

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.