

Civil Rights and WIC

NORTH CAROLINA WIC PROGRAM
FY 2019

Why do civil rights requirements apply?

WIC is a Federally funded program – WIC benefits and administrative costs are funded by the Federal government.

A Civil Rights assurance statement must be incorporated in all agreements for WIC services.

To receive Federal financial assistance, an agency needs to sign assurances promising to comply with Federal civil rights requirements.

Collect	Collect ethnic and racial data about applicants
Apply	Apply the public notification policy
Follow	Follow procedures for accepting complaints
Describe	Describe the monitoring process for compliance with civil rights policies, including compliance reviews and resolution of noncompliance

Participants will be able to:

Uphold	Uphold the responsibility for accommodation of people with disabilities
Apply	Apply the policy to provide language assistance to limited English proficient persons (LEP)
Recognize	Recognize and practice good customer service and conflict resolution
Describe	Describe the protections provided for Faith Based Organizations

Participants will be able to:

Who should be trained?



ALL WHO WORK WITH FNS FUNDED PROGRAMS



FRONT LINE WORKERS



NEW EMPLOYEES AND VOLUNTEERS



SUBRECIPIENTS

Civil Rights Training

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

What are the civil rights requirements for WIC?

- To not discriminate based on race, color, national origin, sex, disability, age
- Reprisal or retaliation for prior civil rights activity is prohibited

What are the civil rights requirements for WIC?

- To conduct annual training for front line workers and supervisors
- To provide public notification which includes displaying the "And Justice for All..." poster and conducting outreach to under represented communities

What are the civil rights requirements for WIC?

- To collect and report data on race and ethnicity
- To accommodate people with disabilities
- To provide qualified, competent language assistance for people with limited English proficiency (LEP)
- To cooperate with Federal and State reviewers and investigators by answering questions honestly and providing requested documents

What are the civil rights requirements for WIC?

- To understand complaint procedures and know where to refer people who want to file a civil rights complaint
- To provide equal opportunity for faith based and community-based organizations to participate as appropriate
- To conduct compliance reviews and promptly resolve noncompliance issues
- To resolve conflicts and provide good customer service

What are the sources of these requirements?

Title VI – Civil Rights Act of 1964: Race, color, national origin

Title IX of the Education Amendments of 1972: Sex

Age Discrimination Act of 1975: Age

Civil Rights Restoration Act of 1987: Race, color and national origin

What are the sources of these requirements?

Sections 504 & 508 of the Rehabilitation Act of 1973: Disability

Americans with Disabilities Act of 1990: Disability

Americans with Disabilities Act Amendments of 2008: Disability

More Sources

Executive Order 13166 & USDA LEP Policy Guidance

The Personal Responsibility and Work Opportunity Reconciliation Act of 1996:

DOJ Memorandum (1/28/99)- "Policy Guidance Document- Enforcement of Title VI of the Civil Rights Act of 1964 and Related Statutes in Block Grant Type Programs."

USDA Department Regulation 4330-2

More Sources

USDA regulations at 7 CFR 15

USDA regulations at 7 CFR 16

WIC regulations at 7 CFR 246

DOJ regulations at 28 CFR 42.401

FNS Instruction 113-1: Appendix D (11/8/2005) found on-line at www.fns.usda.gov/cr/Documents/113-1.pdf

State Civil Rights Resources



CIVIL RIGHTS, SECTION 504, AND ADA COMPLIANCE ATTORNEY FOR NC DHHS



SEE CIVIL RIGHTS RESOURCES HANDOUT

What is discrimination?

Discrimination is 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 perceived or actual protected bases.



Six Protected Bases for WIC

Race

Color

National
Origin

Age

Sex

Disability

Discrimination Types

- **Disparate treatment:** intentional

- **Disparate impact/effect:** unintentional – when a policy or practice that has a disproportionate, adverse effect on a group

Discrimination Types

- **Retaliation** for prior civil rights activity: applies to applicant/beneficiary and his or her family, known associates, and anyone who cooperated in a civil rights investigation including agency employees

Discrimination Examples

Segregated seating in waiting areas or in accommodations such as bathrooms

Differences in waiting times based on protected class

Treating people disrespectfully based on a protected class

Providing a different level of benefits based on a protected class

Discrimination Examples

Facilities and services that are not accessible to people with disabilities including mobility, sight, hearing, and other conditions

Requiring a person with limited English proficiency to bring her own interpreter, or use family, friends or children as interpreters

Failing to advise a person with limited English proficiency that an interpreter will be provided by the Agency at no cost to them

Discrimination Examples

Locating a WIC clinic in an area that is not accessible to people in certain minority groups due to lack of public transportation or other factors

Requesting extra verification or documentation from some people based on a protected class

Not Discrimination

- Limiting benefits to children under age five is **not** age discrimination
- Limiting certain benefits to pregnant and lactating women is **not** sex discrimination

Racial and Ethnic Data Collection



Racial and Ethnic Data Collection

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

Applicants shall be assured that the information is required for and used for statistical purposes only and has no effect on eligibility criteria.

Data should be collected at the point of application.

Racial and Ethnic Data Collection

The purpose is to:

Determine how effectively FNS programs are reaching potentially eligible persons

Identify areas where additional outreach is needed

Assist in the selection of locations for compliance reviews

Complete reports as required

Race and Ethnic Categories Two Question Format

- Treat as separate categories
- Ethnicity first
- One or more racial designations is acceptable

Race/Ethnicity

Declared Observed

Ethnicity

Race

American Indian or Alaskan Native

Asian

Black or African American

White

Native Hawaiian or Pacific Islander

Recording Ethnicity and Race Data

Ethnicity: Hispanic or Latino, or not Hispanic or Latino?

Race: Which one or more of the 5 categories for race are selected?

Ethnicity Choices

Not Hispanic or Latino

→

Hispanic or Latino

- Hispanic Other
- Hispanic Cuban
- Hispanic Mexican American
- Hispanic Puerto Rican

Racial Categories

American Indian or Alaskan Native

Asian

Black or African American

Native Hawaiian or Other Pacific Islander

White

• Reference: FNS Instruction 113-1

Informing the Applicant/Participant

Collection of the ethnic and racial information is for statistical reporting.

It will not effect the determination of their eligibility for WIC.

Provisions must be made for applicants/ participants to self-identify.

The ability to verify this data by some manner such as signing a printout, must be available.

If collecting participant data online...

Asking the Question

- There are a variety of ways to request ethnic and racial information.
- The following examples offer two potential approaches.

Example A
See Handout



"We need to know your ethnicity and race. Your response will not affect how we consider your application. If you prefer not to provide this information, we will need to choose an ethnicity and race category for you. Are you (is your child) of Hispanic or Latino ethnicity? What race or races are you (is your child)?"

Example B
See Handout

"We need to record your ethnicity and race. Your response will help us determine if WIC is in compliance with Federal civil rights laws. It will not affect how we consider your application. If you prefer not to provide this information, we will need to choose an ethnicity and race category for you. Are you (is your child) of Hispanic or Latino ethnicity? What race or races are you (is your child)?"



What if ethnicity and/or race are not identified by the applicant or participant?

- A program staff member must designate the applicant/participant's ethnicity and race category.

Race/Ethnicity _____

Declared Observed

01

Explain reason for data collection

02

Request self-identification

Or

03

Designate ethnicity and race

Ethnicity and Race Data Collection

Confidentiality of Client Records

- Safeguards must be maintained that prevent the use of this information for discriminatory purposes.



Residence

- WIC participation does not require disclosure or verification of:
 - Citizenship
 - Immigration Status
 - Social Security Number



Limited English Proficiency (LEP) and National Origin



Language Assistance

- State and local agencies and their subrecipients are required to take reasonable steps to assure “meaningful” access to their programs and activities by persons with Limited English Proficiency (LEP).

Reference: Title VI, 7 CFR 246.8 (c) of WIC Regulations, Section VII of FNS Instruction 113-1, Executive Order 13166

Language Assistance

- Number and proportion of LEP persons served or encountered in the eligible population
- Frequency of LEP persons’ contact with program
- Nature and importance of program, activity, or service provided by the program
- Resources available and costs

Language Assistance

Population Data Sources

- LEP Mapping Tools
 - www.lep.gov
 - www.lep.gov/maps/
- US Census Data
 - <https://www.census.gov/programs-surveys/decennial-census/decade.2010.html>
- American Community Survey
 - www.census.gov/programs-surveys/acs/

Language Access Plan

- Helps management and front-line staff understand their roles and responsibilities with respect to overcoming language barriers for LEP individuals.
- Use qualified, competent interpreters and translators for all communication and translation of vital documents.

Language Assistance

Volunteers may be used, but they must be qualified and competent to interpret and understand interpreter ethics – particularly confidentiality!

Children (<18 years old) should not be used as interpreters.

Language Assistance

- Visit www.lep.gov
 - “USDA Guidance to Federal Financial Assistance Recipients Regarding the Title VI Prohibition Against National Origin Discrimination Affecting Persons With Limited English Proficiency”

Reference: 79 FR No. 229 [p. 70771 – 70784], Friday, November 28, 2014/Rules and Regulations

Protections for People with Disabilities



Disability Discrimination

The Rehabilitation Act of 1973: Section 504 prohibits

1973

Title II of the Americans with Disabilities Act (ADA) of 1990

1990

ADA Amendments Act of 2008

2008

What is the definition of disability?

- A person who has a physical or mental impairment which substantially limits one or more major life activities, has a record of such an impairment, or is regarded as having such an impairment.
- Major life activity means functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.

What is the definition of disability?

- The ADAAA expands the definition of disability to include:
 - Functions of the immune system, normal cell growth, digestive, bowel, bladder, neurological, brain, respiratory, circulatory, cardiovascular, endocrine, and reproductive functions. (ADA Amendments Act of 2008)
- Note: This is not an all-inclusive list.

Reasonable Modifications

- "A public entity shall make reasonable modifications in policies, practices, or procedures when the modifications are necessary to avoid discrimination on the basis of disability, unless the public entity can demonstrate that making the modifications would fundamentally alter the nature of the service, program, or activity."

Reference: Americans with Disabilities Act Title II Regulations 28 CFR Part 35



Reasonable Modifications

- Parking lot, entrances and exits, halls, elevators, rest rooms
- Qualified, and competent sign language interpreters, Braille signage, service animals
- Alternative arrangements for service
- Check ADA guidelines for specifics: www.ada.gov

Protection for Faith Based Organizations



Protection for Faith Based Organizations



Protection for Faith Based Organizations

- Discrimination prohibited against an organization on the basis of religion, religious belief or character in the distribution of funds
- Clarifies that Faith Based Organizations can use space in their facilities without removing religious art or symbols

Religious Organizations and Clients of USDA-funded Programs

- Regulations protect beneficiaries:
 - No organization that receives direct financial assistance from the USDA can discriminate against a beneficiary or prospective beneficiary on the basis of religion or religious belief.

Equal Opportunity for Religious Organizations

- FBOs retain their independence and carry out their mission, as long as USDA funds (or activities) do not support worship, religious instruction or attempts to convert recipients of the USDA funded program to the faith of the organization.

Public Notification



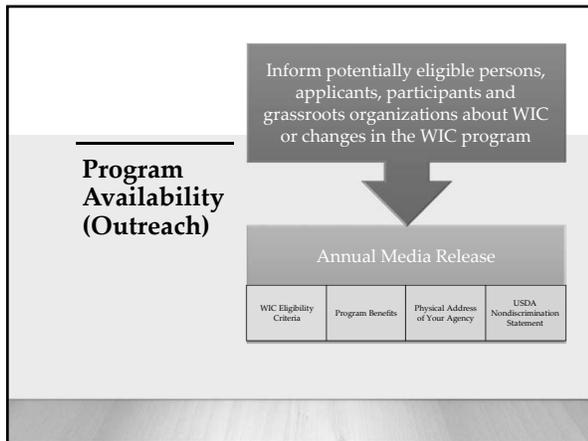
Public Notification

- The purpose of public notification is to inform applicants, participants and potentially eligible persons of program availability, program rights and responsibilities, the policy of nondiscrimination, and the procedure for filing a complaint.



What are some of the components of public notification?

- Outreach
- Displaying the “And Justice for All...” poster
- Using the non discrimination statement on materials and websites
- Providing information that is accessible to people with disabilities
- Providing information in languages appropriate for those with LEP
- Ensuring that photos and graphics reflect diversity



“And Justice For All” Poster

- ✓ Accept WIC Applications
- 📄 Perform Certifications
- 🛒 Issue Food Instruments (electronic)
- 🌟 Waiting rooms

“And Justice For All” Poster

- Updated December 2015
- Additional copies may be ordered from the Nutrition Services Branch

Form AD-475-A—Assisted Poster/ Revised December 2015

Nondiscrimination Statement Requirements

- Include the **current** nondiscrimination statement on all publications, websites, posters and informational materials used to inform the public about WIC or that identify WIC.
- The **2015** nondiscrimination statement is to be used until further updates are received from the Office of Civil Rights.

2015 Nondiscrimination Statement

"In accordance with Federal civil rights law and U.S. Department of Agriculture (USDA) civil rights regulations and policies, the USDA, its Agencies, offices, and employees, and institutions participating in or administering USDA programs are prohibited from discriminating based on race, color, national origin, sex, disability, age, or reprisal or retaliation for prior civil rights activity in any program or activity conducted or funded by USDA....

2015 Nondiscrimination Statement (continued)

Persons with disabilities who require alternative means of communication for program information (e.g. Braille, large print, audiotape, American Sign Language, etc.), should contact the Agency (State or local) where they applied for benefits. Individuals who are deaf, hard of hearing or have speech disabilities may contact USDA through the Federal Relay Service at (800) 877-8339. Additionally, program information may be made available in languages other than English....

2015 Nondiscrimination Statement (continued)

To file a program complaint of discrimination, complete the [USDA Program Discrimination Complaint Form, \(AD-3027\)](#) found online at: http://www.ascr.usda.gov/complaint_filing_cust.html, and at any USDA office, or write a letter addressed to USDA and provide in the letter all of the information requested in the form. To request a copy of the complaint form, call (866) 632-9992...

2015 Nondiscrimination Statement (continued)

Submit your completed form or letter to USDA by:

- 1) mail: U.S. Department of Agriculture
Office of the Assistant Secretary for Civil Rights
1400 Independence Avenue, SW
Washington, D.C. 20250-9410;
- 2) fax: (202) 690-7442; or
- 3) email: program_intake@usda.gov.

This institution is an equal opportunity provider.”

Use of the Nondiscrimination Statement – Long Version

• **Must be used:**

- On participant notices regarding eligibility
- On websites that mention WIC
 - Best Practice: Add a link to the full Nondiscrimination Statement
 - www.nutritionnc.com/nondiscrimination.htm

Use of the Nondiscrimination Statement – Short Version

The exception rather than the rule and should be used on a limited basis

Do not use on notices or materials that inform applicants/participants of their eligibility status

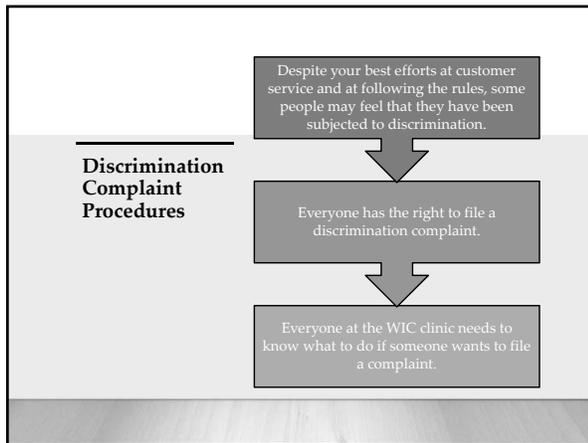
"This institution is an equal opportunity provider."

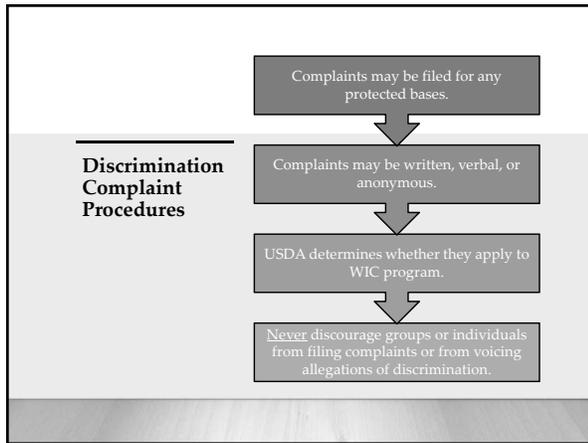
Use of the Nondiscrimination Statement

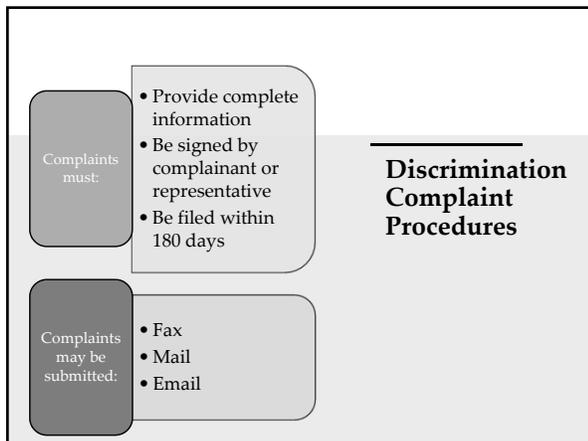
- Newspapers are **not** required to print the nondiscrimination statement in stories that they run about the WIC program.
- Newspapers **must** print the nondiscrimination statement in paid advertising.

Complaint Procedures & Compliance Reviews









Reporting a Complaint of Discrimination

- After submitting a complaint of discrimination:
 - Notify the local agency WIC Director
 - Report it to the State WIC office
- Complaints must be accepted and forwarded to USDA within **5 working days**.
- Confidentiality is extremely important and must be maintained.

Compliance Reviews

- The Federal, State and local governments are required to conduct reviews to determine compliance with civil rights laws, regulations and requirements.
- As a condition of receiving Federal financial assistance, it is necessary to cooperate with reviewers and to provide requested documentation.

Routine Compliance Reviews

- Ten areas of review:
 - Assurances
 - Public Notification
 - Racial and Ethnic Data Collection and Reporting
 - Civil Rights Complaints
 - Compliance Reviews
 - Resolution of Noncompliance
 - Civil Rights Training
 - Disability Compliance
 - Limited English Proficiency
 - Eligibility Determination



Special Compliance Reviews



May be scheduled or unscheduled



To follow-up on previous findings of noncompliance



To investigate reports of noncompliance by other agencies, media, or grassroots organizations



May be specific to an incident or policy



History of statistical underrepresentation of particular group(s)



Pattern of complaints of discrimination

What is Noncompliance?

“A factual finding that any civil rights requirements, as provided by law, regulation, policy, instruction, or guidelines, is not being adhered to by a State agency or local agency...”

Resolution of Noncompliance

- Corrective actions:
 - Cease inappropriate actions
 - Institute appropriate procedures

FAILURE OR REFUSAL TO COMPLY CAN RESULT IN LOSS OF FEDERAL ASSISTANCE FROM ALL FEDERAL SOURCES.

Customer Service



Good Customer Service

- How we meet the needs of the people who use our services
- Focuses on treating customers the way you would like to be treated yourself
- Benefits participants and staff

Good Customer Service



- Make people feel welcomed
- Treat everyone with dignity and respect
- To not make exceptions for people that you are not prepared to make for everyone

Good Customer Service

-  Be Patient
-  Be Polite
-  Avoid Sarcasm
-  Be Empathetic

Good Customer Service

-  Be friendly
-  Explain WIC policy
-  Don't be afraid to apologize
-  Don't feel you need to have the last word

Conflict Resolution

- **Conflicts are inevitable, so it is best to be prepared!**
 - Consider a written and posted policy for dealing with unacceptable behavior and conflicts
 - Try to explain the WIC procedures
 - Remain calm and know how to get help, especially if threats are made or if violence is possible

- Talk with your WIC Director
- Contact your Regional Nutrition Consultant



Civil Rights and WIC

In accordance with Federal civil rights law and U.S. Department of Agriculture (USDA) civil rights regulations and policies, the USDA, its Agencies, offices, and employees, and institutions participating in or administering USDA programs are prohibited from discriminating based on race, color, national origin, sex, disability, age, or reprisal or retaliation for prior civil rights activity in any program or activity conducted or funded by USDA.

Persons with disabilities who require alternative means of communication for program information (e.g. Braille, large print, audiotape, American Sign Language, etc.), should contact the Agency (State or local) where they applied for benefits. Individuals who are deaf, hard of hearing or have speech disabilities may contact USDA through the Federal Relay Service at (800) 877-8339. Additionally, program information may be made available in languages other than English.

To file a program complaint of discrimination, complete the USDA Program Discrimination Complaint Form, (AD-3027) found online at http://www.ascr.usda.gov/complaint_filing_cust.html and at any USDA office, or write a letter addressed to USDA and provide in the letter all of the information requested in the form. To request a copy of the complaint form, call (866) 632-9992. Submit your completed form or letter to USDA by:

- (1) mail: U.S. Department of Agriculture
Office of the Assistant Secretary for Civil Rights
1400 Independence Avenue, SW
Washington, D.C. 20250-9410;
- (2) fax: (202) 690-7442; or
- (3) email: program.intake@usda.gov.

This institution is an equal opportunity provider.



Thank you for all that you do!!
