State
or Authorized Designee)

Date 7/27/2022
Signature Cheryl Kennedy
(Regional Administrator, FNS)

Exhibit 9

IV. **UPDATED** FEDERAL-STATE AGREEMENT TEMPLATE

Below is the Federal-State Agreement template that includes the civil rights policy guidance clarification. A file name for this document should be: "FY23 STATE INITIAL 1 Fed State Agreement.pdf"

Federal-State Agreement

The SNAP State agency of NE and the Food and Nutrition Service (FNS), U.S. Department of Agriculture (USDA), hereby agree to act in accordance with the provisions of the Food and Nutrition Act of 2008, as amended, implementing regulations and the FNS approved State Plan of Operation. The State agency and FNS USDA further agree to fully comply with any changes in Federal law and regulations. This agreement may be modified with the mutual written consent of both parties.

PROVISIONS

The State agrees to:

1. Administer the program in accordance with the provisions contained in the Food and Nutrition Act of 2008, as amended, and in the manner prescribed by regulations issued pursuant to the Act; and to implement the FNS-approved State Plan of Operation.
2. Assurance of Civil Rights Compliance: 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.](#)), section 11(c) of the Food and Nutrition Act of 2008, as amended ([7 U.S.C. 2020](#)), Title II and Title III of the Americans with Disabilities Act (ADA) of 1990 as amended by the ADA Amendments Act of 2008 ([42 U.S.C. 12131-12189](#)) as implemented by Department of Justice regulations at [28 CFR part 35](#) and [36, Executive Order 13166](#), "Improving Access to Services for Persons with Limited English Proficiency" (August 11, 2000), and all requirements imposed by the regulations issued by the Department of Agriculture to the effect that, no person in the United States shall, on the grounds of sex, including gender identity and sexual orientation, race, color, age, political belief, religious creed, disability, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subject to discrimination under SNAP. This includes program-specific requirements found at [7 CFR part 15 et seq.](#) and [7 CFR 272.6](#).

This assurance is given in consideration of and for the purpose of obtaining any and all Federal assistance extended to the State by USDA under the authority of the Food and Nutrition Act of 2008, as amended. Federal financial assistance includes grants, and loans of Federal funds; reimbursable expenditures, grants, or donations of Federal property and interest in property; the detail of Federal personnel; the sale, lease of, or permission to use Federal property or interest in such property; 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 State by USDA. This assistance also 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, 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 State agency agrees to compile data, maintain records, and submit records

and reports as required, to permit effective enforcement of nondiscrimination laws and permit authorized USDA personnel during hours of program operation to review and copy such records, books, and accounts, access such facilities and interview such personnel as needed to ascertain compliance with the nondiscrimination laws. If there are any violations of this assurance, USDA, FNS, shall have the right to seek judicial enforcement of this assurance. This assurance is binding on the State agency, 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 behalf of the State agency.

3. (For States with Indian Reservations only). Implement the Program in a manner that is responsive to the special needs of American Indians on reservations and consult in good faith with tribal organizations about that portion of the State's Plan of Operation pertaining to the implementation of the Program for members of the tribe on reservations.

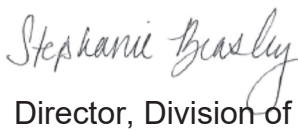
FNS agrees to: 1. Pay administrative costs in accordance with the Food Stamp Act, implementing regulations, and an approved Cost Allocation Plan.

2. Carry-out any other responsibilities delegated by the Secretary in the Food and Nutrition Act of 2008, as amended.

Date
Signature
(Chief Executive Officer of a State
or Authorized Designee)

CHERYL
KENNEDY

Digitally signed by CHERYL
KENNEDY
Date: 2022.09.08 09:53:23
-06'00'

 8/25/2022
Director, Division of Children and Family Services

Date
Signature
(Regional Administrator, FNS)

Exhibit 10

IV. UPDATED FEDERAL-STATE AGREEMENT TEMPLATE

Below is the Federal-State Agreement template that includes the civil rights policy guidance clarification. A file name for this document should be: "FY23 STATE INITIAL 1 Fed State Agreement.pdf"

Federal-State Agreement

The SNAP State agency of Ohio and the Food and Nutrition Service (FNS), U.S. Department of Agriculture (USDA), hereby agree to act in accordance with the provisions of the Food and Nutrition Act of 2008, as amended, implementing regulations and the FNS approved State Plan of Operation. The State agency and FNS USDA further agree to fully comply with any changes in Federal law and regulations. This agreement may be modified with the mutual written consent of both parties.

PROVISIONS

The State agrees to:

1. Administer the program in accordance with the provisions contained in the Food and Nutrition Act of 2008, as amended, and in the manner prescribed by regulations issued pursuant to the Act; and to implement the FNS-approved State Plan of Operation.

2. Assurance of Civil Rights Compliance: 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.*), section 11(c) of the Food and Nutrition Act of 2008, as amended (7 U.S.C. 2020), Title II and Title III of the Americans with Disabilities Act (ADA) of 1990 as amended by the ADA Amendments Act of 2008 (42 U.S.C. 12131-12189) as implemented by Department of Justice regulations at 28 CFR part 35 and 36, Executive Order 13166, "Improving Access to Services for Persons with Limited English Proficiency" (August 11, 2000), and all requirements imposed by the regulations issued by the Department of Agriculture to the effect that, no person in the United States shall, on the grounds of sex, including gender identity and sexual orientation, race, color, age, political belief, religious creed, disability, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subject to discrimination under SNAP. This includes program-specific requirements found at 7 CFR part 15 *et seq.* and 7 CFR 272.6.

This assurance is given in consideration of and for the purpose of obtaining any and all Federal assistance extended to the State by USDA under the authority of the Food and Nutrition Act of 2008, as amended. Federal financial assistance includes grants, and loans of Federal funds; reimbursable expenditures, grants, or donations of Federal property and interest in property; the detail of Federal personnel; the sale, lease of, or permission to use Federal property or interest in such property; 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 State by USDA. This assistance also 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, 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 State agency agrees to compile data, maintain records, and submit records

and reports as required, to permit effective enforcement of nondiscrimination laws and permit authorized USDA personnel during hours of program operation to review and copy such records, books, and accounts, access such facilities and interview such personnel as needed to ascertain compliance with the nondiscrimination laws. If there are any violations of this assurance, USDA, FNS, shall have the right to seek judicial enforcement of this assurance. This assurance is binding on the State agency, 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 behalf of the State agency.

3. (For States with Indian Reservations only). Implement the Program in a manner that is responsive to the special needs of American Indians on reservations and consult in good faith with tribal organizations about that portion of the State's Plan of Operation pertaining to the implementation of the Program for members of the tribe on reservations.

FNS agrees to: 1. Pay administrative costs in accordance with the Food Stamp Act, implementing regulations, and an approved Cost Allocation Plan.

2. Carry-out any other responsibilities delegated by the Secretary in the Food and Nutrition Act of 2008, as amended.

Signature (Chief Executive Officer of a State or Authorized Designee)

Date



Jul 27, 2022

Signature (Regional Administrator, FNS)

Date

VISTA FLETCHER

Digitally signed by VISTA
FLETCHER
Date: 2022.09.01 08:14:10 -05'00'

Addendum

Clarification of SNAP Civil Rights Requirements - Executive Order 13166, “Improving Access to Services for Persons with Limited English Proficiency (LEP),” and Title II and III of the Americans with Disabilities Act

This addendum clarifies core civil rights requirements to ensure meaningful access to programs, services, and information for persons with Limited English Proficiency (LEP) and persons with disabilities in accordance with Federal law, regulations and current guidance from the Department of Justice (DOJ) and the U.S. Department of Agriculture (USDA).

Meaningful Access for LEP Individuals

State agencies that participate in the Supplemental Nutrition Assistance Program (SNAP) must take reasonable steps to ensure that LEP persons have meaningful access to programs, services, and benefits. This includes the requirement to provide bilingual program information and certification materials and interpretation services to single-language minorities in certain project areas. SNAP State agencies that do not provide meaningful access for LEP individuals risk violating prohibitions against discrimination based on National Origin in the Food and Nutrition Act of 2008, as amended, Title VI of the Civil Rights Act of 1964 (Title VI), and SNAP program regulations.

Federal LEP regulations and guidance include:

- SNAP regulations provided by 7 CFR Part 272.4(b), “Bilingual requirements”;
- Executive Order 13166 of August 11, 2000, “Improving Access to Services for Persons with Limited English Proficiency,” reprinted in 65 FR 50121, 50122 (August 16, 2000);
- DOJ policy guidance titled, “Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons,” published in 67 FR 41455, 41457 (June 18, 2002); and
- USDA policy guidance titled, “Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons”, published in 79 FR 70771 - 70784 (November 28, 2014).

Four Factor Analysis for Assessing LEP Needs

To be in compliance, the Title VI guidance provided by DOJ and USDA instructs State Agencies to assess the LEP needs of the population served and determine the LEP services required by balancing four factors:

1. The number or proportion of LEP persons eligible to be served or likely to be encountered within the area serviced by the recipient;
2. The frequency with which LEP individuals come in contact with the program;
3. The nature and importance of the program, activity, or service to people’s lives; and
4. The resources available to the recipient and costs.

SNAP State Agencies must also comply with the specific requirements established by 7 CFR Part 272.4(b) and should include these obligations in the LEP assessment.

Developing an LEP Plan

After completing an assessment of LEP needs, SNAP state agencies should develop an implementing plan to address the LEP needs of the population served. This may include contracting for oral interpretation services, hiring bilingual staff, arranging telephone interpreters and/or language lines, coordinating community volunteers, translating vital documents, and providing written notice that language services are available in appropriate languages. Quality and accuracy of the language service is critical in order to avoid serious consequences to the LEP person and to the recipient. LEP needs should be considered in developing State and local budgets and front line staff should understand how to obtain LEP services.

USDA's 2014 policy guidance includes detailed information on assessing LEP needs, identifying practices for translating documents that will be seen as strong evidence of compliance. For additional assistance and information regarding LEP matters, please also visit <http://www.lep.gov>. The website includes online LEP mapping tools designed to help assess the language needs of the population served by a particular program or facility.

Ensuring Equal Opportunity Access for Persons with Disabilities

SNAP State agencies must also ensure equal opportunity access for persons with disabilities. This includes ensuring that communications with applicants, participants, members of the public, and companions with disabilities are as effective as communications with people without disabilities. State Agencies that do not provide persons with disabilities equal opportunity access to programs may risk violating prohibitions against disability discrimination in the Rehabilitation Act of 1978, the American with Disabilities Act (ADA), and SNAP program regulations.

DOJ published revised final regulations implementing Title II and Title III of the ADA on September 15, 2010. These regulations are codified at 28 CFR Part 35 "Nondiscrimination on the Basis of Disability in State and Local Government Services" and 28 CFR Part 36, "Nondiscrimination on the Basis of Disability in Public Accommodations and Commercial Facilities". In accordance with the implementing regulations, State Agencies must provide auxiliary aids and services where necessary to ensure effective communication and equal opportunity access to program benefits for individuals with disabilities. The type of auxiliary aids and services required will vary, but a State agency may not require an individual with a disability to bring another individual to interpret, and may rely on a person accompanying a disabled individual only in limited circumstances. When a State agency communicates with applicants and beneficiaries by telephone, it must provide text telephone services (TTY) or an equally effective electronic telecommunications system to communicate with individuals who are deaf, hard of hearing, or hearing impaired. State agencies must also ensure that interested persons, including persons with impaired vision or hearing, can obtain information as to the existence and location of accessible services, activities, and facilities. For more information, please visit the ADA website: <http://www.ada.gov>.

Exhibit 11

Item number and name: 1 - Federal-State Agreement Date of last update: State Agency point of contact: Matthew Conley

IV. UPDATED FEDERAL-STATE AGREEMENT TEMPLATE

Below is the Federal-State Agreement template that includes the civil rights policy guidance clarification. A file name for this document should be: "FY23 STATE INITIAL 1 Fed State Agreement.pdf"

Federal-State Agreement

The SNAP State agency of ___ and the Food and Nutrition Service (FNS), U.S. Department of Agriculture (USDA), hereby agree to act in accordance with the provisions of the Food and Nutrition Act of 2008, as amended, implementing regulations and the FNS approved State Plan of Operation. The State agency and FNS USDA further agree to fully comply with any changes in Federal law and regulations. This agreement may be modified with the mutual written consent of both parties.

PROVISIONS

The State agrees to:

1. Administer the program in accordance with the provisions contained in the Food and Nutrition Act of 2008, as amended, and in the manner prescribed by regulations issued pursuant to the Act; and to implement the FNS-approved State Plan of Operation.
2. Assurance of Civil Rights Compliance: 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.*), section 11(c) of the Food and Nutrition Act of 2008, as amended (7 U.S.C. 2020), Title II and Title III of the Americans with Disabilities Act (ADA) of 1990 as amended by the ADA Amendments Act of 2008 (42 U.S.C. 12131-12189) as implemented by Department of Justice regulations at 28 CFR part 35 and 36, Executive Order 13166, "Improving Access to Services for Persons with Limited English Proficiency" (August 11, 2000), and all requirements imposed by the regulations issued by the Department of Agriculture to the effect that, no person in the United States shall, on the grounds of sex, including gender identity and sexual orientation, race, color, age, political belief, religious creed, disability, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subject to discrimination under SNAP. This includes program-specific requirements found at 7 CFR part 15 *et seq.* and 7 CFR 272.6.

This assurance is given in consideration of and for the purpose of obtaining any and all Federal assistance extended to the State by USDA under the authority of the Food and Nutrition Act of 2008, as amended. Federal financial assistance includes grants, and loans of Federal funds; reimbursable expenditures, grants, or donations of Federal property and interest in property; the detail of Federal personnel; the sale, lease of, or permission to use Federal property or interest in such property; 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 State by USDA.

This assistance also 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, 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 State agency agrees to compile data, maintain records, and submit records

and reports as required, to permit effective enforcement of nondiscrimination laws and permit authorized USDA personnel during hours of program operation to review and copy such records, books, and accounts, access such facilities and interview such personnel as needed to ascertain compliance with the nondiscrimination laws. If there are any violations of this assurance, USDA, FNS, shall have the right to seek judicial enforcement of this assurance. This assurance is binding on the State agency, 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 behalf of the State agency.

3. (For States with Indian Reservations only). Implement the Program in a manner that is responsive to the special needs of American Indians on reservations and consult in good faith with tribal organizations about that portion of the State's Plan of Operation pertaining to the implementation of the Program for

members of the tribe on reservations.

FNS agrees to: 1. Pay administrative costs in accordance with the Food Stamp Act, implementing regulations, and an approved Cost Allocation Plan.

2. Carry-out any other responsibilities delegated by the Secretary in the Food and Nutrition Act of 2008, as amended.

Date

Signature Conley, Matthew
(Authorized Designee)

Digitally signed by Conley, Matthew
Date: 2022.08.11 14:02:46 -05'00'

Date

Signature LESLIE LANKSTER
(Regional Administrator, FNS)

Digitally signed by LESLIE
LANKSTER
Date: 2022.09.08 10:15:22 -05'00'

Addendum

Clarification of SNAP Civil Rights Requirements - Executive Order 13166, “Improving Access to Services for Persons with Limited English Proficiency (LEP),” and Title II and III of the Americans with Disabilities Act

This addendum clarifies core civil rights requirements to ensure meaningful access to programs, services, and information for persons with Limited English Proficiency (LEP) and persons with disabilities in accordance with Federal law, regulations and current guidance from the Department of Justice (DOJ) and the U.S. Department of Agriculture (USDA).

Meaningful Access for LEP Individuals

State agencies that participate in the Supplemental Nutrition Assistance Program (SNAP) must take reasonable steps to ensure that LEP persons have meaningful access to programs, services, and benefits. This includes the requirement to provide bilingual program information and certification materials and interpretation services to single-language minorities in certain project areas. SNAP State agencies that do not provide meaningful access for LEP individuals risk violating prohibitions against discrimination based on National Origin in the Food and Nutrition Act of 2008, as amended, Title VI of the Civil Rights Act of 1964 (Title VI), and SNAP program regulations.

Federal LEP regulations and guidance include:

- SNAP regulations provided by 7 CFR Part 272.4(b), “Bilingual requirements”;
- Executive Order 13166 of August 11, 2000, “Improving Access to Services for Persons with Limited English Proficiency,” reprinted in 65 FR 50121, 50122 (August 16, 2000);
- DOJ policy guidance titled, “Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons,” published in 67 FR 41455, 41457 (June 18, 2002); and
- USDA policy guidance titled, “Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons,” published in 79 FR 70771 - 70784 (November 28, 2014).

Four Factor Analysis for Assessing LEP Needs

To be in compliance, the Title VI guidance provided by DOJ and USDA instructs State Agencies to assess the LEP needs of the population served and determine the LEP services required by balancing four factors:

1. The number or proportion of LEP persons eligible to be served or likely to be encountered within the area serviced by the recipient;
2. The frequency with which LEP individuals come in contact with the program;
3. The nature and importance of the program, activity, or service to people’s lives; and
4. The resources available to the recipient and costs.

SNAP State Agencies must also comply with the specific requirements established by 7 CFR Part 272.4(b) and should include these obligations in the LEP assessment.

Developing an LEP Plan

After completing an assessment of LEP needs, SNAP state agencies should develop an implementing plan to address the LEP needs of the population served. This may include contracting for oral interpretation services, hiring bilingual staff, arranging telephone interpreters and/or language lines, coordinating community volunteers, translating vital documents, and providing written notice that language services are available in appropriate languages. Quality and accuracy of the language service is critical in order to avoid serious consequences to the LEP person and to the recipient. LEP needs should be considered in developing State and local budgets and front line staff should understand how to obtain LEP services.

USDA's 2014 policy guidance includes detailed information on assessing LEP needs, identifying practices for translating documents that will be seen as strong evidence of compliance. For additional assistance and information regarding LEP matters, please also visit <http://www.lep.gov>. The website includes online LEP mapping tools designed to help assess the language needs of the population served by a particular program or facility.

Ensuring Equal Opportunity Access for Persons with Disabilities

SNAP State agencies must also ensure equal opportunity access for persons with disabilities. This includes ensuring that communications with applicants, participants, members of the public, and companions with disabilities are as effective as communications with people without disabilities. State Agencies that do not provide persons with disabilities equal opportunity access to programs may risk violating prohibitions against disability discrimination in the Rehabilitation Act of 1978, the American with Disabilities Act (ADA), and SNAP program regulations.

DOJ published revised final regulations implementing Title II and Title III of the ADA on September 15, 2010. These regulations are codified at 28 CFR Part 35 "Nondiscrimination on the Basis of Disability in State and Local Government Services" and 28 CFR Part 36, "Nondiscrimination on the Basis of Disability in Public Accommodations and Commercial Facilities". In accordance with the implementing regulations, State Agencies must provide auxiliary aids and services where necessary to ensure effective communication and equal opportunity access to program benefits for individuals with disabilities. The type of auxiliary aids and services required will vary, but a State agency may not require an individual with a disability to bring another individual to interpret, and may rely on a person accompanying a disabled individual only in limited circumstances. When a State agency communicates with applicants and beneficiaries by telephone, it must provide text telephone services (TTY) or an equally effective electronic telecommunications system to communicate with individuals who are deaf, hard of hearing, or hearing impaired. State agencies must also ensure that interested persons, including persons with impaired vision or hearing, can obtain information as to the existence and location of accessible services, activities, and facilities. For more information, please visit the ADA website: <http://www.ada.gov>.

Exhibit 12

IV. UPDATED FEDERAL-STATE AGREEMENT TEMPLATE

Below is the Federal-State Agreement template that includes the civil rights policy guidance clarification. A file name for this document should be: "FY23 STATE INITIAL 1 Fed State Agreement.pdf"

Federal-State Agreement

The SNAP State agency of South Carolina and the Food and Nutrition Service (FNS), U.S. Department of Agriculture (USDA), hereby agree to act in accordance with the provisions of the Food and Nutrition Act of 2008, as amended, implementing regulations and the FNS approved State Plan of Operation. The State agency and FNS USDA further agree to fully comply with any changes in Federal law and regulations. This agreement may be modified with the mutual written consent of both parties.

PROVISIONS

The State agrees to:

1. Administer the program in accordance with the provisions contained in the Food and Nutrition Act of 2008, as amended, and in the manner prescribed by regulations issued pursuant to the Act; and to implement the FNS-approved State Plan of Operation.
2. Assurance of Civil Rights Compliance: 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.), section 11(c) of the Food and Nutrition Act of 2008, as amended ([7 U.S.C. 2020](#)), Title II and Title III of the Americans with Disabilities Act (ADA) of 1990 as amended by the ADA Amendments Act of 2008 ([42 U.S.C. 12131-12189](#)) as implemented by Department of Justice regulations at [28 CFR part 35](#) and [36, Executive Order 13166](#), "Improving Access to Services for Persons with Limited English Proficiency" (August 11, 2000), and all requirements imposed by the regulations issued by the Department of Agriculture to the effect that, no person in the United States shall, on the grounds of sex, including gender identity and sexual orientation, race, color, age, political belief, religious creed, disability, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subject to discrimination under SNAP. This includes program-specific requirements found at [7 CFR part 15](#) et seq. and [7 CFR 272.6](#).

This assurance is given in consideration of and for the purpose of obtaining any and all

Federal assistance extended to the State by USDA under the authority of the Food and Nutrition Act of 2008, as amended.

Federal financial assistance includes grants, and loans of Federal funds; reimbursable expenditures, grants, or donations of Federal property and interest in property; the detail of Federal personnel; the sale, lease of, or permission to use Federal property or interest in such property; 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 State by USDA. This assistance also 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, 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 State agency agrees to compile data, maintain records, and submit records and reports as required, to permit effective enforcement of nondiscrimination laws and permit authorized USDA personnel during hours of program operation to review and copy such records, books, and accounts, access such facilities and interview such personnel as needed to ascertain compliance with the nondiscrimination laws. If there are any violations of this assurance, USDA, FNS, shall have the right to seek judicial enforcement of this assurance. This assurance is binding on the State agency, 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 behalf of the State agency.

3. (For States with Indian Reservations only). Implement the Program in a manner that is responsive to the special needs of American Indians on reservations and consult in good faith with tribal organizations about that portion of the State's Plan of Operation pertaining to the implementation of the Program for members of the tribe on reservations.

FNS agrees to:

1. Pay administrative costs in accordance with the Food Stamp Act, implementing regulations, and an approved Cost Allocation Plan.
2. Carry-out any other responsibilities delegated by the Secretary in the Food and Nutrition Act of 2008, as amended.

Date: 07/08/2022

Signature: **Mike Leach** Digitally signed by Mike Leach
Date: 2022.07.08 17:30:05 -04'00'

Governor or Authorized Designee

Date: 07/13/2022

Signature: **WILLIE TAYLOR** Digitally signed by WILLIE
TAYLOR
Date: 2022.07.13 10:08:04 -04'00'

Regional Administrator, FNS

Addendum

Clarification of SNAP Civil Rights Requirements - Executive Order 13166, "Improving Access to Services for Persons with Limited English Proficiency (LEP)," and Title II and III of the Americans with Disabilities Act

This addendum clarifies core civil rights requirements to ensure meaningful access to programs, services, and information for persons with Limited English Proficiency (LEP) and persons with disabilities in accordance with Federal law, regulations and current guidance from the Department of Justice (DOJ) and the U.S. Department of Agriculture (USDA).

Meaningful Access for LEP Individuals

State agencies that participate in the Supplemental Nutrition Assistance Program (SNAP) must take reasonable steps to ensure that LEP persons have meaningful access to programs, services, and benefits. This includes the requirement to provide bilingual program information and certification materials and interpretation services to single-language minorities in certain project areas. SNAP State agencies that do not provide meaningful access for LEP individuals risk violating prohibitions against discrimination based on National Origin in the Food and Nutrition Act of 2008, as amended, Title VI of the Civil Rights Act of 1964 (Title VI), and SNAP program regulations.

Federal LEP regulations and guidance include:

- SNAP regulations provided by 7 CFR Part 272.4(b), "Bilingual requirements";
- Executive Order 13166 of August 11, 2000, "Improving Access to Services for Persons with Limited English Proficiency," reprinted in 65 FR 50121, 50122 (August 16, 2000);
- DOJ policy guidance titled, "Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons," published in 67 FR 41455, 41457 (June 18, 2002); and
- USDA policy guidance titled, "Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons", published in 79 FR 70771 - 70784 (November 28, 2014).

Four Factor Analysis for Assessing LEP Needs

To be in compliance, the Title VI guidance provided by DOJ and USDA instructs State Agencies to assess the LEP needs of the population served and determine the LEP services required by balancing four factors:

1. The number or proportion of LEP persons eligible to be served or likely to be encountered within the area serviced by the recipient;
2. The frequency with which LEP individuals come in contact with the program;

3. The nature and importance of the program, activity, or service to people's lives; and
4. The resources available to the recipient and costs.

SNAP State Agencies must also comply with the specific requirements established by 7 CFR Part 272.4(b) and should include these obligations in the LEP assessment.

Developing an LEP Plan

After completing an assessment of LEP needs, SNAP state agencies should develop an implementing plan to address the LEP needs of the population served. This may include contracting for oral interpretation services, hiring bilingual staff, arranging telephone interpreters and/or language lines, coordinating community volunteers, translating vital documents, and providing written notice that language services are available in appropriate languages. Quality and accuracy of the language service is critical in order to avoid serious consequences to the LEP person and to the recipient. LEP needs should be considered in developing State and local budgets and front-line staff should understand how to obtain LEP services.

USDA's 2014 policy guidance includes detailed information on assessing LEP needs, identifying practices for translating documents that will be seen as strong evidence of compliance. For additional assistance and information regarding LEP matters, please also visit <http://www.lep.gov>. The website includes online LEP mapping tools designed to help assess the language needs of the population served by a particular program or facility.

Ensuring Equal Opportunity Access for Persons with Disabilities

SNAP State agencies must also ensure equal opportunity access for persons with disabilities. This includes ensuring that communications with applicants, participants, members of the public, and companions with disabilities are as effective as communications with people without disabilities. State Agencies that do not provide persons with disabilities equal opportunity access to programs may risk violating prohibitions against disability discrimination in the Rehabilitation Act of 1978, the American with Disabilities Act (ADA), and SNAP program regulations.

DOJ published revised final regulations implementing Title II and Title III of the ADA on September 15, 2010. These regulations are codified at 28 CFR Part 35 "Nondiscrimination on the Basis of Disability in State and Local Government Services" and 28 CFR Part 36, "Nondiscrimination on the Basis of Disability in Public Accommodations and Commercial Facilities". In accordance with the implementing regulations, State Agencies must provide auxiliary aids and services where necessary to ensure effective communication and equal opportunity access to program benefits for individuals with disabilities. The type of auxiliary aids and services required will vary, but a State agency may not require an individual with a disability to bring another individual to interpret and may rely on a person accompanying a disabled individual only in limited circumstances. When a State agency communicates with

applicants and beneficiaries by telephone, it must provide text telephone services (TTY) or an equally effective electronic telecommunications system to communicate with individuals who are deaf, hard of hearing, or hearing impaired. State agencies must also ensure that interested persons, including persons with impaired vision or hearing, can obtain information as to the existence and location of accessible services, activities, and facilities. For more information, please visit the ADA website: <http://www.ada.gov>.

Exhibit 13

Item number and name: 1 - Federal-State Agreement
Date of last update: 8/11/2022
State Agency point of contact: Keisha Thaxton,
Family Assistance Director of Operations, Policy &
Contracts

II. **UPDATED** FEDERAL-STATE AGREEMENT TEMPLATE

Below is the Federal-State Agreement template that includes the civil rights policy guidance clarification. A file name for this document should be: "FY23 STATE INITIAL 1 Fed StateAgreement.pdf"

Federal-State Agreement

The SNAP State agency of ____ and the Food and Nutrition Service (FNS), U.S. Department of Agriculture (USDA), hereby agree to act in accordance with the provisions of the Food and Nutrition Act of 2008, as amended, implementing regulations and the FNS approved State Plan of Operation. The State agency and FNS USDA further agree to fully comply with any changes in Federal law and regulations. This agreement may be modified with the mutual written consent of both parties.

PROVISIONS

The State agrees to:

1. Administer the program in accordance with the provisions contained in the Food and Nutrition Act of 2008, as amended, and in the manner prescribed by regulations issued pursuant to the Act; and to implement the FNS-approved State Plan of Operation.
2. Assurance of Civil Rights Compliance: 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.](#)), section 11(c) of the Food and Nutrition Act of 2008, as amended ([7 U.S.C. 2020](#)), Title II and Title III of the Americans with Disabilities Act (ADA) of 1990 as amended by the ADA Amendments Act of 2008 ([42 U.S.C. 12131-12189](#)) as implemented by Department of Justice regulations at [28 CFR part 35](#) and [36](#), [Executive Order 13166](#), "Improving Access to Services for Persons with Limited English Proficiency" (August 11, 2000), and all requirements imposed by the regulations issued by the Department of Agriculture to the effect that, no person in the United States shall, on the grounds of sex, including gender identity and sexual orientation, race, color, age, political belief, religious creed, disability, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subject to discrimination under SNAP. This includes program-specific requirements found at [7 CFR part 15 et seq.](#) and [7 CFR 272.6](#).

This assurance is given in consideration of and for the purpose of obtaining any and all Federal assistance extended to the State by USDA under the authority of the Food and Nutrition Act of 2008, as amended. Federal financial assistance includes grants, and loans of Federal funds; reimbursable expenditures, grants, or donations of Federal property and interest in property; the detail of Federal personnel; the sale, lease of, or permission to use Federal property or interest in such property; 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 State by USDA. This assistance also 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, 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 State agency agrees to compile data, maintain records, and submit records and reports as required, to permit effective enforcement of nondiscrimination laws and permit authorized USDA personnel during hours of program operation to review and copy such records, books, and accounts, access such facilities and interview such personnel as needed to ascertain compliance with the nondiscrimination laws. If there are any violations of this assurance, USDA, FNS, shall have the right to seek judicial enforcement of this assurance. This assurance is binding on the State agency, 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 behalf of the State agency.

3. (For States with Indian Reservations only). Implement the Program in a manner that is responsive to the special needs of American Indians on reservations and consult in good faith with tribal organizations about that portion of the State's Plan of Operation pertaining to the implementation of the Program for members of the tribe on reservations.

FNS agrees to: 1. Pay administrative costs in accordance with the Food Stamp Act, implementing regulations, and an approved Cost Allocation Plan.

2. Carry-out any other responsibilities delegated by the Secretary in the Food and Nutrition Act of 2008, as amended.

August 11, 2022



(Chief Executive Officer of a
State or Authorized Designee)

Date 8/18/22

Signature *Willie C. Taylor*
(Regional Administrator, FNS)

Exhibit 14

Federal-State Agreement

The SNAP State agency of Utah and the Food and Nutrition Service (FNS), U.S. Department of Agriculture (USDA), hereby agree to act in accordance with the provisions of the Food and Nutrition Act of 2008, as amended, implementing regulations and the FNS approved State Plan of Operation. The State agency and FNS USDA further agree to fully comply with any changes in Federal law and regulations. This agreement may be modified with the mutual written consent of both parties.

PROVISIONS

The State agrees to:

1. Administer the program in accordance with the provisions contained in the Food and Nutrition Act of 2008, as amended, and in the manner prescribed by regulations issued pursuant to the Act; and to implement the FNS-approved State Plan of Operation.
2. Assurance of Civil Rights Compliance: 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.*), section 11(c) of the Food and Nutrition Act of 2008, as amended (7 U.S.C. 2020), Title II and Title III of the Americans with Disabilities Act (ADA) of 1990 as amended by the ADA Amendments Act of 2008 (42 U.S.C. 12131-12189) as implemented by Department of Justice regulations at 28 CFR part 35 and 36, Executive Order 13166, “Improving Access to Services for Persons with Limited English Proficiency” (August 11, 2000), and all requirements imposed by the regulations issued by the Department of Agriculture to the effect that, no person in the United States shall, on the grounds of sex, including gender identity and sexual orientation, race, color, age, political belief, religious creed, disability, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subject to discrimination under SNAP. This includes program-specific requirements found at 7 CFR part 15 *et seq.* and 7 CFR 272.6.

This assurance is given in consideration of and for the purpose of obtaining any and all Federal assistance extended to the State by USDA under the authority of the Food and Nutrition Act of 2008, as amended. Federal financial assistance includes grants, and loans of Federal funds; reimbursable expenditures, grants, or donations of Federal property and interest in property; the detail of Federal personnel; the sale, lease of, or permission to use Federal property or interest in such property; 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 State by USDA. This assistance also 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, 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 State agency agrees to compile data, maintain records, and submit records and reports as required, to permit effective enforcement of nondiscrimination laws and permit authorized USDA personnel during hours of program operation to review and copy such

records, books, and accounts, access such facilities and interview such personnel as needed to ascertain compliance with the nondiscrimination laws. If there are any violations of this assurance, USDA, FNS, shall have the right to seek judicial enforcement of this assurance. This assurance is binding on the State agency, 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 behalf of the State agency.

3. (For States with Indian Reservations only). Implement the Program in a manner that is responsive to the special needs of American Indians on reservations and consult in good faith with tribal organizations about that portion of the State's Plan of Operation pertaining to the implementation of the Program for members of the tribe on reservations.

FNS agrees to: 1. Pay administrative costs in accordance with the Food Stamp Act, implementing regulations, and an approved Cost Allocation Plan.

2. Carry-out any other responsibilities delegated by the Secretary in the Food and Nutrition Act of 2008, as amended.

Date 7/22/2022

Signature (Chief Executive Officer of a State or Authorized Designee)



Date LESLIE LANKSTER Digitally signed by LESLIE LANKSTER
Date: 2022.09.08 10:18:32 -05'00'

Signature (On behalf of the Regional

Administrator, FNS)

Addendum

Clarification of SNAP Civil Rights Requirements - Executive Order 13166, “Improving Access to Services for Persons with Limited English Proficiency (LEP),” and Title II and III of the Americans with Disabilities Act

This addendum clarifies core civil rights requirements to ensure meaningful access to programs, services, and information for persons with Limited English Proficiency (LEP) and persons with disabilities in accordance with Federal law, regulations and current guidance from the Department of Justice (DOJ) and the U.S. Department of Agriculture (USDA).

Meaningful Access for LEP Individuals

State agencies that participate in the Supplemental Nutrition Assistance Program (SNAP) must take reasonable steps to ensure that LEP persons have meaningful access to programs, services, and benefits. This includes the requirement to provide bilingual program information and certification materials and interpretation services to single-language minorities in certain project areas. SNAP State agencies that do not provide meaningful access for LEP individuals risk violating prohibitions against discrimination based on National Origin in the Food and Nutrition Act of 2008, as amended, Title VI of the Civil Rights Act of 1964 (Title VI), and SNAP program regulations.

Federal LEP regulations and guidance include:

- SNAP regulations provided by 7 CFR Part 272.4(b), “Bilingual requirements”;
- Executive Order 13166 of August 11, 2000, “Improving Access to Services for Persons with Limited English Proficiency,” reprinted in 65 FR 50121, 50122 (August 16, 2000);
- DOJ policy guidance titled, “Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons,” published in 67 FR 41455, 41457 (June 18, 2002); and
- USDA policy guidance titled, “Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons”, published in 79 FR 70771 - 70784 (November 28, 2014).

Four Factor Analysis for Assessing LEP Needs

To be in compliance, the Title VI guidance provided by DOJ and USDA instructs State Agencies to assess the LEP needs of the population served and determine the LEP services required by balancing four factors:

1. The number or proportion of LEP persons eligible to be served or likely to be encountered within the area serviced by the recipient;
2. The frequency with which LEP individuals come in contact with the program;
3. The nature and importance of the program, activity, or service to people’s lives; and
4. The resources available to the recipient and costs.

SNAP State Agencies must also comply with the specific requirements established by 7 CFR Part 272.4(b) and should include these obligations in the LEP assessment.

Developing an LEP Plan

After completing an assessment of LEP needs, SNAP state agencies should develop an implementing plan to address the LEP needs of the population served. This may include contracting for oral interpretation services, hiring bilingual staff, arranging telephone interpreters and/or language lines, coordinating community volunteers, translating vital documents, and providing written notice that language services are available in appropriate languages. Quality and accuracy of the language service is critical in order to avoid serious consequences to the LEP person and to the recipient. LEP needs should be considered in developing State and local budgets and front line staff should understand how to obtain LEP services.

USDA's 2014 policy guidance includes detailed information on assessing LEP needs, identifying practices for translating documents that will be seen as strong evidence of compliance. For additional assistance and information regarding LEP matters, please also visit <http://www.lep.gov>. The website includes online LEP mapping tools designed to help assess the language needs of the population served by a particular program or facility.

Ensuring Equal Opportunity Access for Persons with Disabilities

SNAP State agencies must also ensure equal opportunity access for persons with disabilities. This includes ensuring that communications with applicants, participants, members of the public, and companions with disabilities are as effective as communications with people without disabilities. State Agencies that do not provide persons with disabilities equal opportunity access to programs may risk violating prohibitions against disability discrimination in the Rehabilitation Act of 1978, the American with Disabilities Act (ADA), and SNAP program regulations.

DOJ published revised final regulations implementing Title II and Title III of the ADA on September 15, 2010. These regulations are codified at 28 CFR Part 35 "Nondiscrimination on the Basis of Disability in State and Local Government Services" and 28 CFR Part 36, "Nondiscrimination on the Basis of Disability in Public Accommodations and Commercial Facilities". In accordance with the implementing regulations, State Agencies must provide auxiliary aids and services where necessary to ensure effective communication and equal opportunity access to program benefits for individuals with disabilities. The type of auxiliary aids and services required will vary, but a State agency may not require an individual with a disability to bring another individual to interpret, and may rely on a person accompanying a disabled individual only in limited circumstances. When a State agency communicates with applicants and beneficiaries by telephone, it must provide text telephone services (TTY) or an equally effective electronic telecommunications system to communicate with individuals who are deaf, hard of hearing, or hearing impaired. State agencies must also ensure that interested persons, including persons with impaired vision or hearing, can obtain information as to the existence and location of accessible services, activities, and facilities. For more information, please visit the ADA website: <http://www.ada.gov>.

Exhibit 15

Federal-State Agreement

The SNAP State agency of West Virginia and the Food and Nutrition Service (FNS), U.S. Department of Agriculture (USDA), hereby agree to act in accordance with the provisions of the Food and Nutrition Act of 2008, as amended, implementing regulations and the FNS approved State Plan of Operation. The State agency and FNS USDA further agree to fully comply with any changes in Federal law and regulations. This agreement may be modified with the mutual written consent of both parties.

PROVISIONS

The State agrees to:

1. Administer the program in accordance with the provisions contained in the Food and Nutrition Act of 2008, as amended, and in the manner prescribed by regulations issued pursuant to the Act; and to implement the FNS-approved State Plan of Operation.

2. Assurance of Civil Rights Compliance: 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.](#)), section 11(c) of the Food and Nutrition Act of 2008, as amended ([7 U.S.C. 2020](#)), Title II and Title III of the Americans with Disabilities Act (ADA) of 1990 as amended by the ADA Amendments Act of 2008 ([42 U.S.C. 12131-12189](#)) as implemented by Department of Justice regulations at [28 CFR part 35](#) and [36](#), [Executive Order 13166](#), "Improving Access to Services for Persons with Limited English Proficiency" (August 11, 2000), and all requirements imposed by the regulations issued by the Department of Agriculture to the effect that, no person in the United States shall, on the grounds of sex, including gender identity and sexual orientation, race, color, age, political belief, religious creed, disability, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subject to discrimination under SNAP. This includes program-specific requirements found at [7 CFR part 15 et seq.](#) and [7 CFR 272.6](#).

This assurance is given in consideration of and for the purpose of obtaining any and all Federal assistance extended to the State by USDA under the authority of the Food and Nutrition Act of 2008, as amended. Federal financial assistance includes grants, and loans of Federal funds; reimbursable expenditures, grants, or donations of Federal property and interest in property; the detail of Federal personnel; the sale, lease of, or permission to use Federal property or interest in such property; 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 State by USDA. This assistance also 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, 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 State agency agrees to compile data, maintain records, and submit records

and reports as required, to permit effective enforcement of nondiscrimination laws and permit authorized USDA personnel during hours of program operation to review and copy such records, books, and accounts, access such facilities and interview such personnel as needed to ascertain compliance with the nondiscrimination laws. If there are any violations of this assurance, USDA, FNS, shall have the right to seek judicial enforcement of this assurance. This assurance is binding on the State agency, 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 behalf of the State agency.

3. Intentionally omitted.

FNS agrees to:

1. Pay administrative costs in accordance with the Food Stamp Act, implementing regulations, and an approved Cost Allocation Plan.
2. Carry-out any other responsibilities delegated by the Secretary in the Food and Nutrition Act of 2008, as amended.

Date 08-15-22

Signature



Janie M. Cole, Interim Commissioner, Bureau for Family Assistance

(Chief Executive Officer of a State
or Authorized Designee)

Date 31 August 2022

Signature


(Regional Administrator, FNS)

Addendum

Clarification of SNAP Civil Rights Requirements - Executive Order 13166, “Improving Access to Services for Persons with Limited English Proficiency (LEP),” and Title II and III of the Americans with Disabilities Act

This addendum clarifies core civil rights requirements to ensure meaningful access to programs, services, and information for persons with Limited English Proficiency (LEP) and persons with disabilities in accordance with Federal law, regulations and current guidance from the Department of Justice (DOJ) and the U.S. Department of Agriculture (USDA).

Meaningful Access for LEP Individuals

State agencies that participate in the Supplemental Nutrition Assistance Program (SNAP) must take reasonable steps to ensure that LEP persons have meaningful access to programs, services, and benefits. This includes the requirement to provide bilingual program information and certification materials and interpretation services to single-language minorities in certain project areas. SNAP State agencies that do not provide meaningful access for LEP individuals risk violating prohibitions against discrimination based on National Origin in the Food and Nutrition Act of 2008, as amended, Title VI of the Civil Rights Act of 1964 (Title VI), and SNAP program regulations.

Federal LEP regulations and guidance include:

- SNAP regulations provided by 7 CFR Part 272.4(b), “Bilingual requirements”; • Executive Order 13166 of August 11, 2000, “Improving Access to Services for Persons with Limited English Proficiency,” reprinted in 65 FR 50121, 50122 (August 16, 2000); • DOJ policy guidance titled, “Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons,” published in 67 FR 41455, 41457 (June 18, 2002); and
- USDA policy guidance titled, “Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons”, published in 79 FR 70771 - 70784 (November 28, 2014).

Four Factor Analysis for Assessing LEP Needs

To be in compliance, the Title VI guidance provided by DOJ and USDA instructs State Agencies to assess the LEP needs of the population served and determine the LEP services required by balancing four factors:

1. The number or proportion of LEP persons eligible to be served or likely to be encountered within the area serviced by the recipient;
2. The frequency with which LEP individuals come in contact with the program;
3. The nature and importance of the program, activity, or service to people’s lives; and
4. The resources available to the recipient and costs.

SNAP State Agencies must also comply with the specific requirements established by 7 CFR Part 272.4(b) and should include these obligations in the LEP assessment.

Developing an LEP Plan

3

After completing an assessment of LEP needs, SNAP state agencies should develop an implementation plan to address the LEP needs of the population served. This may include contracting for oral interpretation services, hiring bilingual staff, arranging telephone interpreters and/or language lines, coordinating community volunteers, translating vital documents, and providing written notice that language services are available in appropriate languages. Quality and accuracy of the language service is critical in order to avoid serious consequences to the LEP person and to the recipient. LEP needs should be considered in developing State and local budgets and front line staff should understand how to obtain LEP services.

USDA's 2014 policy guidance includes detailed information on assessing LEP needs, identifying practices for translating documents that will be seen as strong evidence of compliance. For additional assistance and information regarding LEP matters, please also visit <http://www.lep.gov>. The website includes online LEP mapping tools designed to help assess the language needs of the population served by a particular program or facility.

Ensuring Equal Opportunity Access for Persons with Disabilities

SNAP State agencies must also ensure equal opportunity access for persons with disabilities. This includes ensuring that communications with applicants, participants, members of the public, and companions with disabilities are as effective as communications with people without disabilities. State Agencies that do not provide persons with disabilities equal opportunity access to programs may risk violating prohibitions against disability discrimination in the Rehabilitation Act of 1978, the American with Disabilities Act (ADA), and SNAP program regulations.

DOJ published revised final regulations implementing Title II and Title III of the ADA on September 15, 2010. These regulations are codified at 28 CFR Part 35 "Nondiscrimination on the Basis of Disability in State and Local Government Services" and 28 CFR Part 36, "Nondiscrimination on the Basis of Disability in Public Accommodations and Commercial Facilities". In accordance with the implementing regulations, State Agencies must provide auxiliary aids and services where necessary to ensure effective communication and equal opportunity access to program benefits for individuals with disabilities. The type of auxiliary aids and services required will vary, but a State agency may not require an individual with a disability to bring another individual to interpret, and may rely on a person accompanying a disabled individual only in limited circumstances. When a State agency communicates with applicants and beneficiaries by telephone, it must provide text telephone services (TTY) or an equally effective electronic telecommunications system to communicate with individuals who are deaf, hard of hearing, or hearing impaired. State agencies must also ensure that interested persons, including persons with impaired vision or hearing, can obtain information as to the existence and location of accessible services, activities, and facilities. For more information, please visit the ADA website: <http://www.ada.gov>.

Exhibit B

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TENNESSEE
KNOXVILLE DIVISION

THE STATE OF TENNESSEE, *et al.*

Plaintiffs,

v.

UNITED STATES DEPARTMENT OF
AGRICULTURE, *et al.*

Defendants.

Case No. 3:22-cv-00257

District Judge Travis R. McDonough

Magistrate Judge Debra C. Poplin

DECLARATION OF ROBERTO CONTRERAS

I, Roberto Contreras, do hereby state and declare as follows:

1. I am the Civil Rights Director, Food Nutrition and Consumer Services (“FNCS”), Food and Nutrition Service (“FNS”), at the United States Department of Agriculture (“USDA” or “Department”), Alexandria, VA. I have held my current position since April 2016.
2. As the Civil Rights Director, I am responsible for ensuring compliance with civil rights laws and regulations in the administration of fifteen FNCS national programs. I also manage the administration of the equal employment opportunity programs serving over 1,800 employees dispersed throughout the country in seven regional offices and headquarters. I provide overall management and day-to-day operations of the Civil Rights Division (“CRD”), which is divided into three Branches: Compliance Branch, Complaints Branch, and the Equal Employment Opportunity (“EEO”) & Alternative Dispute Resolution (“ADR”) Branch. I evaluate and

enforce equal employment opportunity and civil rights laws, rules and regulations across the United States and its territories to assure compliance through program discrimination complaint investigations, civil rights program compliance reviews, and Title VII EEO compliance reviews.

3. Statements made in this declaration are based on knowledge that I have acquired in the performance of my official duties, information provided to me by USDA FNS's Supplemental Nutrition Assistance Program ("SNAP") staff, CRD staff, and staff from the Office of the Assistant Secretary for Civil Rights ("OASCR"), and my knowledge of the issues being litigated in the above-captioned matter.

SNAP Program and Non-Discrimination Provisions

4. FNS administers the nutrition assistance programs of USDA, including SNAP. The mission of FNS is to provide children and needy families with better access to food and a more healthful diet through its food assistance programs and comprehensive nutrition education efforts.
5. In determining a household's eligibility for SNAP benefits, states may only consider criteria required by the Food and Nutrition Act of 2008, as amended. These criteria predominately concern a household's income and assets but also include related items such as work requirements for able-bodied adults without dependents.
6. State agencies and program operators are prohibited from discriminating against beneficiaries under Title IX and the Food and Nutrition Act of 2008. Title IX provides that no person "shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance." 20 U.S.C. § 1681(a). Title IX's prohibitions only apply to educational programs or activities which receive federal funds, including SNAP. CRD's review and enforcement of

the Title IX prohibition is limited to programs and activities that are both educational and receive Federal financial assistance from FNS. The Food and Nutrition Act provides, “in the certification of applicant households for the supplemental nutrition program, there shall be no discrimination by reason of race, sex, religious creed, national origin, or political affiliation.” 7 U.S.C. § 2020(c)(1); 7 C.F.R. § 272.2(b)(1). The FNA’s prohibitions against discrimination at 7 U.S.C. 2020(c)(1) apply to SNAP. CRD’s review and enforcement of the FNA prohibition is limited to program implementation wherein FNS CRD processes administrative complaints and provides technical assistance to recipients to ensure that Federal funds do not subsidize SNAP programs or activities that discriminate on the basis of race, sex, religious creed, national origin, or political affiliation.

7. CRD’s mission is to ensure compliance with applicable laws, regulations, and policies for FNS customers and employees regardless of race, color, national origin, religion, sex, gender identity (including gender expression), sexual orientation, disability, marital status, family/parental status, income derived from a public assistance program, political beliefs, or reprisal or retaliation for prior civil rights activity, in any program or activity conducted or funded by USDA, however, not all bases apply to all programs.
8. CRD has jurisdiction over programs conducted by FNS and programs administered by recipients of Federal financial assistance from FNS, with “recipient” and “Federal financial assistance” defined at 7 C.F.R. § 15.2. State agencies with approved complaint processing plans must follow those plans in handling complaints, including submitting decisions to FNS for review before they are issued, and ensuring decisions include appeal rights to USDA’s Office of the Assistant Secretary for Civil Rights.

9. On May 5, 2022, CRD issued a memorandum (the “May 5 Memo”) to provide direction to state agencies and program operators regarding processing program complaints that allege discrimination on the basis of gender identity and sexual orientation in programs or activities receiving federal financial assistance from FNS. Prior to the issuance of the May 5 Memo, state agencies and program operators were already prohibited from considering a person’s gender identity or sexual orientation as a factor for purposes of SNAP eligibility.
10. The May 5 Memo stated that the Food and Nutrition Act’s antidiscrimination provision and Title IX’s prohibition on sex discrimination should be read to include a prohibition on discrimination on the basis of gender identity and sexual orientation.
11. In 2021 by Executive Order, the President instructed agency heads to consider whether there are additional actions that the agency should take to ensure that it was fully implementing the policy set forth in the Order. Exec. Order No. 13988 (Pres.). Consistent with the Executive Order, CRD issued the May 5 Memo to advise state agencies and program operators administering SNAP that compliance with Title IX and the FNA means that beneficiaries may not be discriminated against on the basis of gender identity and sexual orientation. It further sought to advise States and other organizations receiving FNS funds of the same regarding their operation of any education program or activity receiving Federal financial assistance. The May 5 Memo did not change any aspects of the law or regulations that control eligibility for the SNAP program because consideration of factors other than those set forth in the Food and Nutrition Act and its corresponding regulations was already prohibited. 7 U.S.C. 2014(b).

Non-Discrimination Compliance and Enforcement

12. USDA Departmental Regulation (“DR”) 4330-002 (attached hereto as Exhibit 1), which became effective on July 27, 2021, requires USDA employees to ensure that programs and

activities receiving Federal financial assistance from USDA are in compliance with applicable civil rights laws, including the prohibitions against discrimination in all FNCS programs and activities. DR 4330-002 specifies that “No person will be excluded from participation in, denied the benefits of, or otherwise subjected to discrimination in programs or activities receiving financial assistance from USDA based on: (1) Race; (2) Color; (3) National origin; (4) Age; (5) Disability; (6) Because of prior civil rights activity; and as applicable: (7) Sex (including sexual orientation and gender identity); (8) Religion; or (9) Political beliefs.” DR 4330-002 § 4(a).

13. When such programs or activities are operated in violation of those laws, DR 4330-002 establishes the process by which USDA endeavors to bring the program or activity into compliance.
14. CRD staff is responsible for using a variety of compliance mechanisms to prevent eligible persons from being excluded from, or denied participation in FNS programs and/or activities on the bases of race, color, national origin, age, sex, disability, religion, and political beliefs. 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. A civil rights review (desk or onsite) 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. FNS Instruction 113-1, Exhibit 2 (attached).
15. A civil rights review that results in findings that indicate probable noncompliance with CR requirements are handled in accordance with the procedures for resolving noncompliance

contained in Instruction 113-1. If an initial noncompliance determination is made, written notice is sent to the State agency, local agency, or other subrecipient identifying: (1) the area of probable noncompliance, (2) appropriate citations being violated, (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. If compliance still cannot be achieved, the non-compliance issue will be elevated progressively higher within USDA and with the State, up to and including the Secretary of Agriculture, until all voluntary compliance efforts are exhausted. If a letter from the FNS Administrator fails to achieve compliance within the thirty days allowed, the complete case and other required documentation will be forwarded to OASCR for formal enforcement action through 7 C.F.R. § 15.8, described below. Instruction 113-1 § XIV; DR 4330-002 § 6; 42 U.S.C. § 2000d-1; 20 U.S.C. § 1682.

16. In addition to compliance reviews, CRD processes discrimination complaints. A “civil rights program complaint” is a verbal or written allegation of discrimination that an FNS program is administered or operated in a manner that results in disparate treatment or services being provided to persons or groups of persons because of one or more protected bases.
17. OASCR and the FNCS mission area have a Memorandum of Understanding (“MOU”) that outlines the processing and investigation of discrimination complaints involving FNS Programs. Exhibit 3 (attached). The MOU covers the agreed-upon procedure for the processing and investigation of federally-assisted complaints of discrimination in FNS Programs and sets forth the terms under which OASCR delegates first-line complaint processing to FNS while retaining oversight and final authority for civil rights complaints at USDA. CRD is the division of FNS that administers the processing responsibilities in this MOU.

18. The Federal-State Agreement is the legal agreement between the State and USDA by which the State elects to operate and administer SNAP in accordance with the Food and Nutrition Act of 2008, as amended (“the Act”), the regulations issued pursuant to the Act, and the FNS-approved State Plan of Operation. 7 C.F.R. § 272(a)(2). In some cases, state agencies administering certain programs may process discrimination complaints if the Federal-State Agreement has procedures in place to handle such complaints. FNS exercises oversight of state agencies’ established procedures and also complaint processing activities, including ensuring that state agencies have appropriate procedures in place, as established in applicable statutes, program regulations, state operating plans and guidance documents.
19. All program discrimination complaints must be filed within 180 days of the alleged discriminatory action. CRD then determines whether USDA has jurisdiction over the complaint based on civil rights laws and regulations.
20. If a program complaint is accepted for processing, CRD will send the complainant a letter notifying of the acceptance and identifying the basis and issues that will be investigated. Conversely, if a complaint is not accepted for processing, CRD will send the complainant a letter stating why the complaint was not accepted, and the complaint will be closed. If appropriate, the closed complaint may be referred to an USDA or other federal agency that may assist in resolving the complaint such as the Department of Education.
21. Regarding allegations of civil rights violations based on sex by or in schools, USDA would refer complaints which did not directly involve the administration of a USDA program to the Department of Education or other applicable entity. Traditional SNAP programs are not conducted in schools.

22. Once a complaint is accepted, CRD attempts to resolve the complaint at the lowest possible level through alternative dispute resolution. And, if those attempts are not successful, CRD will move forward with the investigative process by assigning an investigator to the program complaint. The investigator will contact the complainant, any agency employees involved, and any other appropriate individual, to obtain sworn statements and documents relating to the issues in the complaint.
23. If the complaint cannot be resolved during investigation, CRD will review the evidence and perform a legal and factual analysis of the complaint to determine whether discrimination occurred. Based on this analysis, the Division will issue a Final Agency Decision (FAD). The FAD will contain an analysis of the claims in the complaint and conclusions and findings, including whether discrimination was found. The administrative process also includes appeal rights to OASCR following the FAD.
24. If discrimination is found, CRD may attempt to settle the complaint, as appropriate. If the FAD concludes the recipient discriminated or was in non-compliance with a civil rights law, rule, regulation, or policy, CRD will direct the recipient to remedy the discrimination or correct the non-compliance or will direct or recommend resolution efforts aimed at achieving voluntary compliance.
25. USDA's goal during any investigation or compliance related action is to work with the state agencies and program recipients to resolve the complaint at the lowest possible level. Absent voluntary compliance by the program or activity receiving Federal financial assistance from USDA, CRD will refer the case to OASCR with a recommendation for further enforcement under 7.C.F.R. § 15.8.

26. CRD has no independent legal authority outside of the judicial process to terminate or suspend funding allocated to the States for applicant food benefits. If there appears to be a failure or threatened failure to comply with civil rights requirements in this part, and if the noncompliance or threatened noncompliance cannot be corrected by informal means, compliance with the regulations in this part may be effectuated by the suspension or termination of or refusal to grant or to continue Federal financial assistance, upon a finding, in accordance with the procedure prescribed in 7 C.F.R. § 15.8, or by any other means authorized by law.
27. Such other means may include, but are not limited to: (1) a reference to the Department of Justice with a recommendation that appropriate proceedings be brought to enforce any rights of the United States under any law of the United States (including other titles of the Act), or any assurance or other contractual undertaking, and (2) any applicable proceeding under state or local law. 7 C.F.R. § 15.8(a).
28. Any order suspending, terminating, or refusing to grant or to continue Federal financial assistance through SNAP under USDA's Civil Rights regulations can only become effective after several steps occur. 7 C.F.R. § 15.8(c). Additionally, any action to suspend or terminate or to refuse to grant or to continue Federal financial assistance is required to be limited to the noncompliant entity and effected program and should not be broader in scope or effect. 7 C.F.R. § 15.8(c)(4).
29. Initially, the Agency is required to advise the State or provider of the failure to comply and the State or provider does not voluntarily comply. Next, a hearing regarding noncompliance must result in an express finding on the record. After a finding, the Secretary of Agriculture must make the decision to suspend, terminate, or refuse to grant or to continue financial assistance.

7 CFR § 15.10(e). The Secretary must then file a full written report with the House and Senate committee overseeing the program describing the circumstance and grounds for the order. Any order cannot take effect until thirty days after filing the report.

30. To my knowledge, FNS has never sought to suspend, terminate, or refuse to grant or to continue financial assistance to a State under 7 C.F.R. § 15.8.

I declare under penalty of perjury, pursuant to 28 U.S.C. § 1746, that the foregoing is true and correct.

**ROBERTO
CONTRERAS** Digitally signed by
ROBERTO CONTRERAS
Date: 2022.09.09
12:17:47 -04'00'

ROBERTO CONTRERAS
Civil Rights Director
Food Nutrition and Consumer Services
U.S. Department of Agriculture
Alexandria, VA

Exhibit 1

U.S. DEPARTMENT OF AGRICULTURE
WASHINGTON, DC 20250

DEPARTMENTAL REGULATION	NUMBER: DR 4330-002
SUBJECT: Nondiscrimination in Programs and Activities Receiving Federal Financial Assistance from USDA	DATE: July 27, 2021
OPI: Office of the Assistant Secretary for Civil Rights	EXPIRATION DATE: July 27, 2026

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1. PURPOSE

- a. This Departmental Regulation (DR) establishes the United States Department of Agriculture (USDA) policy for ensuring programs and activities receiving Federal financial assistance from USDA are in compliance with applicable civil rights laws, including the prohibition against discrimination in those programs and activities.
- b. This DR establishes the policy for achieving compliance through civil rights complaints against recipients of Federal financial assistance from USDA who operate those programs and activities.

2. SPECIAL INSTRUCTIONS/CANCELLATIONS

This DR supersedes DR 4330-002, *Nondiscrimination in Programs and Activities Receiving Federal Financial Assistance From USDA*, dated March 3, 1999.

3. SCOPE

This regulation applies to all programs and activities receiving Federal financial assistance from USDA Mission Areas and agencies.

4. POLICY

- a. No person will be excluded from participation in, denied the benefits of, or otherwise subjected to discrimination in programs or activities receiving financial assistance from USDA based on:

- (1) Race;
- (2) Color;
- (3) National origin;
- (4) Age;
- (5) Disability;
- (6) Because of prior civil rights activity;

And as applicable:

- (7) Sex (including sexual orientation and gender identity);
- (8) Religion; or
- (9) Political beliefs.

- b. USDA will enforce this policy through the fair and efficient processing and addressing of complaints of discrimination and non-compliance with civil rights laws filed against recipients of USDA financial assistance. USDA will also enforce this policy through civil rights compliance reviews, which will be addressed in greater detail in another forthcoming DR.
- c. No recipient of USDA financial assistance will retaliate against or intimidate a person because they:

- (1) File a discrimination complaint against a recipient of financial assistance from USDA or participate in the processing of such a complaint;
- (2) Participate in or provide information for a civil rights review of a program or activity receiving financial assistance from USDA; or
- (3) Aid or support the enforcement of Federal civil rights laws or policies against a recipient or take other action in opposition to prohibited discriminatory practices by a recipient.

5. COMPLAINT PROCESSING

a. Filing a Complaint

- (1) Any individual or group of individuals that believe they have been subjected to discrimination in a program or activity receiving Federal financial assistance from USDA may file a complaint with the Secretary of Agriculture (Secretary), or the Assistant Secretary for Civil Rights (ASCR) or their designee.
- (2) Individuals or groups must file their complaint within 180 calendar days of the date of the alleged discrimination or non-compliance with the law. The ASCR may extend the filing deadline for good cause. All complaints must be signed by the complainant.
- (3) Complaints must be filed using either Form [Agriculture Department \(AD\) -3027](#), *USDA Program Discrimination Complaint Form* or another written document with all the information required by Form AD-3027. See Section 5c(1)(c) below, for information regarding administrative closures. See Appendix D, *Complaint Form Information*, for the list of information required by Form AD-3027.

b. Voluntary Compliance and Alternative Dispute Resolution (ADR)

- (1) During the complaint process, the USDA agency that provided financial assistance to the recipient named in a complaint will participate in efforts to bring the recipient into voluntary compliance with civil rights laws.
- (2) The ASCR will utilize ADR to achieve a recipient's voluntary compliance with civil rights laws. The ASCR will determine where to utilize ADR.
- (3) The ASCR will forward all complaints having claims under the [Age Discrimination Act of 1975](#), to the mediation agency designated by the Secretary, Health and Human Services, for possible resolution.

c. Complaint Intake and Notifications

(1) The ASCR:

- (a) Will review each complaint to determine if it was timely filed and relates to civil rights laws USDA enforces. The ASCR will refer complaints not within USDA's jurisdiction or subject to concurrent jurisdiction to the appropriate Federal, State, or local agencies;
 - (b) Will keep the complainant's identity confidential to the extent permitted by law until the complainant has provided written authorization to share their identity;
 - (c) May close a complaint during any stage of the complaint process after a determination that procedural grounds exist for an administrative closure;
 - (d) Will accept complaints for further processing if they are not closed during intake; and
 - (e) Will promptly investigate all accepted complaints that indicate a possible failure by a recipient to comply with any applicable civil rights law, rule, regulation, or policy.
- (2) Good cause must exist for the ASCR not to investigate an accepted complaint. The ASCR will explain the good cause in the notification of disposition. In those situations, the ASCR will explore the feasibility of referring the complaint to the primary recipient (e.g., a State agency) for investigation.

d. Investigations

- (1) Investigations must be conducted impartially. They will be limited to learning facts and collecting evidence relevant to determining if a recipient discriminated against a complainant in violation of a Federal civil rights law, rule, regulation, or policy, or was in non-compliance in another way.
- (2) The ASCR will conduct investigations in accordance with standards and requirements found in Federal statutes, regulations, Executive Orders, case law, policies, and guidance.
- (3) The ASCR will maintain a record of the evidence and findings of fact collected in the investigation.

e. Complaint Adjudication and Disposition

- (1) When the investigation is completed, the ASCR will review and analyze the facts and evidence and apply proper legal standards to ensure findings of fact and conclusions of law are consistent with statute, regulation, and case law.

- (2) If the ASCR finds no violation or determines that no further action is warranted, the ASCR will provide written notification to the recipient and the complainant of that decision.
- (3) If the ASCR determines that the recipient is in non-compliance with civil rights law, rule, regulation, or policy, the ASCR will promptly notify the recipient of that conclusion. The Mission Area or agency that provided funds to the recipient will then initiate efforts to bring the recipient into voluntary compliance.
- (4) If the Mission Area or agency, and recipient reach a resolution to bring the recipient into voluntary compliance with civil rights law, rule, regulation, or policy, the resolution will be documented in a signed written agreement between the recipient and the ASCR. If the complainant and recipient reach a resolution, the terms will be documented in a written agreement between them, and a signed copy will be provided to the ASCR.
- (5) If voluntary compliance is not achieved, the ASCR will issue a Final Agency Decision (FAD) that determines if the recipient discriminated or was in non-compliance with a civil rights law, rule, regulation, or policy. The FAD will summarize the facts and evidence, state findings of fact and conclusions of law for each issue and provide appeal rights if applicable. In appropriate circumstances, the ASCR will initiate proceedings under 7 Code of Federal Regulations (CFR) §§ [15.8](#), *Procedure for effecting compliance*; [15.9](#), *Hearings*; and [15.10](#), *Decisions and notices*.
- (6) If the FAD concludes the recipient discriminated or was in non-compliance with a civil rights law, rule, regulation, or policy, the ASCR will direct the recipient to remedy the discrimination or correct the non-compliance or will direct or recommend resolution efforts aimed at achieving voluntary compliance. This may include payment of damages where permitted by law.

6. MONITORING COMPLIANCE AND NOTIFYING JUSTICE DEPARTMENT

- a. When the ASCR issues a FAD with a finding of discrimination or non-compliance with a civil rights law, rule, regulation, or policy by a recipient and orders steps to remedy the discrimination or achieve compliance, the ASCR will monitor the recipient until there is full compliance with the FAD.
- b. When the ASCR and the recipient sign an agreement to bring the recipient into voluntary compliance with the law, the ASCR will monitor the recipient until there is full compliance with the agreement. Similarly, the ASCR will monitor the recipient until there is full compliance with any agreement reached between the recipient and the complainant.

- c. Once the ASCR determines the recipient has achieved full compliance, the ASCR will issue a letter closing the complaint.
- d. When a recipient refuses or fails to comply with any of the terms in a FAD or agreement, the ASCR will notify the U.S. Department of Justice (DOJ) and may take action under 7 CFR §§ 15.8-15.10 to terminate or suspend all USDA financial assistance to the recipient.

7. REASONABLE ACCOMMODATIONS

The ASCR will make reasonable accommodations in the complaint process to assist complainants or other persons with a disability.

8. REVIEWS

- a. USDA will conduct compliance reviews of programs and activities receiving financial assistance from USDA to ensure there is full compliance with Federal civil rights laws, rules, regulations, and policies.
- b. Civil Rights Directors will develop annual compliance review schedules consistent with this USDA DR on compliance as part of their program for monitoring recipients.

9. ROLES AND RESPONSIBILITIES

- a. The Secretary will:
 - (1) Provide leadership, direction, and establish policy for USDA enforcement of civil rights laws and compliance with those laws by recipients of financial assistance from USDA; and
 - (2) Ensure the availability of adequate resources to support and carry out a broad range of civil rights compliance and enforcement activities throughout USDA.
- b. The ASCR or their designee will:
 - (1) Direct, coordinate, and provide oversight over USDA's enforcement of civil rights laws and compliance with those laws by recipients of USDA financial assistance through rules, regulations, policy, complaint processing, compliance reviews, and other actions;
 - (2) Ensure USDA Mission Areas and agencies inform recipients of their civil rights compliance responsibilities through training, dissemination of information, and technical assistance;

- (3) Review, supplement, or modify investigations, decisions, agreements, and other complaint processing actions taken by Mission Area or agency officials designated by the ASCR, and provide other oversight;
 - (4) Process appeals, where applicable, of Mission Area or agency decisions; and
 - (5) Recommend enforcement actions to DOJ to ensure recipients' compliance with Federal civil rights requirements.
- c. Under and Assistant Secretaries, supported by their Civil Rights Directors, will:
- (1) Enforce compliance with civil rights laws by recipients of financial assistance from their Mission Areas;
 - (2) Issue Mission Area directives and policy consistent with USDA rules, regulations, and policy;
 - (3) Process complaints against recipients consistent with USDA rules, regulations, procedures, and established memoranda of understanding;
 - (4) Ensure recipients' compliance with FADs and settlement and voluntary resolution agreements, including timely implementation of corrective action plans; and
 - (5) Develop annual compliance review schedules and conduct reviews of recipients.
- d. Agency Heads will:
- (1) Enforce compliance with civil rights laws by recipients of financial assistance from their agencies;
 - (2) If applicable, ensure that recipients timely submit their signed Statements of Assurance or Federal-State Agreements;
 - (3) Assist and cooperate with the ASCR and Civil Rights Directors in resolving recipients' non-compliance; and
 - (4) Collect and analyze data and information to evaluate success in ensuring recipients' compliance with civil rights laws.
- e. The General Counsel will:
- (1) Provide legal advice and guidance to support USDA's programs to ensure compliance with civil rights laws by recipients of USDA financial assistance; and
 - (2) Conduct legal sufficiency reviews, when required or requested by the ASCR, of:

- (a) Findings of discrimination or non-compliance with civil rights laws;
- (b) The terms of settlement or voluntary resolution agreements;
- (c) Awards of compensatory damages and attorney fees; and
- (d) Other legal issues.

10. INQUIRIES

All USDA Mission Areas, agencies, and staff offices should direct questions and inquiries regarding this DR to the Center for Civil Rights Operations (CCRO), Compliance Division, via email at CCROCOMPLIANCE@usda.gov.

-END-

APPENDIX A

ACRONYMS AND ABBREVIATIONS

AD	Agriculture Department (Prefix for Departmental forms)
ADR	Alternative Dispute Resolution
ASCR	Assistant Secretary for Civil Rights
CCRO	Center for Civil Rights Operations
CFR	Code of Federal Regulations
DG	Departmental Guidebook
DOJ	United States Department of Justice
DR	Departmental Regulation
EEOC	Equal Employment Opportunity Commission
FAD	Final Agency Decision
P.L.	Public Law
Secretary	Secretary of Agriculture
SM	Secretary's Memorandum
U.S.C.	United States Code
USDA	United States Department of Agriculture

APPENDIX B

DEFINITIONS

Civil Rights Director. An individual appointed by the Agency Head who is responsible for the implementation of an equal employment program and for federally assisted and federally conducted programs, to promote equal employment opportunity, and to identify and eliminate discriminatory practices and policies. Civil Rights Directors report directly to their Agency Heads. (Source: Adapted from [Departmental Guidebook \(DG\) 0100-002](#), *USDA Departmental Directives Definitions Glossary*, September 26, 2018; modified to delete language about Equal Employment Opportunity Commission (EEOC) regulations which was not applicable)

Complainant. Any person or group of persons who believes they have been subjected to discrimination in a program or activity receiving Federal financial assistance from USDA. (Sources: Adapted from DR 4330-002, *Nondiscrimination in Programs and Activities Receiving Federal Financial Assistance From USDA*, Section 6c (March 3, 1999 version); and DR 4330-003, *Nondiscrimination in USDA-Conducted Programs and Activities*, Section 5e (October 15, 2015 version); this revised language is a slightly modified hybrid based on these two sources)

Complaint. A written statement that contains the complainant's name and address and describes a Recipient's alleged discriminatory action in sufficient detail to inform the ASCR of the nature and date of an alleged civil rights violation. The statement must be signed by the complainant(s) or someone authorized to sign on behalf of the complainant(s). To accommodate the needs of persons with disabilities, special needs, or who have Limited English Proficiency, a complaint may be in an alternative format. (Source: Adapted from DR 4330-003, Section 5f (October 15, 2015 version); slightly modified for assisted complaints)

Discrimination. Different treatment or denial of benefits, services, rights, or privileges to a person or persons, because of their membership in one or more of the protected classes listed in Section 4 of this Departmental Regulation, by or in connection with a program or activity receiving Federal financial assistance from USDA. Specific examples of prohibited discriminatory actions are found in [7 CFR §15.3](#). (Source: [7 CFR §15.3](#), *Discrimination prohibited*)

Federal Financial Assistance or financial assistance from USDA. Includes:

- a. Grants and loans of Federal funds;
- b. The grant or donation of Federal property and interests in property;
- c. The detail of Federal personnel;
- d. The 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, or at a consideration which 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; and

- e. Any Federal agreement, arrangement, or other contract which has as one of its purposes the provision of assistance. (Source: [7 CFR § 15.2\(g\)](#))

Program or Activity. All of the operations of any entity listed in [7 CFR § 15.2\(k\)](#), any part of which receives Federal financial assistance from USDA. (Source: [7 CFR § 15.2\(k\)](#))

Recipient. Any State, political subdivision of any State, or instrumentality of any State or political subdivision (to include the District of Columbia and any U.S. territories and possessions), any public or private agency, institution, or organization, or any entity or individual in any State, to whom USDA extends Federal financial assistance, directly or through another recipient, for any program or activity, including any successor, assignee, or transferee thereof, but not including any ultimate beneficiary of the assistance. For purposes of this Departmental Regulation, the term “recipient” includes entities that have applied for Federal financial assistance. (Sources: [28 CFR § 42.102](#), *Definitions*; [7 CFR § 15.2\(e\)](#))

Retaliation. Intimidation, threats, coercion, or discrimination against any individual because they have made a complaint against or testified, assisted, or participated in a civil rights investigation involving a recipient of financial assistance from USDA. (Source: [28 CFR § 42.107\(e\)](#))

APPENDIX C
AUTHORITIES AND REFERENCES

Age Discrimination Act of 1975, as amended, [42 U.S.C. §§ 6101 et seq.](#)

Americans with Disabilities Act of 1990, as amended, [42 U.S.C. §§ 12101 et seq.](#)

Civil Rights Restoration Act of 1987, P.L. 100-259, as amended by, *Civil Rights Act of 1991*, [P.L. 102-166](#), codified at 42 U.S.C. § 1981(a)

Compliance Procedures, [28 CFR Part 35, Subpart F](#)

Coordination of Enforcement of Nondiscrimination in Federally Assisted Programs, [28 CFR Part 42, Subpart F](#)

Delegations of Authority by the Secretary of Agriculture to the Assistant Secretary for Civil Rights, [7 CFR § 2.25](#)

Education Programs or Activities Receiving or Benefitting from Federal Financial Assistance, [7 CFR Part 15a](#),

[Executive Order 12250](#), *Leadership and Coordination of Implementation and Enforcement of Nondiscrimination Laws*, November 2, 1980

[Executive Order 12898](#), *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations*, February 11, 1994

[Executive Order 13985](#), *Advancing Racial Equity and Support for Underserved Communities Through the Federal Government*, January 20, 2021

[Executive Order 13988](#), *Preventing and Combating Discrimination on the Basis of Gender Identity or Sexual Orientation*, January 20, 2021

[Executive Order 14008](#), *Tackling the Climate Crisis at Home and Abroad*, January 27, 2021

Food and Nutrition Act of 2008, as amended, [7 U.S.C. §§ 2011 et seq.](#)

[Guidance to Federal Financial Assistance Recipients Regarding the Title VI Prohibition Against National Origin Discrimination Affecting Persons with Limited English Proficiency](#), November 28, 2014

Guidelines for the Enforcement of Title VI, Civil Rights Act of 1964, [28 CFR § 50.3](#)

Implementation of Executive Order 12250, Nondiscrimination on the Basis of Handicap in Federally Assisted Programs, [28 CFR Part 41](#)

Nondiscrimination in Federally Assisted Programs of the Department of Agriculture — Effectuation of Title VI of the Civil Rights Act of 1964, [7 CFR Part 15, Subpart A](#)

Nondiscrimination on the Basis of Age in Programs or Activities Receiving Federal Financial Assistance from the United States Department of Agriculture, [7 CFR Part 15c](#)

Nondiscrimination on the Basis of Disability in State and Local Government Services, [28 CFR Part 35](#)

Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving Federal Financial Assistance, [7 CFR Part 15b](#)

Procedures for Complaints of Employment Discrimination Filed Against Recipients of Federal Financial Assistance, [28 CFR Part 42, Subpart H](#); [29 CFR § 1691](#)

Procedures for Coordinating the Investigation of Complaints or Charges of Employment Discrimination Based on Disability Subject to the Americans with Disabilities Act and Section 504 of the Rehabilitation Act of 1973, [29 CFR § 1640](#)

Section 504 of the *Rehabilitation Act of 1973*, as amended, [29 U.S.C. § 794](#)

Title VI of the *Civil Rights Act of 1964*, as amended, [42 U.S.C. § 2000d](#)

Title VIII of the *Civil Rights Act of 1968*, as amended by the *Fair Housing Amendments Act of 1988*, [42 U.S.C. §§ 3601 et seq.](#)

Title IX of the *Education Amendments of 1972*, [20 U.S.C. §§ 1681 et seq.](#)

USDA, [AD-3027](#), *USDA Program Discrimination Complaint Form*, January 19, 2012

USDA, [DG 0100-002](#), *Departmental Directives Definitions Glossary*, September 26, 2018

USDA, [DR 0100-001](#), *Departmental Directives System*, January 4, 2018

USDA, [DR 4300-003](#), *Equal Opportunity Public Notification Policy*, October 17, 2019

USDA, [DR 4710-001](#), *Alternative Dispute Resolution*, April 5, 2006

USDA, [DR 5600-002](#), *Environmental Justice*, December 15, 1997

USDA, [SM 1076-023](#), *Strengthening Civil Rights Management Functions*, March 9, 2018

APPENDIX D

COMPLAINT FORM INFORMATION

The following required information from Form [AD-3027](#), *USDA Program Discrimination Complaint Form*, must be included if a Complainant uses a written format other than Form AD-3027 to initiate a complaint:

1. Name of Complainant (First, Middle, Last).
2. Mailing Address (Street with number or P.O. Box, Apartment number, City, State, Zip Code).
3. Email Address.
4. Telephone Number (with Area Code) (include alternate telephone number if available)
5. Best way to reach you: Mail, phone, email, other (specify).
6. Do you have a lawyer or representative for this complaint? (Yes or No)
 - a. If yes, provide the Representative's: First and last name; full address (including Zip Code), telephone, and email address.
7. Who do you believe discriminated against you? (including name(s) of person(s) involved if known).
8. Name of the program you applied for (if known/if applicable).
9. Name of the U.S. Department of Agriculture agency that provides Federal financial assistance for the program (if known):
 - a. Farm Service Agency;
 - b. Rural Development;
 - c. Food and Nutrition Service; or
 - d. Other.
10. What happened to you? State the date when the alleged discrimination occurred and then describe what happened. If the alleged discrimination occurred more than once, provide the other dates, and describe what happened. Include any supporting documents that would help show what happened. Include the address where the discrimination or incident occurred: City, State, Zip Code.

11. It is a violation of the law to discriminate against you based on the following: race, color, national origin, age, disability, sex, religion, political beliefs, or in retaliation for prior civil rights activity. (Not all bases apply to all programs) You believe you were discriminated against based on which basis(es)?
12. Remedies: How would you like to see this complaint resolved?
13. Have you filed a complaint about the incident(s) with another Federal, state, or local agency or with a court? (Yes or No)
 - a. If yes, with what agency or court did you file?
 - b. When did you file (month/day/year)?
14. If you are filing this complaint more than 180 calendar days after the alleged discrimination occurred, please provide your “good cause” explanation for filing after that deadline.
15. Your signature or signature of your authorized representative.
16. Date you signed your complaint.

Mail Completed Form To:

USDA
Office of the Assistant Secretary for Civil Rights
1400 Independence Ave, SW, Stop 9410
Washington, D.C. 20250-9410

E-mail address: program.intake@usda.gov

Telephone Numbers:

Local area:	(202) 260-1026
Toll-free:	(866) 632-9992
Local or Federal relay:	(800) 877-8339
Spanish relay:	(800) 845-6136
Fax:	(202) 690-7442

Exhibit 2

Food & Nutrition Service	FNS INSTRUCTION	NUMBER 113-1
	U.S. DEPARTMENT OF AGRICULTURE 3101 PARK CENTER DRIVE ALEXANDRIA, VA 22302-1500	

INFORMATION FOR: All FNS Employees and State Agencies

Civil Rights Compliance and Enforcement – Nutrition Programs and Activities

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DISTRIBUTION: EAD, EF4, EN	MANUAL MAINTENANCE INSTRUCTIONS: This Instruction Replaces FNS Instructions 113-1, Rev 1, 113-2, 113-3, 113-4, 113-6, 113-7 and 113-8. Remove all FNS Instructions listed here and replace with this Instruction.	RESPONSIBLE FOR PREPARATION AND MAINTENANCE: CRD	Page i 11/8/05
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- B Child Nutrition Programs (CNP)
- C Food Distribution Programs (FDP)
- D Special Supplemental Nutrition Program for Women, Infants and Children (WIC) and WIC Farmers' Market Nutrition Program (FMNP)
- E Sample Complaint Processing Form Letters
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 - 4 Sample Referral Letter
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- F Complaint Processing and Procedures Flowchart

Food & Nutrition Service	FNS INSTRUCTION	NUMBER 113-1
	U.S. DEPARTMENT OF AGRICULTURE 3101 PARK CENTER DRIVE ALEXANDRIA, VA 22302-1500	

INFORMATION FOR: All FNS Employees and State Agencies

Civil Rights Compliance and Enforcement – Nutrition Programs and Activities

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.

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."

DISTRIBUTION: EAD, EF4, EN	MANUAL MAINTENANCE INSTRUCTIONS: This Instruction Replaces FNS Instructions 113-1, Rev 1, 113-2, 113-3, 113-4, 113-6, 113-7 and 113-8. Remove all FNS Instructions listed here and replace with this Instruction.	RESPONSIBLE FOR PREPARATION AND MAINTENANCE: CRD	Page 1 11/8/05
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FORM FNS-620 (1-99) Previous editions obsolete
Electronic Form Version Designed in JetForm 5.1 Version

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 followup, 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.

A The FNS Administrator delegates the following responsibilities to the FNS CR Director:

- 1 Provide direction and leadership in the formulation and review of FNS CR policies. Provide oversight for State and local agency CR programs.
- 2 Review Agencywide CR program under the CR laws, regulations, rules, and implementing guidelines.
- 3 Provide CR technical assistance and direction to Food Stamp, Special Nutrition, and all other Programs, staffs, and administrative areas.
- 4 Direct and coordinate the Agency's CR compliance program and activities.
- 5 Act as liaison with the USDA OCR, underserved communities, and grassroots organizations or groups.

6 Evaluate program regulations, applicable FNS Instructions, policies, and guidelines to assure that all CR requirements are included.

B Regional Administrators provide direction, leadership, and resources to insure proper implementation of the Regional CR compliance program.

C FNS Regional OCR Directors, in collaboration with appropriate regional program and administrative staff, must:

1 Ensure that CR coverage is included as required in program reviews and grant applications.

2 Ensure that CR compliance assurances are obtained from all State agencies, local agencies, or other subrecipients.

3 Ensure that preapproval/preaward reviews (either onsite or desk reviews) are conducted for program administration applications to determine CR compliance status before approval.

4 Ensure that applicants', participants', and potentially eligible persons' racial and ethnic data are obtained from State agencies as required by CR laws, regulations, policies, instructions, and guidelines.

5 Conduct and/or coordinate ongoing CR training for the FNS Regional Office and State agency personnel.

6 Seek voluntary compliance in noncompliance cases or potential noncompliance cases as provided in the CR regulations, policies, instructions, and guidelines.

7 Coordinate with FNS Headquarters CRD in overall FNS planning and targeting special onsite CR reviews.

8 Process, manage, and facilitate resolution of CR complaints in accordance with guidance from FNS Headquarters CRD and USDA MOU.

9 Provide CR technical assistance and direction to FNS and State program staff and to all other FNS administrative staff.

10 Provide operational direction to Regional Administrators in implementing the CR policies of FNS programs.

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.

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.

4 FSP and FDPIR State or local agencies, and their subrecipients, must post the following nondiscrimination statement (or current applicable revision). This statement must be posted in all FSP and FDPIR State agency, local agency, or other subrecipient offices and be included, in full, on all materials regarding such recipients' programs that are produced by the recipients for public information, public education, or public distribution. The authorized statements below cannot be modified. If a State authorizes additional language, it must be included in a separate statement.

a 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, religion, political beliefs, or disability.

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

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.”

b For State agencies using a joint application for food stamp benefits and other public assistance programs administered by the Department of Health and Human Services, FNS allows State agencies the option of waiving the use of the previously mentioned required statement and using the statement specified below. Use of the joint nondiscrimination statement is preapproved. State agencies do not have to submit a written request to FNS to use the joint statement. The second statement that may be used on joint application forms reads as follows:

c “In accordance with Federal law and U.S. Department of Agriculture (USDA) and U.S. Department of Health and Human Services (HHS) policy, this institution is prohibited from discriminating on the basis of race, color, national origin, sex, age, or disability. Under the Food Stamp Act and USDA policy, discrimination is prohibited also on the basis of religion or political beliefs.

“To file a complaint of discrimination, contact USDA or HHS. Write USDA, Director, Office of Civil Rights, 1400 Independence Avenue, S.W., Washington, D.C. 20250-9410 or call (800) 795-3272 (voice) or (202) 720-6382 (TTY). Write HHS, Director, Office for Civil Rights, Room 506-F, 200 Independence Avenue, S.W., Washington, D.C. 20201 or call (202) 619-0403 (voice) or (202) 619-3257 (TTY). USDA and HHS are equal opportunity providers and employers.”

If the material is too small to permit the full statement to be included, the material will, at minimum, include the statement, in print no smaller than text, that “The USDA is an equal opportunity provider and employer.”

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

- (1) Whether the State is meeting its requirement to review lower-level agencies (e.g., local agencies),
- (2) Whether the State's data collection system results in valid counts of program applicants and participants,
- (3) Whether the State's data collection system ensures that access to program records is restricted to authorized personnel only,
- (4) Whether uniform program requirements are applied to all local agencies or other subrecipients (e.g., are all clinics required to operate under the same requirements?),
- (5) Whether there is a public notification system in place that meets the minimum requirements set forth in this Instruction and other applicable regulations, policies, and guidance,
- (6) Whether the complaint procedure meets the minimum requirements set forth in this Instruction and other applicable regulations, policies, and guidance,
- (7) Whether training is provided to all new and current employees to assure that these persons are competent in CR enforcement or the operation of the program in a nondiscriminatory manner,
- (8) Whether the State is using the USDA nondiscrimination statement (see appropriate program appendices),
- (9) Whether the State provides CR training to its local agencies or other subrecipients,
- (10) Whether the State is conducting analyses to determine that denied applications are not disproportionately composed of any segment of the population, and
- (11) Whether vendors are serving all persons in compliance with CR requirements, and whether program participants are treated the same as other customers.

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.

I FNS Regional Office Reviews. FNS Headquarters CRD must conduct Regional Office reviews in coordination with Program Deputy Administrators, Regional Administrators, and Regional OCRs. The reviews will include in-depth examinations of Regional Office practices related to State agency implementation of its CR administrative responsibilities, procedures for monitoring and conducting CR reviews, and procedures for handling CR complaints in FNS programs. The review may also include an assessment of the implementation practices of a State agency.

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

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 governmentwide 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.

D FNS, and those State agencies delegated the authority to process complaints of discrimination under their respective statutes or policies, will be responsible for the entire complaint process, including providing the complainant with appeal rights at the time of closure. Program complaints that do not allege discrimination shall be processed as such under program

guidelines and recorded under a separate and distinct logging system for easy identification. Upon receipt of an incoming complaint, the OCR, Regional Offices, and State agencies will proceed accordingly:

1 When the OCR receives a complaint, it is immediately logged into a computerized tracking system. The case is forwarded to a Civil Rights Specialist who analyzes it to determine jurisdiction and appropriate course of action. The Civil Rights Specialist acknowledges receipt of the complaint within 5 days and includes within the acknowledgement letter action(s) planned or a request for additional information, if needed.

2 Based on the analysis performed by the Civil Rights Specialist, one of three situations will occur:

a Referral: these are cases received that required no action to be performed by the Civil Rights Specialist. In this instance, the case is referred to the appropriate office and /or agency. Cases in this category will be considered closed at this point.

b Age Discrimination: these are cases received that contain an allegation of age discrimination. These cases will be forwarded to the Federal Mediation and Conciliation Service (FMCS) in Washington, D.C. for mediation. The agency will ensure that, as required by regulations, complaints are referred to FMCS within 10 days of receipt by FNS. FMCS will have 60 days to mediate the complaint. If mediation is successful and the complaint is resolved, FMCS will forward its findings to FNS. This will initiate a letter to the complainant by FNS confirming that the mediation was successful. If mediation is unsuccessful, or if FNS does not send the complaint to FMCS within the 10-day time frame, FNS will process the complaint in accordance with the established complaint processing procedures for other complaints.

c Investigation: these are cases that contain alleged violations in FNS programs, a prohibited basis of discrimination, and an adverse action as determined by the complainant. An investigation must be conducted on these cases. *At minimum, the investigation must consist of:*

(1) contact with the complainant or authorized representative, if any, and a review of his/her case file,

(2) a review of a representative sample of case files of similarly situated program participants/applicants proceeding with:

(a) the total program participant/applicant population (to be determined within an established timeframe), extracting from that population:

(b) the total number of program participants/applicants that are similarly situated as the complainant, concluding with not less than ten (10) percent of the random number of program participants/applicants that are similarly situated as the complainant,

Note: In cases where ten (10) percent of the total number of program participants/applicants that are similarly situated as the complainant is twenty (20) or less, you must review at least five (5) of those case files.

(3) contact with the State agency for a response to the allegations set forth in the complaint.

3 When an investigation is determined necessary, the Specialist uses one of two methods for obtaining information on a complainant: a) contact the complainant for additional information on the complaint and desk review of the case files; or b) conduct an investigation.

a When a desk review of information from the complainant's case file and similarly situated case files is determined to be the appropriate action, the regional office will provide a written request, within 5 days of receipt of notice from OCR, to the State agency for the information desired. If the complainant's letter was initially received in Headquarters, the request for a desk review will be forwarded to the regional office for action. Information from the State agency may be requested by telephone; however, all telephone requests should be documented and followed up in writing. The letter to the State agency shall be sent certified mail -- return receipt requested or by a method where delivery can be tracked by the receiver's signature.

b The nature of the complainant's letter may warrant an onsite investigation. The onsite investigation must consist of an interview with the complainant (face-to-face or by telephone); the investigation may be discontinued at this step if the complainant indicates that discrimination did not occur; that he/she understands how the case was handled; does not wish to pursue the complaint; or withdraws the complaint. If the complainant does not wish to pursue or withdraws the complaint, the person conducting the investigation should obtain a signed statement from the complainant. The signed statement should be included with the investigative report. If further investigation is necessary based on available information, the following steps will be taken in addition to the interview with the complainant:

- (1) review of the complainant's case file,
- (2) review of other similarly situated case files,
- (3) interviews with local Agency officials,
- (4) interviews with relevant witnesses and other applicants/participants, and
- (5) interviews with representatives of grassroots/advocacy organizations, if warranted.

4 The FNS/State agency shall conduct an investigation to substantiate or refute the allegations in the complaint. An investigation shall be conducted on all complaints that establish a prima facie case of discrimination. The elements of a prima facie case may vary depending on the facts of the complaint, but such elements often include the following:

- a the complainant is a member of a protected class,
- b the complainant is qualified and eligible for a benefit or a program that receives Federal financial assistance from USDA,
- c the complainant's access to or participation in a USDA federally funded program was harmed by the recipient's action or failure to act, and
- d there is some evidence of recipient's actions or failure to act from which, if otherwise unexplained, an inference of discrimination can be drawn.

The State agency shall prepare a written report of the investigation that includes the findings of the investigation with relation to the specific allegations of the complaint and a summary of all interviews with the complainant, participants, and community organizations and case file examinations. If an investigation is not conducted, the State agency shall provide an explanation in its report to the FNS regional office.

To ensure that sufficient information is presented to make a sound decision and fully address issues or concerns of the complainant, a standardized inquiry report format may be used. All requests for extensions of time to conduct preliminary inquiries will be handled on a case-by-case basis. Processing time will be counted during the extension period.

5 All complaints, regardless of the originating office, shall be processed and closed within 90 days of receipt. A decision letter shall be sent to the complainant that contains: The name of the complainant, a review number, the date the complaint was received, a statement of the jurisdictional authority, a statement of each allegation and applicable regulation, if an investigation is warranted, the methodology on how the complaint was investigated, and the conclusions. All decision letters to complainants will include their appeal rights to the Secretary of Agriculture.

6 The FNSRO shall maintain responsibility for the review and disposition of each complaint handled at the State agency level. The State agency will 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. All complaint reports will be reviewed for thoroughness, particularly to determine if all of the complainant's allegations and concerns were addressed and if appropriate inquiry/contacts were made. The FNS regional office shall refer all complaints processed by the State agency to FNS Headquarters quarterly for final disposition.

FNS Headquarters will maintain management responsibility for the review and disposition of each complaint handled at the Headquarters or FNSRO levels. All reports will be reviewed for compliance to determine if the complainant's concerns were adequately addressed and if appropriate contacts were made.

In addition to reviewing records, all complaint activity, including training, will be monitored and evaluated during routine annual CR reviews. Staff having the responsibility for processing complaints must be trained on the appropriate procedures prior to conducting complaint inquiries/investigations. Regional Civil Rights Directors will continue to provide training to

Regional, Field Office, and State agency personnel on an ongoing basis. The FNSRO will, during Management Evaluation Reviews, review State agency complaint procedures to determine if their procedures meet regulatory requirements and to assure that State agencies implement connective action on any noncompliance situation disclosed during an investigation.

A handwritten signature in black ink, appearing to be 'Roberto Salazar', written over a horizontal line.

Roberto Salazar
Administrator

FOOD STAMP PROGRAM (FSP)

- A Legislative Authority - The Food Stamp Act of 1977, 7 U.S.C. § 2011-2036.
- B Regulatory - 7 CFR Parts 271 -- 285.
- C Overview

The FSP is authorized under the Food Stamp Act of 1977, as amended (the Act). The FSP is an entitlement program available to all low-income individuals and families that meet the income, resource, and eligibility requirements as specified under the Act and corresponding regulations. In addition to CR legislation and USDA policy, FSP regulations at 7 CFR Part 272.6 specify that State agencies shall not discriminate against any applicant or participant in any aspect of program administration, including, but not limited to, the certification of households, the issuance of program benefits, the conduct of fair hearings, or the conduct of any other program service for reasons of age, sex, race, national origin, color, handicap, religious creed, or political beliefs.

D Definitions

1 *Citizenship and immigrant status* -- In general, to be eligible to participate in the FSP, a person must be a U.S. citizen, a U.S. noncitizen national, a member of an Indian tribe as defined in section 4(e) of the Indian Self Determination and Education Assistance Act (25 U.S.C. § 450b(e)), an American Indian who was born in Canada, or an eligible immigrant as specified under the Act and corresponding regulations. See 7 CFR Part 273.4.

2 *Disabled* -- a household member who suffers from a disability considered permanent under the Social Security Act or who suffers from a non-disease-related severe and permanent disability. See full definition at 7 CFR Part 271.2.

3 *Elderly* -- For FSP purposes, an elderly person is 60 years of age or older.

4 *Plan of Operation* -- Each State agency must submit for approval a plan of operation specifying the manner in which the program will be conducted within the State in every political subdivision. The State Plan of Operation includes a preprinted Federal or State Agreement that has been signed by each State. The agreement includes a CR statement. See 7 CFR Part 272.2.

5 *Project area* - the county or similar political subdivision designated by a State as the administrative unit for program operations.

6 *Small project* - areas with monthly active caseloads of 2,000 households or fewer.

7 *Medium project* - areas with monthly active caseloads of 2,001 to 15,000 households.

8 *Large project* - areas with monthly active caseloads of 15,000 households or more.

9 *Single-language minority* – households that speak the same non-English language and that do not contain adult(s) fluent in English as a second language.

10 *State agency* -- The State agency is the agency of State government, including local offices, that are responsible for the administration of the federally aided public assistance programs, including the FSP. The State agency may either be State administered or County administered. County administered agencies include the local agencies that administer public assistance programs for the State agency. Under the Act, an Indian Tribal Organization (ITO) may request approval from the Secretary of Agriculture to operate the FSP as a separate State agency providing the ITO can prove the State agency is not operating the program to meet the needs on the reservation. The FSP must notify FNS Civil Rights Offices in the event approval is given. (See 7 CFR Part 271.2).

E Civil Rights Assurance

In accordance with 7 CFR Part 272.2(b), the State/Federal agreement, which is a component in the State agency's Plan of Operation, must contain a statement in which the State agency agrees to comply with all applicable civil rights laws and regulations. FNS Regional and State OCR offices are responsible for ensuring that the appropriate CR statement in the State/Federal agreement is updated as necessary.

F Public Notification -- 7 CFR Part 272.6(f)

In general, State agencies must: (1) publicize procedures for filing a complaint, (2) insure that all offices involved in administering the program display the nondiscrimination poster provided by FNS, and (3) insure that participants and other low-income households have access to information regarding nondiscrimination statutes and policies, complaint procedures, and the rights of participants, within 10 days of the date of a request.

G Nondiscrimination Statement

Under 7 CFR Part 273.2 (b)(viii) of the FSP regulations, each State agency's food stamp application form must contain the nondiscrimination statement as specified below in Item 1. For State agencies using a joint application for food stamp benefits and other public assistance programs administered by the Department of Health and Human Services, FNS is allowing State agencies the option of waiving 7 CFR Part 273.2(b)(viii) and using the statement specified under Item 2 below. Use of the joint nondiscrimination statement is preapproved. State agencies do not have to submit a written request to FNS to use the joint statement. If the material is too small to permit the full statement to be included, the material will, at minimum, include the statement, in print no smaller than text, that "The USDA is an equal opportunity provider and employer."

1 The first 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, religion, political beliefs, or disability.”

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

2 The second statement that may be used on joint application forms reads as follows:

“In accordance with Federal law and U.S. Department of Agriculture (USDA) and U.S. Department of Health and Human Services (HHS) policy, this institution is prohibited from discriminating on the basis of race, color, national origin, sex, age, or disability. Under the Food Stamp Act and USDA policy, discrimination is prohibited also on the basis of religion or political beliefs.

“To file a complaint of discrimination, contact USDA or HHS. Write USDA, Director, Office of Civil Rights, 1400 Independence Avenue, S.W., Washington, D.C. 20250-9410 or call (800) 795-3272(voice) or (202) 720-6382 (TTY). Write HHS, Director, Office for Civil Rights, Room 506-F, 200 Independence Avenue, S.W., Washington, D.C. 20201 or call (202) 619-0403 (voice) or (202) 619-3257 (TTY). USDA and HHS are equal opportunity providers and employers.”

H Bilingual Requirements -- 7 CFR Part 272.4(b)

1 Current FSP rules at 7 CFR Part 272.4(b) require State agencies to use appropriate bilingual personnel and printed materials in areas in the State in which a substantial number of members of low-income households speak a language other than English, otherwise referred to as persons with Limited English Proficiency (LEP). To determine if a substantial number of LEP households reside in an area, the current rules specify the methodology for estimating the number of LEP households and thresholds that trigger mandatory bilingual services.

2 In general, each certification office that provides service to an area containing approximately 100 single-language minority low-income households must routinely provide both bilingual certification materials and bilingual staff or interpreters. Certification materials include the food stamp application form, change report forms (i.e., monthly, quarterly, or change reports) and notices to the household. Bilingual services also are required in project areas with a total of less than 100 low-income households if a majority of those households are of a single-language minority.

3 Bilingual services as described in this section must be provided for all FSP activities including, but not limited to, work requirements, Electronic Benefit Transfer, outreach, and nutrition education.

4 To determine the need to provide for bilingual services, State agencies are required to develop estimates of the number of low-income single-language minority households, both participating and not participating in the program, for each project area and certification office, and use those estimates to determine if thresholds are met. If so, bilingual services must routinely be provided in those project areas and offices.

I Data Collection

As specified at 7 CFR Part 272.6(g), State agencies must obtain racial and ethnic data on participating food stamp households and report the information to FNS on the *FNS 101, Participation in Food Programs*. State agencies may request applicant households to identify voluntarily their race and ethnicity on the application form. The application form must clearly indicate that the information is voluntary, that it will not affect the applicant's eligibility or benefit level, and that the information is to assure that program benefits are distributed without regard to race, color, or national origin. The data must be maintained on file for 3 years.

State agencies are responsible for using current racial or ethnic data to determine if the program is reaching potentially eligible, low-income households. Unexplained discrepancies in participation data that indicate a project area is not in compliance with CR requirements must be reviewed or investigated further. Trend analyses must also be conducted to determine if significant changes in racial and ethnic data warrant further review or investigation.

J FSP Complaint Process -- 7 CFR Part 272.6(c)

1 Complaints from an applicant or recipient alleging discrimination in any aspect of program administration will be accepted by the Secretary of Agriculture provided sufficient information (See 2 (a-f) below) is submitted. A complaint must be filed no later than 180 days from the date of the alleged discrimination. This filing date may be extended by the Secretary.

2 At a minimum, complaints must contain the following information (for additional information, see Sections XIV through XVI):

a The name, address, and telephone number or other means of contacting the person alleging discrimination,

b the location and name of the organization or office that is accused of discriminatory practices,

c the nature of the incident or action or the aspect of program administration that led the person to allege discrimination,

d the basis for the alleged discrimination (age, race, color, sex, disability, religious creed, national origin, or political belief),

e the names, titles (if appropriate), and addresses of persons who may have knowledge of the alleged discriminatory acts, and,

f the date or dates on which the alleged discriminatory actions occurred.

K Compliance Reviews

Ongoing CR compliance reviews must be conducted by Regional OCR Offices as part of the overall FSP Management Evaluation (ME) process. Regional OCR Offices and Regional FSP staff must consult each other when developing review schedules and advise each other of pertinent findings that may have an impact on the responsibility of the each Office to maintain OCR and FSP oversight. CR compliance reviews may be conducted along with other program areas at the State or local level, or the reviews may be conducted separately. In accordance with 7 CFR Part 275, each State agency must conduct a CR review annually for large project areas; every 2 years for medium project areas; and every 3 years for small project areas.

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) 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 during hours of program operation to review such records, books, and accounts as needed to ascertain compliance with the nondiscrimination laws. If there are any violations of this assurance, FNS shall have the right to seek judicial enforcement of this assurance. This assurance is binding on the program applicant and its successors, transferees, and assignees, as long as they receive assistance or retain possession of any assistance from USDA.

(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:

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

(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) Regional Offices are required to review all State agencies within their region and a sampling of local institutions and facilities under those State agencies as a part of the management evaluation process. In States where Regional Offices directly administer the Program, Regional Offices are required to conduct CR compliance reviews of participating institutions and facilities as a part of the program review process.

(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) FNSROs are required to review State agencies within their region and a sampling of local sponsors and sites under those State agencies as a part of the management evaluation process.

(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.

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 FDPIR

- (a) Regulations -- 7 CFR Parts 250, 253, and 254
- (b) Legislation -- Section 4(b) of the Food Stamp Act of 1977 (Public Law 95-113), as amended; Section 4(a) of the Agriculture and Consumer Protection Act of 1973 (Public Law 93-86), as amended.

2 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 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:

(a) Regulations -- 7 CFR Part 250

(b) Legislation -- Compact of Free Association Act of 1985 (Public Law 99-239), as amended; “a bill to authorize appropriatory for certain insular areas of the United States, and for other purposes” (Public Law 96-597), as amended.

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. Eligible households that reside in approved service areas outside reservation boundaries, or in Oklahoma, must contain at least one member who is recognized as a tribal member by an Indian tribe, as defined at 7 CFR Part 253.2(d).

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 submit 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) The FNS Regional OCR shall, as a part of the management evaluation, review the CR compliance of each State agency. Review of CR compliance shall also be included as part of each local agency or other subrecipient review (excluding correctional institutions) conducted as part of the management review.

(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 The FNSRO is responsible for obtaining from each State agency a written Statement of Assurance, using Federal-State Agreement, Form FNS-74. The following statement must be incorporated. "By accepting this assurance, the program applicant agrees to compile data, maintain records, and submit reports, as required, to permit effective enforcement of the nondiscrimination laws and permit authorized USDA personnel during normal working hours to review such records, books, and accounts as needed to ascertain compliance with the nondiscrimination laws. If there are any violations of this assurance, FNS shall have the right to seek judicial enforcement of this assurance. This assurance is binding on the program applicant and its successors, transferees, and assignees, as long as they receive assistance or retain possession of any assistance from USDA. The person or persons whose signatures appear below are authorized to sign this assurance on behalf of the program applicant."

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."

SPECIAL SUPPLEMENTAL NUTRITION PROGRAM FOR WOMEN, INFANTS AND CHILDREN (WIC) AND WIC FARMERS' MARKET NUTRITION PROGRAM (FMNP)

A AUTHORITY

- 1 Legislative --WIC and FMNP: Section 17 of the Child Nutrition Act of 1966, as amended.
- 2 Regulatory
 - (a) WIC: 7 CFR Part 246
 - (b) FMNP: 7 CFR Part 248

B DEFINITIONS

1 WIC

(a) State Agency -- Health department or comparable agency of each State; an Indian tribe, band or group recognized by the Department of the Interior; an intertribal council or group that is an authorized representative of Indian tribes, bands, or groups recognized by the Department of the Interior and that has an ongoing relationship with such tribes, bands, or groups for other purposes and has contracted with them to administer the program; or the appropriate area office of the Indian Health Service (IHS).

(b) Local Agency -- A public or private nonprofit health or human service agency that provides health services, either directly or through contract, in accordance with Section 246.5; an IHS service unit; an Indian tribe, band, or group recognized by the Department of the Interior that operates a health clinic or is provided health services by an IHS service unit; or an intertribal council or group that is an authorized representative of Indian tribes, bands, or groups recognized by the Department of the Interior, that operates a health clinic or is provided health services by an IHS service unit.

2 FMNP

(a) State Agency -- Agriculture department, the health department, or any other agency approved by the chief executive officer of the State; an Indian tribe, band, or group recognized by the Department of the Interior; an intertribal council or group that is an authorized representative of Indian tribes, bands, or groups recognized by the Department of the Interior and that has an ongoing relationship with such tribes, bands, or groups for other purposes and has contracted with them to administer the Program; or the appropriate area office of the IHS.

(b) Local Agency -- Any nonprofit entity or local government agency that issues FMNP coupons, and provides nutrition education and/or information on operational aspects of the FMNP to FMNP recipients.

3 WIC/FMNP Participants - Pregnant, postpartum, and breastfeeding women, infants, and children to age 5.

4 WIC/FMNP Exceptions to Nondiscrimination Policy - Section 17 of the Child Nutrition Act of 1966, as amended, defines the purpose of the WIC Program to provide benefits specifically to pregnant, breastfeeding, and postpartum women, and infants and children to 5 years of age. Therefore, any reference to age and sex in this Instruction as it relates to the WIC and FMNP is subject to these qualifications.

C WIC DATA COLLECTION, REPORTING, AND RETENTION (SECTION XI) - The FNSRO is responsible for obtaining from each State agency a written assurance of compliance, using form FNS-339, Federal-State Special Supplemental Nutrition Program Agreement, as appropriate.

D WIC DATA COLLECTION, REPORTING, AND RETENTION (SECTION XI) - Racial or ethnic participation data must be reported through the WIC Participant and Program Characteristics Minimum Data Set (MDS) and must include the number of actual participants in each participant category (women, infants, and children) by racial or ethnic category. Analyses of these data shall be used by FNS to determine how effectively the program is reaching potentially eligible persons, and to identify areas where additional outreach is needed. Similarly, State agencies and local agencies are encouraged to use such racial or ethnic data for their internal CR monitoring.

E COLLECTING, REPORTING, AND RETAINING ACTUAL PARTICIPATION DATA
The State agency must ensure the actual participation data by category of women, infants, and children and by racial and ethnic category for each local agency is collected biennially for the month of April using the WIC Participant and Program Characteristics MDS. This information must be submitted to FNS. The State agency must also 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. The State agency must ensure that access to data collected is limited to authorized personnel. Participants must be asked to self-identify their racial or ethnic group, but 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 participate in the program. If a participant refuses to self-identify his/her racial or ethnic group, visual identification by a program staff member must be used to determine the participant's racial and ethnic category. Selection of one race and one ethnic group is acceptable when local agency staff performs visual identification.

F FMNP DATA COLLECTION, REPORTING, AND RETENTION - Because racial and ethnic participation data are collected at the time women, infants, and children are certified to participate in the WIC Program, USDA has determined that the WIC data collection effort is sufficient to fulfill the racial and ethnic data collection requirement for the FMNP.

G COMPLIANCE REVIEWS (FREQUENCY) (SECTION XII)

1 WIC:

(a) FNSROs establish and monitor plans in partnership with their WIC State agencies as to the frequency of FNSRO reviews of the State agencies.

(b) State agencies are required to conduct reviews of local agencies at least once every 2 years. These reviews are to include on-site reviews of a minimum of 20 percent of the clinics in each local agency, or one clinic, whichever is greater. The State agency may conduct additional reviews if necessary.

(c) State agencies are required to conduct routine monitoring visits on a minimum of 5 percent of the number of vendors authorized by the State agency as of October 1 of each fiscal year.

2 FMNP:

(a) FNSROs establish and monitor plans in partnership with their FMNP State agencies as to the frequency of FNSRO reviews of the State agencies.

(b) State agencies are required to conduct monitoring reviews of local agencies at least once every 2 years.

(c) State agencies are required to conduct reviews of 10 percent of farmers, 10 percent of farmers' markets, and 10 percent of roadside stands annually.

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? 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.)

[illegible]

Name: _____

Address: _____

12 Do you have any other information that you think is relevant to our investigation of your
allegations?

13 What remedy are you seeking for the alleged discrimination?

14 Have you (or the person discriminated against) filed the same or any other complaints with other offices of the U.S. Government (including U.S. Department of Agriculture)?

Yes _____ No _____

If so, do you remember the Complaint number?

Which agency and department or program was it filed with?

Address: (Include City, State, and Zip Code)

Telephone Number () _____

Date of Filing: _____

Government Agency: _____

Briefly describe the nature of the complaint:

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

Initial on line above
if you give consent.

CONSENT GRANTED – 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.

Initial on the line above
if you give consent.

CONSENT DENIED – 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

SAMPLE ACCEPTANCE LETTER

Mr. Joe Public
123 American Street
Any City, Any State 45678

Dear Mr. Public:

Your complaint regarding the **(federally funded program)** has been referred to this office for reply. It is the policy of the **(Recipient State agency)**, in accordance with applicable civil rights laws, to protect against discrimination in the operation of this program.

This office has the responsibility and authority to process complaints of discrimination. Based upon the information provided in your letter, we have accepted your complaint for processing on the basis of alleged discrimination based on **(protected base(s))**. We will conduct an inquiry and notify you in writing regarding the results.

Thank you for bringing this matter to our attention.

Sincerely,

Signature of Director
Title
Division

SAMPLE REFERRAL LETTER

Mr. Joe Public
123 American Street
Any City, Any State 45678

Dear Mr. Public:

Your complaint regarding the **(federally funded program)** has been referred to this office for reply. It is the policy of the **(Recipient agency)**, in accordance with applicable civil rights laws, to protect against discrimination in the operation of this program.

This office has the responsibility and authority to process complaints of discrimination based on race, color, national origin, age, sex, disability, religion, and political beliefs. Since your complaint is not based on one of these protected classes, we have referred it to our **(appropriate office)** for response. Someone from that office will contact you.

Thank you for bringing this matter to our attention.

Sincerely,

Signature of Director
Title
Division

SAMPLE 20-DAY LETTER

Mr. Joe Public
123 American Street
Any City, Any State 45678

Dear Mr. Public:

Your complaint addressed to the **[appropriate Recipient agency]**, has been referred to this office for reply. You indicated that you experienced discrimination in the operation of the **[federally funded program]**. Unfortunately, you did not provide enough information in your letter for us to take action, so I am requesting that you provide some additional information.

The Food and Nutrition Service (FNS), an agency of the U.S. Department of Agriculture (USDA), administers the **[federally funded program]**. It is the policy of USDA and FNS to protect against discrimination in the administration of its programs. There are laws that guarantee protection against discrimination on the basis of race, color, national origin, age, sex, disability, religion, and political beliefs. Your letter, however, did not include the basis for your allegation of discrimination and other important information. Therefore, before we can process your complaint, we need the following information within 20 days.

- 1 The basis on which your complaint is being filed. In other words, were you allegedly discriminated against based on race, color, national origin, age, sex, disability, religion, or political beliefs?
- 2 The date of alleged discrimination.
- 3 The name of the person or persons responsible for the alleged discrimination.
- 4 The names and address of witnesses, if any, to the alleged discrimination.
- 5 Other specific details that would help us resolve your complaint.

The above information is necessary to make sure that your complaint is processed in accordance with civil rights laws and regulations. Please note that unless we receive this information within **20 days from the date of this letter**, we cannot take action on your complaint.

Sincerely,

Signature of Director
Title
Division

FNS 113 Complaint Processing Procedures & Timelines

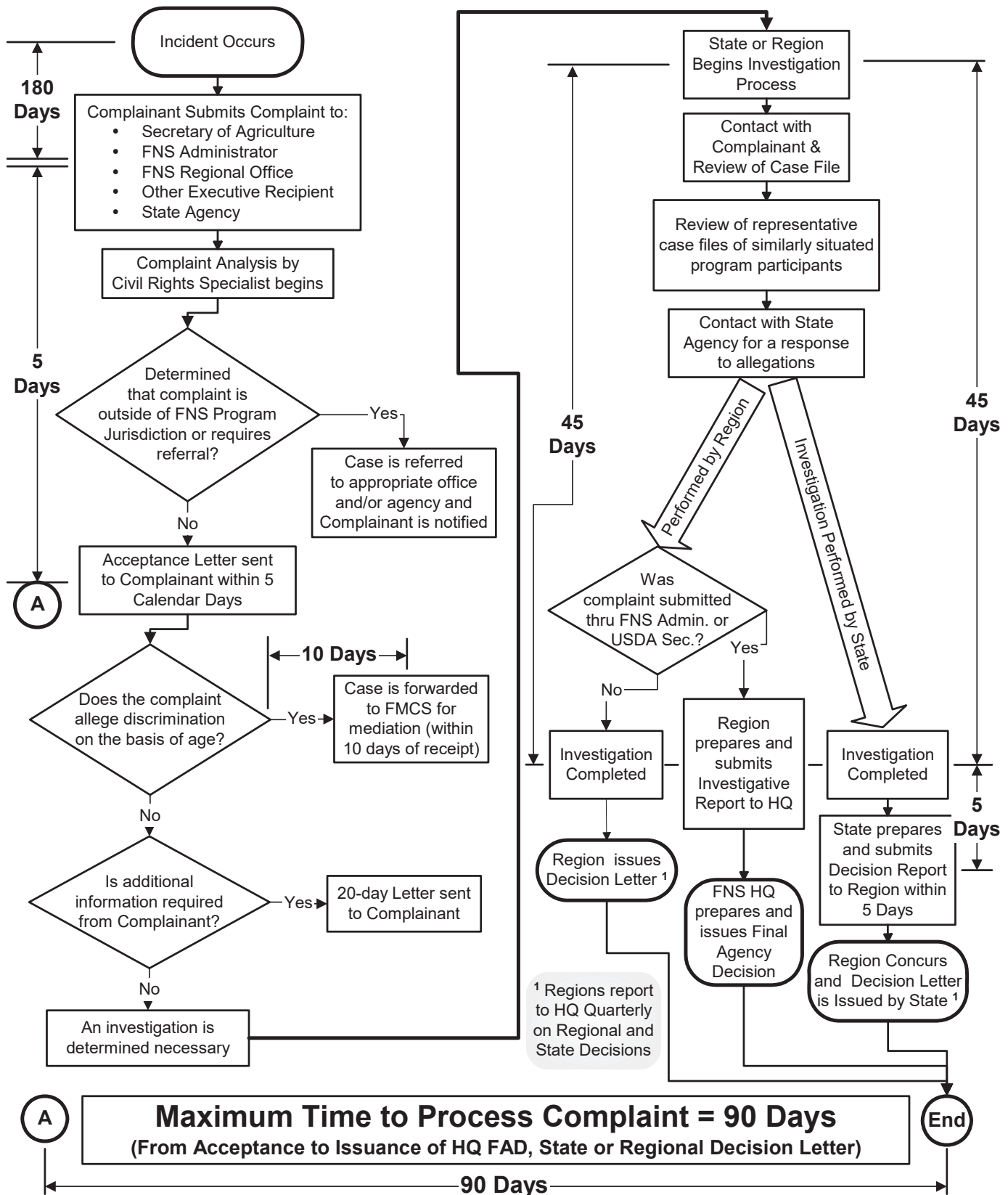


Exhibit 3

MEMORANDUM OF UNDERSTANDING
Between
Food, Nutrition and Consumer Services
And
Office of the Assistant Secretary for Civil Rights

I. PURPOSE

The U.S. Department of Agriculture's (USDA) Office of the Assistant Secretary for Civil Rights (OASCR) and Food, Nutrition and Consumer Services (FNCS) enter into this Memorandum of Understanding (MOU) to process and investigate discrimination complaints involving FNCS Programs. The MOU covers the agreed upon procedure for the processing and investigation of Federally assisted complaints of discrimination in FNCS Programs. This agreement sets forth the terms under which OASCR delegates first-line complaint processing to FNCS while retaining oversight and final authority for civil rights complaints at USDA. The Food and Nutrition Service (FNS), Civil Rights Division (CRD) is the agency of FNCS that will administer the processing responsibilities in this MOU.

II. SCOPE

A. This agreement applies to correspondence and complaints that:

- (1) Involve programs administered by recipients of Federal financial assistance from FNS. This agreement incorporates the definition of "recipient" and "Federal financial assistance" found in USDA regulations at 7 C.F.R. §15.2; and
- (2) Allege violations of Title VI of the Civil Rights Act of 1964, Title IX of the Education Amendments of 1972, Section 504 of the Rehabilitation Act of 1973, the Age Discrimination Act of 1975, the Americans with Disabilities Act, the non-discrimination provisions of the Food and Nutrition Act of 2008, Limited English Proficiency (LEP) Final Guidance for Assisted Programs, and applicable civil rights regulations.

B. This agreement does not apply to complaints of employment discrimination, under Title VII of the Civil Rights Act of 1964 or other Federal employment anti-discrimination statutes.

C. This agreement is governed by the definitions set forth in Attachment A.

III. OASCR OVERSIGHT AND FINAL AUTHORITY

A. OASCR retains comprehensive oversight authority and responsibility for all complaints processed by FNCS, including all complaints processed by program recipients.

- B. OASCR will carry out its oversight responsibility by processing complaint appeals, reviewing FNS reports and executed voluntary resolution agreements, conducting audits, compliance reviews, trainings, and evaluations of the FNS complaint process.
- C. OASCR retains the authority to require additional investigation or an independent investigation and adjudication on a case-by-case basis as OASCR deems necessary.

IV. DELEGATION OF AUTHORITY TO FNCS

Subject to the terms of this agreement, OASCR delegates to FNCS authority to conduct first line processing of complaints that fall within the scope set forth in Section II, above. However, OASCR retains the authority to initiate, intervene in, and complete, on a case-by-case basis, the investigation of complaints that allege civil rights violations involving FNS funded and administered programs and activities, as set forth in Section III, above.

V. COORDINATION WITH OTHER FEDERAL AGENCIES

Recipients may receive financial assistance from more than one Federal Agency.

FNCS will be the appropriate USDA Agency for program discrimination complaint(s) processing, including coordinating with any other Federal agencies, when FNS is the only source of USDA Federal financial assistance; and will be the appropriate agency for processing allegations that specifically refer to an FNS program, regardless of other sources of Federal assistance.

FNCS will refer complaints against recipients who receive Federal financial assistance from multiple sources and do not specifically refer to operations involving an FNCS program to the appropriate Federal agency. If there is uncertainty as to which agency should receive a complaint, FNCS will collaborate with OASCR, the U.S. Department of Justice, and any other relevant Federal agencies to determine the appropriate course of action, including the appropriate agency to handle the complaint.

FNCS may make other referrals, as appropriate, when a matter does not involve a recipient who receives Federal financial assistance from USDA or does not specifically refer to FNCS programs.

VI. COMPLAINT PROCESSING RESPONSIBILITIES

A. OASCR agrees to:

- (1) Forward to FNS correspondence received by OASCR which falls within the scope of this MOU within three business days.
- (2) Translate correspondence or complaints received in alternative formats and languages prior to forwarding to FNS CRD.
- (3) Provide FNS with full access to, and technical support for OASCR's electronic

complaint tracking system for tracking program discrimination complaints and correspondence.

- (4) Provide FNS with notice and an opportunity to comment on any substantive changes to the electronic complaint tracking system. OASCR retains its authority to design and establish an electronic complaint tracking system for program discrimination complaints.
- (5) Ensure any electronic complaint tracking system offers mutual access to a report showing the status and disposition of FNCS appeal cases. Review report and reconcile with FNCS by September 30th, each year. In the event that a report from the electronic complaint tracking system is not available, prepare manual report, and reconcile with FNCS by September 30th, each year.
- (6) Timely update and monitor OASCR's electronic complaint tracking system as appropriate to accurately reflect the status of complaints and correspondence.
- (7) Maintain case files for FNS appeals filed with OASCR in accordance with USDA Departmental Regulation (DR) 3080-1 and 44 U.S.C. 21, record retention policies and regulations. Case files may be solely in electronic form.
- (8) Provide FNS CRD with timely technical guidance and information, and facilitate coordination with the Office of General Counsel, as needed, to ensure appropriate and timely resolution of complaints.
- (9) Maintain a collaborative relationship with FNS CRD to support its civil rights complaint processing.
- (10) Notify FNS CRD if OASCR elects to undertake additional investigation or an independent investigation and adjudication. Specifically,
 - a. OASCR will notify FNS CRD in writing when it will undertake the investigation of a complaint. The notice will also advise FNS CRD when the investigation will begin, if any other federal agencies are involved, and identify complaint-related records, documents, files and information to be forwarded to OASCR. FNS CRD will provide all documents requested by OASCR within 60 days of receiving notice and will cooperate with OASCR's investigators as required.
 - b. OASCR requires that FNS CRD, within 60 calendar days of receipt of the notice of a planned complaint investigation, or 30 calendar days from the receipt of any subsequent requests, upload an electronic copy of all records, documents, files and information cited in the notice from OASCR to the electronic complaint tracking system, as necessary, for an adequate and thorough complaint investigation. The timeframes for transmittal of the records, documents, files and information will be modified only upon written mutual agreement between FNS CRD and OASCR.

B. FNS CRD agrees to:

- (1) Review all correspondence received, including those forwarded by OASCR to determine jurisdiction and completeness.
- (2) FNS CRD will translate correspondence or complaints received in alternative formats and languages.
- (3) Send the correspondent an acknowledgment of receipt of the complaint as outlined in FNS Standard Operating Procedures.
- (4) Determine whether the complaint is complete. A complaint is complete if it includes a written statement that contains the complainant's name, the basis of the complaint, and describes an agency's alleged discriminatory action in sufficient detail to inform the Agency of the nature and date of an alleged civil rights violation. The statement must be signed by the complainant(s) or someone authorized to sign on behalf of the complainant(s). To accommodate the needs of people with disabilities, special needs, or those who have LEP, a complaint may be in an alternative format. FNS CRD will translate correspondence or complaints received in alternative formats.
- (5) Determine whether the complaint is timely as set forth in Paragraph 4 of Part 1 of Departmental Manual 4330-1, which states that a complaint is timely if it is filed within 180 days of the alleged violation. The FNS CRD Director may waive the timeliness requirement for good cause on the Director's own initiative provided the reason for the waiver is documented in the complaint file.
- (6) Obtain a signed consent form from the complainant(s) or someone authorized to sign on behalf of the complainant(s) as needed on a case-by-case basis. To accommodate the needs of people with disabilities, special needs, or who have LEP, a consent form may be in an alternative format. FNS CRD will translate forms received in alternative formats.
- (7) Confirm the complaint is within the scope of this agreement as defined in Section II by:
 - a. Determining that the complaint involves programs administered by recipients of Federal financial assistance from FNS as defined in Section II, A.1; and
 - b. Determining whether the basis or bases on which the complainant alleges the Agency discriminated is protected under the civil rights laws as set forth in Section II, A.2.
- (8) Note whether the complaint alleges discrimination based on age, and adhere to processing requirements as described in Section VII below.

- (9) Send the correspondent a letter that requests necessary forms to be submitted to FNS, including a request for any additional information required to make the complaint complete, as outlined in FNS Standard Operating Procedures.
- (10) Accept for processing complaints which are complete, timely, allege discrimination on a protected basis, and fall within the scope of this agreement. Notify complainant of acceptance of complaint by sending a letter of acceptance as outlined in FNS Standard Operating Procedures.
- (11) Dismiss complaints which are untimely, do not allege discrimination on a protected basis, or remain incomplete even after FNS has exhausted reasonable efforts to obtain the required information. Notify complainant of dismissal by sending a dismissal letter as outlined in FNS Standard Operating Procedures.
- (12) Promptly refer to the appropriate FNS headquarters office correspondence which raises allegations of a programmatic nature involving FNS programs. FNS will document programmatic referrals, including any follow-up action taken.
- (13) Promptly refer correspondence which raises allegations of a programmatic nature involving non-FNS programs at the USDA to OASCR.
- (14) Refer all other correspondence alleging discrimination on a protected basis that does not meet the criteria under Section VI, B.9-B.12, above, to the Office of Adjudication, Intake Division.
- (15) Send the complainant a letter of complaint acceptance or non-acceptance as outlined in FNS Standard Operating Procedures. Scan and upload a copy of the letter of acceptance or non-acceptance to electronic complaint tracking system and update the electronic complaint tracking system when a complaint is accepted or not accepted.
- (16) Process accepted discrimination complaints received by FNS, including any forwarded by OASCR, within 180 calendar days of an accepted complaint. Processing will include providing notice of the allegation to the recipient of Federal financial assistance; working with the recipient to resolve claims; conducting an investigation into the complaint supported by written documentation; adjudicating complaints that cannot be resolved, issuing a decision on the merits of complainant's claims; providing written notice of the decision to the complainant and to the recipient of Federal financial assistance; and updating all required records in the OASCR electronic complaint tracking system. The FNS CRD Director may make documented extensions of the timeliness requirement for good cause on the Director's own initiative provided the reason for the extension and the duration is documented in the complaint file.

- (17) Maintain a record of all actions taken to resolve the complaint including dates of phone calls, personnel involved (including any non-CRD FNS staff), conversations, issues of concern, and correspondence with complainant and respondents.
- (18) Maintain a record of any investigation or inquiry into the complaint including memorializing conversations with complainant(s) and responding officials and any other witness testimony gathered in the course of investigating the complaint. Records of conversations will include, at a minimum, the date, the names of people participating in the conversation, and copies of any documents referred to in the course of the conversation.
- (19) When a complaint cannot be otherwise resolved, write a decision on the merits of the complaint that summarizes the actions taken to investigate the complaint, recites relevant facts supported by the record of investigation, applies the appropriate law to reach a decision, and identify any corrective action required.
- (20) Maintain signed copies of all settlements and agreements electronically and upload all settlement agreements to the electronic complaints management system with appropriate closure codes within 30 days of final signature.
- (21) Upload compliance reports for all settlements and agreements, including supporting documentation to OASCR electronic monitoring system, as outlined in FNS Standard Operating Procedures, so that compliance can be verified. Provide OASCR with additional information related to compliance upon request.
- (22) Maintain copies of original case files for complaints filed directly with FNS in accordance with USDA DR 3080-1 and 44 U.S.C. 21 record retention policies and regulations. Original case files may be solely in electronic form.
- (23) If, after the completion of FNS CRD's investigation of the complaint, it finds that a violation has occurred, FNS CRD will attempt to achieve voluntary compliance. If voluntary compliance cannot be achieved within 180 days, FNS CRD will refer the case to OASCR with a recommendation for further enforcement. The FNS CRD Director may make documented extensions of the 180-day requirement for good cause on the Director's own initiative provided the reason for the extension and the duration is documented in the complaint file.
- (24) If after the completion of FNS CRD's investigation of the complaint, it finds no violation has occurred, FNS will notify complainant by letter explaining its decision. The letter must include language providing notice of appeal rights in a format that the complainant can understand as shown in Attachment B.

- (25) OASCR and FNS CRD will coordinate in the tracking of appeals.
- (26) Maintain updates to OASCR electronic record tracking systems that reflect the current status of all cases. Maintain record keeping practices as described in Section XI.
- (27) Maintain oversight of state agencies as described in Sections IX and X.

VII. ENSURING EQUAL ACCESS

OASCR and FNCS are committed to ensuring equal opportunity access to the complaint process. OASCR and FNCS will make reasonable modifications to accommodate the needs of people with disabilities and may also make appropriate modifications to accommodate special needs and circumstances, and LEP individuals. This may include using alternate means of communication and accepting documents in alternate formats.

VIII. ADDITIONAL PROCEDURES FOR AGE COMPLAINTS

FNS CRD will ensure that all complaints that allege discrimination based on age, including complaints received directly by FNS, are forwarded to the mediation agency designated by the Secretary, Health and Human Services, for possible resolution.

IX. PROCEDURES FOR HANDLING ALLEGATIONS AGAINST FNS STAFF

In some cases, complainants may make allegations of prohibited discrimination by FNS staff. This may include allegations that FNS program staff discriminated on a prohibited basis in the administration or delivery of program services (“Program Allegations”), or allegations FNS civil rights staff discriminated on a prohibited basis in the processing of a program civil rights complaints (“Process Allegations”).

- A. FNS will notify OASCR when it receives Program Allegations so that OASCR may determine whether it will take direct jurisdiction over the matter. If FNS does not receive written notice that OASCR wishes to take direct jurisdiction within 10 business days, FNS will process Program Allegations under its ordinary procedures.
- B. Process Allegations will not be treated as program civil rights complaints. The FNS Civil Rights Director will review Process Allegations and take any appropriate action.

X. PROCEDURES FOR COMPLAINTS FILED WITH RECIPIENTS (STATE AGENCIES)

In some cases, state agencies administering certain programs may process discrimination complaints if the SA has procedures in place to handle such complaints. FNS will exercise oversight of state agencies’ complaint processing,

including ensuring that state agencies have appropriate procedures in place, as established in applicable statutes, program regulations, state operating plans and guidance documents.

XI. TRAINING

In order to facilitate the effective and efficient accomplishment of the terms, conditions and requirements of this agreement by FNS, OASCR will provide training to FNS CRD individuals involved in complaints processing.

A. OASCR agrees to:

- (1) Provide civil rights complaint processing training and other civil rights training, as needed.
- (2) Provide training to FNS CRD on electronic complaint tracking systems.
- (3) Collaborate with FNS CRD to provide training to FNS Regional office personnel, as needed.
- (4) Collaborate with FNS CRD to provide training to SA staff involved in complaints processing, as needed.
- (5) Assess the effectiveness of the training provided through periodic evaluations.

B. FNS CRD agrees to:

- (1) Provide training/technical assistance to FNS Regional office personnel and SA staff involved in complaints processing; training topics to include LEP, Age, customer service, Title VI, and FNS regulations, as needed.
- (2) Provide technical training on FNS program rules to OASCR upon request.
- (3) Attend and provide candid feedback regarding relevant trainings organized by OASCR.

XII. RECORD KEEPING AND REPORTING

- ### A.
- FNS CRD will ensure that OASCR's electronic complaint tracking system is updated on an on-going basis with appropriate records and status update information, to ensure accurate tracking of all of its complaint activities. This includes the accurate and timely designation of case status; scanning and uploading of case documentation for all cases, including those received directly by FNS; and completing required screens and fields.

- B. FNS CRD will maintain original case files for all complaints processed by FNS under this MOU in accordance with USDA DR 3080-1 and 44 U.S.C. 21 record retention policies and regulations. Original case files may be solely in electronic form.
- C. FNS CRD will ensure its records and reports are available to OASCR through the electronic program complaint tracking system.

XIII. AUDITS, REVIEWS EVALUATION, AND OVERSIGHT

- A. OASCR and FNS will conduct periodic joint desk and onsite audits, reviews and evaluations of FNS civil rights complaint processing activities. The purpose of the audits, reviews, and evaluations is to ensure that FNS civil rights complaint processing activities are consistent and in accordance with applicable statutory, regulatory and USDA policy requirements.
- B. As an exercise of its oversight authority and responsibility, OASCR will perform scheduled audits, reviews or evaluations of FNS CRD, as needed to evaluate and monitor FNS' compliance with this MOU. These audits will include, but are not limited to, the examination of FNS civil rights complaint processing data and its MOUs with SA.
- C. OASCR will notify FNS in writing of a *planned* audit, review or evaluation not less than 60 days prior to the date the audit, review or evaluation will commence. The notice will advise FNS of the issues, activities, procedures and matters to be audited, reviewed and/or evaluated, the name(s) of the OASCR personnel who will participate in the audit, review and/or evaluation and, if more than one OASCR staff member, the name of the Team Leader. In addition, the notice will identify to FNS the records, files, documents and information to be transmitted to OASCR, and tentatively identify FNS personnel to be interviewed in conjunction with the audit, review and/or evaluation.
- D. This agreement will serve as prior notification for any *randomly* selected audits, compliance reviews or evaluations regarding case processing to be conducted by OASCR. The issues, activities, procedures and matters to be audited, reviewed and/or evaluated will be discussed at the onset of the process. FNS will assign a staff member to work with OASCR personnel conducting the audit, compliance review or evaluation. All necessary files, documents and information will be made available for review.
- E. Except in the case of a randomly selected audit, compliance review or evaluation, in response to the OASCR notice, FNS will transmit or inform them of the electronic location within 60 days of notice, the records, files, documents and information cited in the notice to OASCR. The timeframes for transmittal/identification of electronic location of the records, files,

documents and information will be modified only upon written mutual agreement between FNS CRD and OASCR.

- F. OASCR leaders and FNS CRD staff will meet no less than biannually to maintain a collaborative relationship in coordinating complaint processing responsibilities.

XIV. EFFECTIVE PERIOD OF AGREEMENT

- A. FNS CRD agrees to be in full compliance with the processing requirements of this MOU no later than one year after its effective date.
- B. This agreement shall remain in effect for a period of 5 years, commencing on the first calendar date after it is signed by the Under Secretary, Food, Nutrition and Consumer Services and the Assistant Secretary for Civil Rights.
- C. This agreement can be modified or otherwise revised upon written mutual agreement between OASCR and FNCS.

XV. SIGNATURES

Deputy Under Secretary
Food, Nutrition, and Consumer Services

Deputy Assistant Secretary for Civil Rights
Office of the Assistant Secretary for Civil Rights

Date

Date

MODEL APPEAL RIGHTS

The follow language should be included in all decisions issued by FNS and SA unless a modification is necessary to provide notice in an accessible format that the Complainant can understand.

APPEAL RIGHTS

If you disagree with this decision you may appeal to the Office of the Assistant Secretary for Civil Rights at the U.S. Department of Agriculture. **You must do so within 90 days of receiving this letter.** To appeal this decision, write to:

U.S. Department of Agriculture
Office of the Assistant Secretary for Civil Rights
Stop 9410
1400 Independence Avenue, S.W.
Room 212-A, Whitten Building
Washington, D.C., 20250