

United States Department of Agriculture

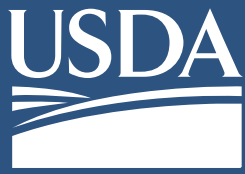
Civil Rights Training

Special Supplemental Nutrition Program for Women, Infants and Children (WIC), Farmers Market Nutrition Program (FMNP) and Seniors Farmers' Market Nutrition Program (SFMNP)

Civil Rights Division

USDA, Food and Nutrition Service

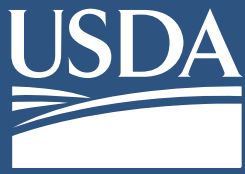
September 2023



Agenda

Civil Rights coverage Legal Authorities
Areas of Compliance

- Assurances
- Public Notification Requirements
- Race and Ethnicity Data Collection
- Complaints of Discrimination
- Compliance Reviews
- Resolution of Noncompliance
- Civil Rights Training
- Access for Individuals with Limited English Proficiency (LEP)
- Access for Individuals with Disabilities



Civil Rights Authorities

Title VI of the Civil Rights Act of 1964

Race, Color, and National Origin

Civil Rights Restoration Act of 1987

Clarifies the scope of the Civil Rights Act of 1964

Section 504 of the Rehabilitation Act of 1973; Americans w/Disabilities Act of 1990; and the Americans with Disabilities Act Amendments Act of 2008

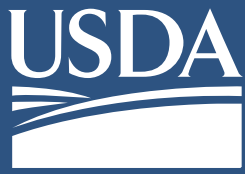
Disability

Title IX of the Education Amendments of 1972

Sex

Age Discrimination Act of 1975

Age

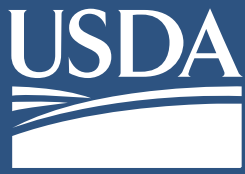


Civil Rights Authorities (Continued)

7 CFR Parts 15, 15a, & 15b

USDA's implementing regulations for nondiscrimination in Federally assisted programs. Gives USDA agencies authority to develop Civil Rights requirements

7 CFR Part 16, "Equal Opportunity for Religious Organizations"
Gives equal footing to religiously affiliated organizations



More Civil Rights Authorities

28 CFR Part 35

Covers nondiscrimination on the basis of disability in State/local government services

28 CFR Part 36

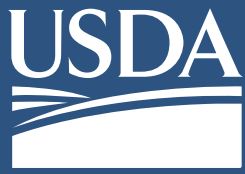
Covers nondiscrimination on the basis of disability by public accommodations and in commercial facilities

28 CFR Part 42

Covers nondiscrimination in Federally assisted programs

28 CFR 50.3

DOJ Guidelines for enforcing Title VI



More Civil Rights Authorities (Continued)

Executive Order 13166 - "Improving Access to Services for Persons with Limited English Proficiency" (August 11, 2000)

Executive Order 13988 – "Preventing and Combating Discrimination on the Basis of Gender Identity or Sexual Orientation" (6 Fed. Reg. 7023 (Jan. 25, 2021))

USDA Departmental Regulation 4300-003

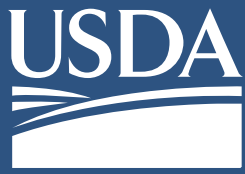
Equal Opportunity Public Notification Policy

USDA Departmental Regulation 4330-002

Prohibits discrimination in programs and activities funded in whole or in part by the USDA

FNS Instruction 113-1 and Appendix D

Civil Rights compliance and enforcement



Program Authorities

7 CFR Part 246

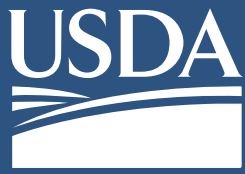
Special Supplemental Nutrition Program For Women, Infants And Children

7 CFR Part 248

Farmers' Market Nutrition Program

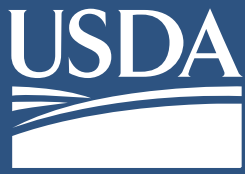
7 CFR Part 249

Senior Farmers' Market Nutrition Program



Civil Rights Guidance

USDA Guidance to Federal Financial Assistance Recipients Regarding the Title VI Prohibition Against National Origin Discrimination Affecting Persons With Limited English Proficiency (79 Fed. Reg. No. 229, Friday, [p. 70771 – 70784] “**USDA LEP Guidance**”)

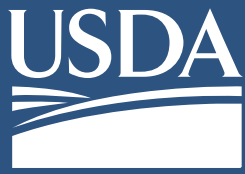


What is discrimination?

Different treatment which makes a distinction of one person or a group of persons from others, either intentionally, by neglect, or by the actions or lack of actions based on a protected class

Protected classes for WIC, FMNP and SFMNP:

- ✓ Race
- ✓ Color
- ✓ National origin
- ✓ Age
- ✓ Sex (including gender identity and sexual orientation)
- ✓ Disability

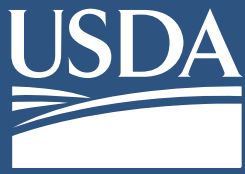


Assurances

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

A Civil Rights assurance statement must be incorporated in all agreements between:

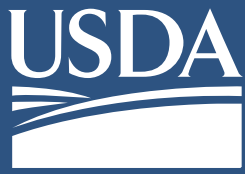
- Federal and WIC, FMNP and SFMNP State agencies - ([FNS Form 339](#))
- State agencies and local agencies
- Local agencies and subrecipients (if applicable)



Public Notification

- All FNS assistance programs must include a public notification system

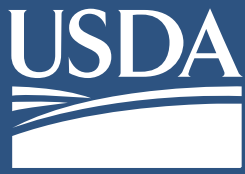
- The purpose of this system is to inform applicants, participants, and potentially-eligible persons of:
 - program availability
 - program rights and responsibilities
 - the policy of nondiscrimination
 - the procedure for filing a complaint



Elements of Public Notification

State agencies and their subrecipients must:

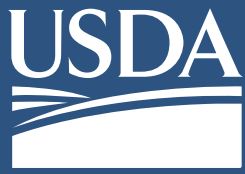
- Make program information available to the public upon request
- Prominently display the “And Justice for All” poster



Elements of Public Notification (Continued)

State agencies and their subrecipients must:

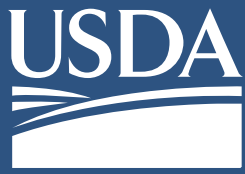
- Inform potentially eligible persons, applicants, participants and community organizations of programs or changes in programs
- Convey the message of equal opportunity in all photos and other graphics that are used to provide program or program-related information



More Elements of Public Notification

States agencies and their subrecipients must:

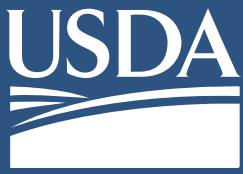
- Notify persons with disabilities about the availability of reasonable modifications and auxiliary aids and services
- Notify persons with limited English proficiency (LEP) of their right to free language assistance services
- Provide appropriate information in alternative formats for persons with disabilities and in the appropriate language(s) for LEP persons



Nondiscrimination Statement (Continued)

At a minimum, the full Nondiscrimination Statement must be on:

- Application form(s)
- Notification of eligibility or ineligibility
- Notification of adverse action
- Program (home) webpage and digital services (or a link to it)
- Public information, including program literature



United States Department of Agriculture

Nondiscrimination Statement

In accordance with federal civil rights law and U.S. Department of Agriculture (USDA) civil rights regulations and policies, this institution is prohibited from discriminating on the basis of race, color, national origin, sex (including gender identity and sexual orientation), disability, age, or reprisal or retaliation for prior civil rights activity.

Program information may be made available in languages other than English. Persons with disabilities who require alternative means of communication to obtain program information (e.g., Braille, large print, audiotape, American Sign Language), should contact the responsible state or local agency that administers the program or USDA's TARGET Center at (202) 720-2600 (voice and TTY) or contact USDA through the Federal Relay Service at (800) 877-8339.

To file a program discrimination complaint, a Complainant should complete a Form AD-3027, USDA Program Discrimination Complaint Form which can be obtained online at: <https://www.usda.gov/sites/default/files/documents/ad-3027.pdf>, from any USDA office, by calling (866) 632-9992, or by writing a letter addressed to USDA. The letter must contain the complainant's name, address, telephone number, and a written description of the alleged discriminatory action in sufficient detail to inform the Assistant Secretary for Civil Rights (ASCR) about the nature and date of an alleged civil rights violation. The completed AD-3027 form or letter must be submitted 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; or

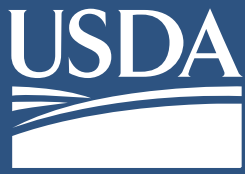
2. fax:

(833) 256-1665 or (202) 690-7442; or

3. email:

program.intake@usda.gov

This institution is an equal opportunity provider.



Nondiscrimination Statement (*Spanish*)

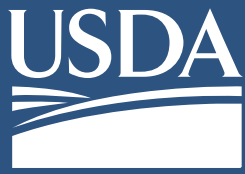
De acuerdo con la ley federal de derechos civiles y las normas y políticas de derechos civiles del Departamento de Agricultura de los Estados Unidos (USDA), esta entidad está prohibida de discriminar por motivos de raza, color, origen nacional, sexo (incluyendo identidad de género y orientación sexual), discapacidad, edad, o represalia o retorsión por actividades previas de derechos civiles.

La información sobre el programa puede estar disponible en otros idiomas que no sean el inglés. Las personas con discapacidades que requieren medios alternos de comunicación para obtener la información del programa (por ejemplo, Braille, letra grande, cinta de audio, lenguaje de señas americano (ASL), etc.) deben comunicarse con la agencia local o estatal responsable de administrar el programa o con el Centro TARGET del USDA al (202) 720-2600 (voz y TTY) o comuníquese con el USDA a través del Servicio Federal de Retransmisión al (800) 877-8339.

Para presentar una queja por discriminación en el programa, el reclamante debe llenar un formulario AD-3027, formulario de queja por discriminación en el programa del USDA, el cual puede obtenerse en línea en:

<https://www.usda.gov/sites/default/files/documents/ad-3027s.pdf>, de cualquier oficina de USDA, llamando al (866) 632-9992, o escribiendo una carta dirigida a USDA. La carta debe contener el nombre del demandante, la dirección, el número de teléfono y una descripción escrita de la acción discriminatoria alegada con suficiente detalle para informar al Subsecretario de Derechos Civiles (ASCR) sobre la naturaleza y fecha de una presunta violación de derechos civiles. El formulario AD-3027 completado o la carta debe presentarse a USDA por:

- (1) correo: U.S. Department of Agriculture
Office of the Assistant Secretary for Civil Rights
1400 Independence Avenue, SW
Washington, D.C. 20250-9410;
- (2) fax: (833) 256-1665 o (202) 690-7442; o
- (3) correo electrónico: program.intake@usda.gov.



Nondiscrimination Statement

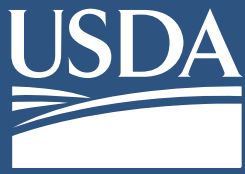
USDA Nondiscrimination Statement

Short versions

- **This institution is an equal opportunity provider.**
- **Esta institución es un proveedor que ofrece igualdad de oportunidades. (Spanish)**
- *Can be used in special circumstances only

Translations

- **Are available on the FNS CRD website**



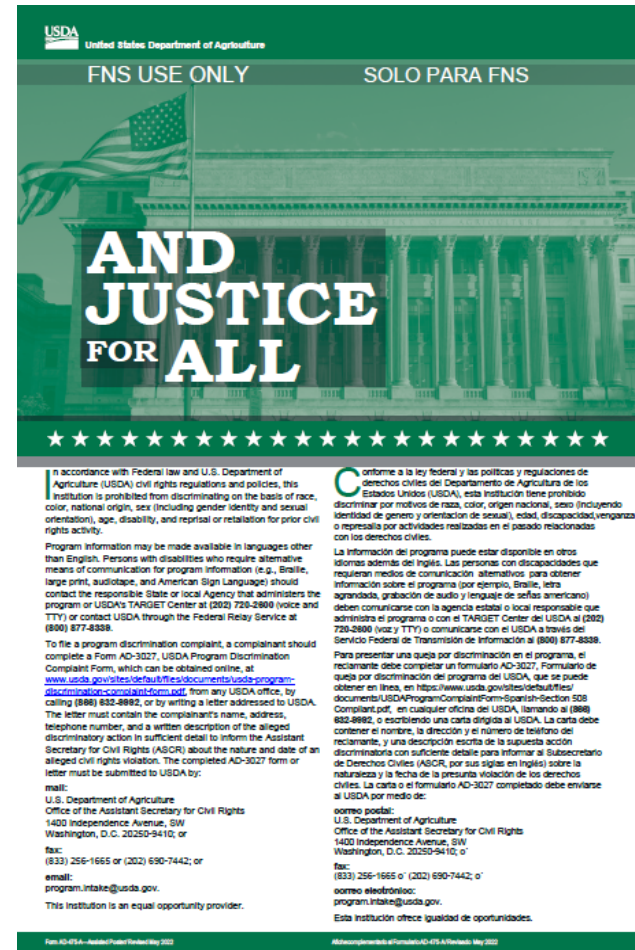
United States Department of Agriculture

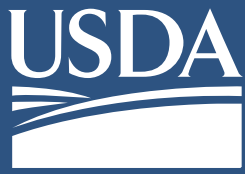
“And Justice For All” (AJFA) Poster

Display the poster in a prominent location for all to view

Required version for WIC, FMNP & SFMNP

AD-475-A



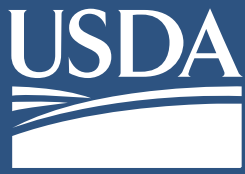


AJFA Posters

Until the new posters are received, State agencies may...

- Request 2019 AJFA posters from Regional Civil Rights Officers (RCRO) until their supplies are exhausted
- Distribute AJFA posters currently on hand to local agencies and subrecipients until new posters are received

NOTE: AJFA posters currently posted must not be removed until replaced with the new poster

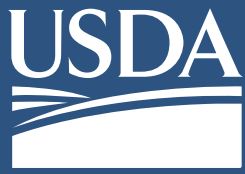


Race/Ethnicity Data Collection

As a means of monitoring Civil Rights compliance, state agencies must establish a system for the collection of race and ethnicity data of each person applying for and receiving benefits

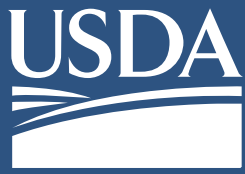
Purpose:

- To determine how effectively FNS programs are reaching potentially eligible persons and participants
- To identify areas where additional outreach or services are needed
- To assist in the selection of locations for compliance reviews
- To complete reports, as required



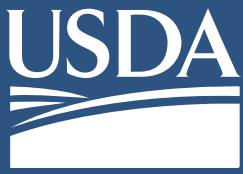
Race/Ethnicity Data Collection (Continued)

- Collect data at the point of service
- Notify the public that provision of race and ethnicity data is voluntary
- Inform participants that provision of race and ethnic data is requested solely for the purpose of determining the State's compliance with Federal civil rights laws and has no effect on eligibility criteria
- Notify the applicant that another data collection method will be used if they decline to self-identify



Race / Ethnicity Data Collection (Continued)

- Collect ethnicity before race
- Provide an option to select one or more races
- Access restricted only to authorized personnel
- Maintain race and ethnicity data for three (3) years



Race and Ethnic Categories - Two Question Format

1. **Ethnicity**

Hispanic or Latino

Not Hispanic or Latino

2. **Race (may select one or more of the following)**

American Indian or Alaska Native

Asian

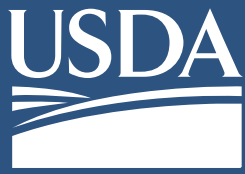
Black or African American

Native Hawaiian or Other Pacific Islander

White

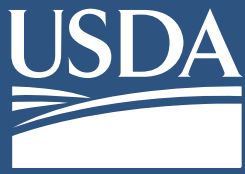
Complaints of Discrimination

- Applicants or participants allege different treatment based on protected class(es)
- Protected classes in WIC, FMNP and SFMNP:
 - ✓ Race
 - ✓ Color
 - ✓ National origin
 - ✓ Age
 - ✓ Sex (including gender identity and sexual orientation)
 - ✓ Disability
- Retaliation or Reprisal



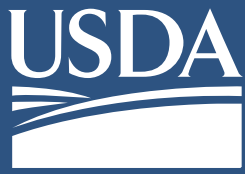
Right to File Discrimination Complaints

- Participants have the right to file discrimination complaints
- State agencies are required to inform participants of the option to file a complaint with the USDA
- Complaints must be filed within 180 days from the alleged act of discrimination
- Complaints may be written, verbal, or anonymous



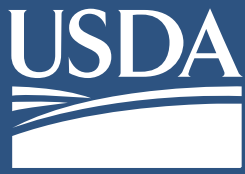
Complaint Processing Timeframes

- Unless the State agency has an FNS-approved Civil Rights complaints processing system, the State agency must refer complaints to the FNS CRD for processing
- FNS / State agency complaints processing MOU may be in place
- Complaints must be accepted and forwarded to FNS within 5 calendar days
- Age-based Complaints (or a combination of age and other bases) involve FMCS and must be referred to FNS Civil Rights Division within 5 working days



Complaint Processing Procedures

- Confidentiality is extremely important and must be maintained
- State agencies may develop their own complaint forms, but the use of such forms cannot be a pre-requisite for acceptance
- State agencies must maintain a separate log reflecting only civil rights complaints



Complaints Should Include

- Name, address, and telephone number of the complainant
- The location and name of the organization or office
- The nature of the incident or action
- The names, titles, and business addresses of persons who may have knowledge of the discriminatory action
- The date(s) during which the alleged discriminatory actions occurred
- The basis for the alleged discrimination



Complaints of Discrimination

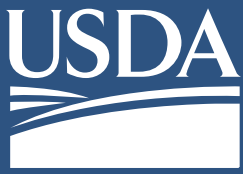
USDA complaint form

- English version:

<https://www.usda.gov/sites/default/files/documents/ad-3027.pdf>

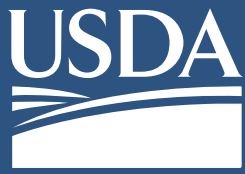
- Spanish version:

<https://www.usda.gov/sites/default/files/documents/ad-3027s.pdf>



Compliance Reviews

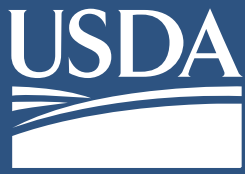
- Examine the activities of State agencies, subrecipients, and local sites to determine Civil Rights compliance
 - ✓ FNS Civil Rights and Program staff review State agencies
 - ✓ State agencies review local agencies
 - ✓ Local agencies review their subrecipients
- Significant findings must be provided in writing to the reviewed entity and to FNS



Types of Compliance Reviews

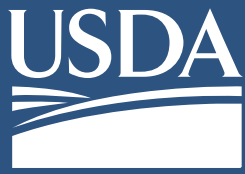
There are three types of compliance reviews:

- Pre-Award Compliance Reviews
- Routine (Post-Award) Compliance Reviews
- Special Compliance Reviews



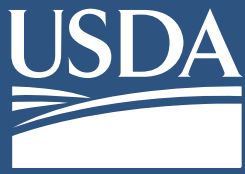
Pre-Award Compliance Reviews

State agencies, subrecipient agencies, and local sites must be in compliance with Civil Rights requirements prior to approval for Federal financial assistance



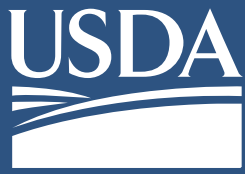
Routine/Post-Award Reviews

- FNS and State agencies must conduct routine compliance reviews as identified by FNS Instruction 113-1 and program-specific regulations and policies
- Assess all the Civil Rights compliance areas
- Sample post-award review questions:
 - ✓ Do printed materials contain the nondiscrimination statement?
 - ✓ Is the "And Justice For All" poster displayed appropriately?
 - ✓ Are program informational materials available to all?
 - ✓ Is data on race and ethnicity collected appropriately?
 - ✓ How are applicants and participants advised of their right to file a Civil Rights complaint of discrimination?
 - ✓ Are reasonable modifications appropriately made for people with disabilities?



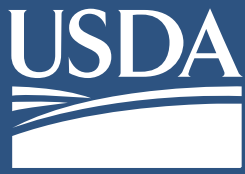
Special Compliance Reviews

- 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



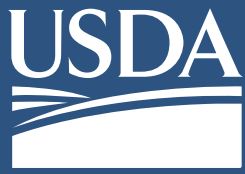
Resolution of Noncompliance

- A factual finding that any civil rights requirement, as provided by law, regulation, policy, instruction, or guidelines, is not being adhered to by a State agency, subrecipient agency, or a local site
- Steps must be taken immediately to obtain compliance
- A finding's effective date is the date of notice to the reviewed entity



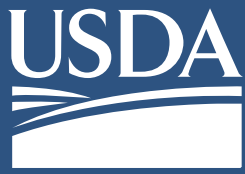
Voluntary Resolution Agreement

- A written agreement that the reviewed entity voluntarily enters with FNS to ensure compliance with Federal Civil Rights laws
- Between two or more parties (e.g., FNS CRD, State agency, subrecipient, complainant, etc.)
- To closeout a Civil Rights Review in lieu of issuing a written Compliance Review report with findings



Civil Rights Training

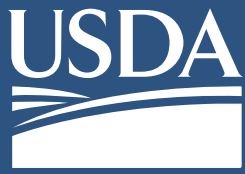
- State agencies are responsible for training local agencies on an **annual basis**
- Local agencies are responsible for training their subrecipients, including “frontline staff” who interact with participants on an **annual basis**
- New employees before participating in program activities must receive training
- Volunteers must receive training appropriate to their roles and responsibilities



Civil Rights Training (Continued)

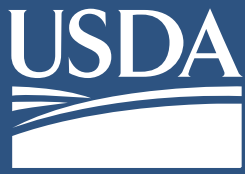
All staff should receive training on all aspects of Civil Rights compliance, including, but not limited to:

- Collection and use of data
- Effective public notification system
- Complaint procedures
- Compliance review techniques
- Resolution of noncompliance
- Requirements for reasonable modifications & auxiliary aids and services for persons with disabilities
- Requirements for language assistance for individuals with limited English proficiency
- **Conflict resolution**
- **Customer service**



Limited English Proficiency (LEP) and Program Access

- **Who are persons with LEP?**
 - ✓ Individuals who do not speak English as their primary language and who have a limited ability to read, speak, write, or understand English because of their national origin



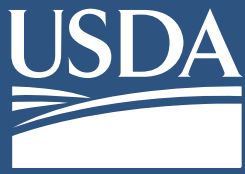
Meaningful Access

- Recipients of federal financial assistance have a responsibility to take reasonable steps to ensure meaningful access to their programs and activities by persons with LEP
- Failure to provide “meaningful” access to persons with LEP could be discrimination on the basis of national origin
- Providing reasonable, timely, appropriate and competent/qualified language assistance services at no cost to individuals with LEP

LEP Requirements

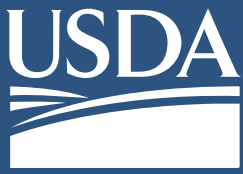
Factors to consider to ensure “meaningful” access:

- Number or proportion of LEP persons eligible to be served or likely to be encountered within the area serviced by the recipient
- Frequency with which LEP individuals come in contact with the program
- Nature and importance of the program, activity, or service provided by the program
- Resources available and their costs



Interpretation Services

- Use qualified and competent interpreters (telephonic, contract, bilingual staff and volunteers)
- A **qualified interpreter** is a highly trained individual who mediates spoken communication between people speaking different languages without adding, omitting, or distorting meaning or editorializing
- Some bilingual persons may communicate effectively when communicating information directly in a non-English language, but not be competent to interpret (or translate) in and out of English

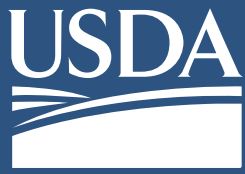


Family, Friends and Children as Interpreters

- Do not plan or expect to rely on a LEP person's family or friends or other informal interpreters to provide meaningful access to important programs or activities, unless the LEP person requests this
- LEP persons should be permitted to use family and friends if appropriate **only after offering** free language assistance
- Reliance on children is especially discouraged unless there is an extreme emergency, and no preferable qualified interpreters are available

Vital Documents

- Translate vital documents using qualified and competent translators and proofreaders for accuracy
- Include materials that are **"vital"** to an individual's participation, including:
 - ✓ Application forms
 - ✓ Documents that require a response from applicants (i.e. verification letters)
 - ✓ Denial letters
- Anytime a vital document is updated, the State agency must, at minimum, issue that document simultaneously in English and the most frequently encountered languages spoken in the area



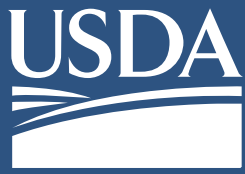
Websites and Digital Services

- State agencies must ensure access to websites and digital services for individuals with LEP, including:
 - ✓ Online applications and digital services
 - ✓ Websites and forms
 - ✓ Brochures

- At minimum, vital information on websites and digital services must be available to LEP persons in a language they can understand

- Translated website and hyperlinks

- Multilingual taglines that instruct LEP persons on how to receive vital information in their primary language



LEP Population and Data Sources

Population data sources:

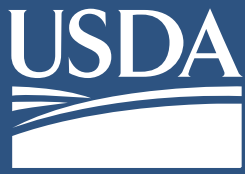
- Department of Justice site: LEP.GOV
<http://www.lep.gov/maps/>
- U.S. Census Data
<https://www.census.gov/data.html>
- American Community Survey
<http://www.census.gov/acs/>
- Migration Policy Institute's National Center on Immigrant Integration Policy
<http://www.migrationpolicy.org/>

Disability Access

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. *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)



Disability Access - Continued

There is also an obligation to ensure that members of the public are provided accommodations in order to access program information, applications and assistance (i.e. Braille, large print, and audio tape)

Providing qualified sign language interpreters for persons with hearing disabilities may be necessary to effectively communicate with these applicants and participants.

More Disability Access

- As programs and offices modernize, it is imperative that websites, including State and local agency websites, and online application systems are readily accessible to and useable by persons with visual impairments and other disabilities.
- In addition, programs must ensure physical accessibility for buildings and facilities, particularly to persons in wheelchairs and with mobility disabilities.

Questions

