

DEPARTMENTAL REGULATION		Number: 4330-002
SUBJECT: Nondiscrimination in Programs and Activities Receiving Federal Financial Assistance From USDA		DATE: March 3, 1999
		OPI: Office of Civil Rights

1 PURPOSE

The purpose of this Departmental Regulation (DR) is to establish and convey policy and provide guidance and direction to Department of Agriculture (the Department or USDA) agencies and employees to ensure compliance with and enforcement of the prohibition against discrimination in programs and activities funded in whole or in part by the Department. This DR is limited to and specifically addresses.

- a Conducting civil rights compliance reviews of programs and activities receiving financial assistance from USDA- and
- b Processing administrative complaints of discrimination filed with the Department in any program or activity receiving financial assistance from USDA.

2 SPECIAL INSTRUCTIONS

This regulation replaces DR 4330-001, Departmental Policy for Program Compliance Reviews, dated June 27, 1986.

3 SCOPE

This regulation applies to all programs and activities receiving Federal financial assistance from USDA, its agencies and instrumentalities, and to the processing of all complaint and compliance review investigations pertaining to those programs and activities.

4 POLICY

It is USDA policy to ensure no person is subject to prohibited discrimination in programs and activities funded in whole or part by USDA based on race, color, national origin, gender, religion, age, disability, and, where applicable, political beliefs, marital or familial status, income, or because of the receipt of public assistance. The policy, in part, is enforced by

a fairly and efficiently responding to discrimination complaints filed against recipients of Federal financial assistance by USDA; and

b systematically evaluating whether and the extent to which recipients of Federal USDA financial assistance conduct their programs and activities in a manner consistent with applicable Federal and USDA civil rights requirements.

No person shall be subjected to reprisal or harassment because he or she filed a discrimination complaint; participated in or contributed to the identification, investigation, prosecution, or resolution of civil rights violations in or by a recipient of Federal financial assistance from USDA; or otherwise aided or supported the enforcement of Federal or USDA civil rights laws, rules, regulations, or policies.

5 AUTHORITIES/REFERENCES

a Statutory

- (1) Title VI of the Civil Rights Act of 1964, as amended, 42 USC 2000d.
- (2) Section 504 of the Rehabilitation Act of 1973, as amended, 29 USC 794.
- (3) Americans with Disabilities Act of 1990, 42 U.S.C. 12101 et. seq.
- (4) Age Discrimination Act of 1975, 42 USC 601 et seq.
- (5) Title IX of the Education Amendments of 1972, et. seq.
- (6) Civil Rights Restoration Act of 1987, P.L. 100-259, as amended by, Civil Rights Restoration Act of 1991, P.L. 102-166.
- (7) Title VIII of the Civil Rights Act of 1968, as amended by the Fair Housing Amendments Act of 1988, 42 USC §§3601 et seq.
- (8) Food Stamp Act of 1977, as amended by the Food Stamp Improvement Act of 1994, 7 USC §2011 et seq.

b Regulatory and Executive Orders

- (1) 7 CFR Part 2, Subpart P.
- (2) 7 CFR Part 15-Nondiscrimination.
- (3) 7 CFR Part 15a-Education Programs or Activities Receiving or Benefiting From Federal Financial Assistance.
- (4) 7 CFR Part 15b-Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving Federal Financial Assistance.
- (5) 45 CFR Part 90-Nondiscrimination on the Basis of Age in Programs and Activities Receiving Federal Financial Assistance.
- (6) 28 CFR Part 42 Subpart F - Coordination of Enforcement of Nondiscrimination in Federally Assisted Programs.
- (7) 28 CFR 50.3 - Guidelines for the Enforcement of Title VI, Civil Rights Act of 1964.
- (8) 28 CFR Part 35 - Nondiscrimination on the Basis of Disability in State and Local Government Services.
- (9) 29 CFR 1691; 28 CFR Part 42, Subpart H - Procedures for Complaints of Employment Discrimination Filed Against Recipients of Federal Financial Assistance.
- (10) 28 CFR 1640 - 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.
- (11) 28 CFR Part 41 - Implementation of Executive Order 12550, Nondiscrimination on the Basis of Handicap in Federally Assisted Programs.
- (12) 28 CFR Part 35, Subpart F - Compliance Procedures.

(13) Executive Order 12250, Leadership and Coordination of Nondiscrimination Laws, Issued November 2, 1980.

(14) Executive Order 12250, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations.

c Departmental Regulations/Policy

(1) USDA DR 4300-5, Agency Civil Rights programs, dated January 14, 1998.

(2) USDA DR 4300-3, Equal Opportunity Public Notification Policy, dated February 25, 1998.

(3) USDA DR 4300-6 Civil Rights Policy for the U.S. Department of Agriculture, dated March 16, 1998.

(4) USDA DR 5600-2, Environmental Justice, dated December 15, 1997.

(5) Secretary's Memorandum 10 10-4, Restructuring Departmental Administration, dated May 16, 1997.

6 DEFINITIONS

a Agency - Any bureau, agency, office, administration, or corporation responsible for the management and administration of a USDA program.

b Beneficiary - A person or group of persons with an entitlement to receive or enjoy the benefits, services, resources, and information, or to participate in the activities and programs funded in whole or part by the USDA.'

c Complainant - Any person or group of persons who files with USDA a written complaint that alleges discrimination in a program or activity funded in whole or in part by USDA.

d Complaint - A written allegation that discrimination has occurred or is occurring in a program or activity funded by USDA or that the recipient of USDA financial assistance is otherwise not in compliance with Federal civil rights requirements.

e Compliance Review - A systematically planned and regularly initiated investigation that assesses and evaluates the civil rights and equal opportunity policies, procedures, and practices of an organization or its instrumentality, funded in whole or part by USDA to determine compliance with applicable civil rights statutes, regulations, standards, and policies.

f Federal Financial Assistance - Includes but is not limited to money paid; rental or use of Federal property at below-market value; gift of Federal property; asset forfeiture funds; Federal training; loan of Federal personnel, subsidies and other arrangements with the intent of providing assistance. Federal financial assistance does not include contract or guarantee or insurance, regulated programs, licenses, procurement contracts at market value, or programs that provide direct benefits.

g Discrimination - Different treatment or denial of benefits, services, rights or privileges to a person or persons because of their race, color, religion, gender, age, national origin, marital status, familial status, or disability and, where appropriate, income status or political beliefs, by or in conjunction with any program or activity funded by USDA.

h Letter of Finding - A written notice to the recipient and signed by the Director, USDA Office of Civil Rights (CR), that officially advises of the findings of a complaint or compliance review investigation and, where appropriate, identifies the actions the recipient must take to correct a violation or otherwise secure compliance with one or more Federal civil rights requirements.

i Legal Sufficiency Review (LSR) - A review of the findings and recommendations resulting from a civil rights complaint or compliance review investigation for the sole purpose of ensuring:

- (1) The accuracy of the document's legal citations;
- (2) The appropriate translation of allegations to issues;
- (3) The delineation of jurisdiction and authority of USDA;
- (4) That all issues are resolved based on a preponderance of the evidence;
- (5) That the facts and evidence establishing issue resolution are material, relevant, and reliable;

(6) That the findings of fact and conclusions of law reflect and are consistent with the appropriate legal theories and standards; and

(7) That recommended disposition in fact resolves and disposes of all issues and matters.

j Post-Award Recipient Review - A review that extends to all organizational components of a recipient organization or entity.

k Program Review (PR) - A compliance review investigation that is limited to a particular recipient program or organizational subcomponent.

l 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, organization or any of their instrumentalities, or any individual (provided the individual is not the ultimate beneficiary) in any State, to whom Federal financial assistance is extended, directly or through another recipient, for any program or activity, including any successor, assignee, or transferee thereof. In Voluntary Resolution/Settlements - The resolution of a complaint or compliance review issue for which a finding of noncompliance most likely would have resulted, had the agency not voluntarily effected corrective or remedial action before CR's official determination.

7 ROLES AND RESPONSIBILITIES

a Secretary of Agriculture sets the tone and direction, provides leadership, prescribes regulations, sets overall civil rights policy, and ensures civil rights compliance and enforcement throughout the Department. The Secretary further ensures the availability of resources adequate to support and carry out a broad range of civil rights compliance and enforcement activities throughout the Department. The Secretary accomplishes his responsibilities directly and through the broad delegation of authority for civil rights to the Assistant Secretary for Administration and other USDA agencies, officers, and employees.

b Assistant Secretary for Administration (ASA) - The civil rights officer for USDA who is responsible for the oversight of all civil rights functions within USDA.

c Director, Office of Civil Rights (CR) is responsible for planning, managing, directing, and coordinating the day-to-day management and administration of the full range of the Department's civil rights compliance and enforcement functions, responsibilities, and obligations, including:

- (1) Providing overall leadership, coordination, and direction for USDA civil rights compliance and enforcement;
- (2) The investigation, adjudication, and resolution of complaints, including the full authority and sole responsibility for determining whether discrimination has occurred in programs and activities receiving Federal financial assistance from USDA, and the authority to require appropriate remedies;
- (3) Reviewing and evaluating recipients' accomplishment of their civil rights responsibilities through compliance reviews and other appropriate methods;
- (4) Issuing policies, directives, procedures, rules, and regulations as necessary to ensure that the Department fully achieves its civil rights compliance and enforcement obligations;
- (5) Recommending enforcement actions as appropriate and where necessary to secure recipient compliance with applicable civil rights laws;
- (6) Ensuring through training, dissemination of information, technical assistance, and other appropriate methods that recipients are apprised of their civil rights compliance and enforcement responsibilities;
- (7) Ensuring that recipients and their instrumentalities actively support and adhere to the civil rights policies, directives, findings, and decisions rendered by the Office of Civil Rights;
- (8) As appropriate and necessary, recommending to the U.S. Department of Justice (DOJ) enforcement actions to secure compliance with Federal civil rights requirements;
- (9) Systematically reviewing, evaluating, and holding to a high accountability standard the civil rights performance of agency heads and administrators;
- (10) Providing leadership, proactively promoting civil rights, and providing guidance and oversight to ensure civil rights compliance by recipients and their instrumentalities;

(11) Developing and implementing a comprehensive civil rights strategic plan that encompasses the full scope of the Department's civil rights obligations, and supplemented by an annual operating plan for strategy accomplishment, and disseminating the plan throughout the Department; and

(12) Serving as a clearinghouse for information dissemination and exchange with USDA agencies, recipients, the government and nongovernment civil rights communities.

d Age - Any, bureau, agency, office, administration, instrumentality of or corporation within USDA to which legal authority~ and responsibility have been delegated or assigned to manage, administer, or supervise any USDA program or activity, or any officer or employee of the Department to whom the Secretary delegates the power and authority to carry out any of the functions or responsibilities of an agency under this regulation. An Agency will:

(1) Establish and maintain an effective, proactive civil rights compliance and enforcement program in accordance with the policies, guidelines, and directives promulgated by CR;

(2) Provide adequate and appropriately trained and qualified staff and other resources as necessary to ensure efficient and effective accomplishment of the Department's civil rights obligations;

(3) Timely collect and make available all data and information as necessary and requested by CR to enable an efficient and effective evaluation of the Department's civil rights compliance and enforcement programs and activities;

(4) Cooperate with and provide assistance as necessary and requested by CR in the investigation of any complaints and compliance reviews, including ensuring access to information and the resolution of any issues of noncompliance; and

(5) Ensure that any of its recipients for which CR has made a noncompliance finding timely and effectively implements any corrective action plans determined necessary to secure compliance with a Federal civil rights requirement.

e Office of the General Counsel (OGC) - In-house counsel for the USDA. OGC will:

- (1) Provide legal expertise, advice, and support as requested by CR to ensure the accomplishment of the Department's civil rights compliance and enforcement obligations.
- (2) Conduct legal sufficiency reviews for all letters of findings resulting from complaint investigations.
- (3) Upon request of the CR Director, review settlement agreements and provide legal advice relating to the award of compensatory damages and attorney fees, and other legal issues involved in the complaint investigation and compliance review process.

8 COMPLIANCE

a All USDA agencies will be responsible for ensuring that their recipients are in compliance with all applicable policies of nondiscrimination in programs and activities receiving Federal financial assistance.

b All agencies shall continually monitor their recipients to ensure such compliance and shall establish procedures and systems as a method of ensuring such compliance.

c Agencies will ensure that all recipients have submitted to USDA a signed statement of assurance that all programs and activities will be conducted in compliance with all applicable Federal civil rights laws, rules, regulations, and policies.

d Compliance review investigations will be routinely scheduled by CR as part of its regular, systematic program of monitoring and evaluating whether, and the extent to which, recipients meet their Federal civil rights obligations.

e As an integral element of its civil rights enforcement responsibility, CR routinely will maintain a regular, systematic program that includes:

- (1) technical guidance and assistance to agencies with the aim of resolving civil rights problems and issues associated with recipient programs and activities, and

(2) monitoring and evaluations of whether and the extent to which agencies meet their obligations to ensure that recipients administer their programs and activities pursuant to applicable civil rights requirements.

f In conducting compliance review investigations of USDA-funded programs and activities, CR will be guided by the legal standards, policies, and requirements that have been established in Federal statutes, regulations, Executive Orders, policies, and case law decisions related to discrimination based on race, color, national origin, gender, religion, age, disability, political beliefs, or marital or familial status, or income status, as applicable to recipients of Federal financial assistance and federally assisted programs and activities.

9 COMPLIANCE REVIEWS

a Distribution of Responsibilities

(1) The CR, with the assistance of the USDA agencies, will be responsible for conducting compliance review investigations of all USDA recipients. The CR will exercise its discretion about whether the investigation will extend to all recipient programs or merely to one or more of a recipient's programs and activities, or whether the compliance review investigations will incorporate the investigation of complaints of alleged unlawful discrimination in a recipient's programs and activities.

(2) As determined by the CR Director, CR will decide whether to conduct a compliance review of a recipient based on consideration of

(a) data and information cited in one or more complaints or other reliable information sources;

(b) the receipt of a significant number of complaints that raise the same or similar issue(s) relating to a particular recipient program or activity, or the receipt of one or more complaints that involve politically sensitive matters or have generated significant media interest;

(c) research initiated and conducted by CR;

(d) other legitimate factors and information.

b Voluntary Compliance and Conciliation

USDA agencies are strongly encouraged to engage in voluntary compliance where appropriate, at any stage of the compliance review process, and will provide technical assistance to facilitate a voluntary resolution of any noncompliance issues.

c Timefrancies

(1) Unless otherwise stated, all days are calendar days.

(2) CR will complete a compliance review investigation within 180 days following the receipt of information from the recipient subject to review.

(3) CR will issue a notice to the recipient subject to review not less than 60 days prior to the date that the compliance review activities will commence. The notice will advise the recipient of the date on which the compliance review will commence, the data and information necessary to an efficient and effective compliance review, and the date on which the data and information are to be received by CR. The notice to the recipient will be sent concurrently to the appropriate USDA agency(ies).

(4) CR will notify the recipient and the Agency in writing of the findings of the compliance review within 30 days following the completion of the compliance review investigation. The letter of finding shall identify:

(a) each issue investigated during the review;

(b) the facts and evidence collected and analyzed in relation to each issue;

(c) the findings of fact and conclusions of laws as related to each issue, including whether or not the agency is in compliance relative to the issue(s); and

(d) any actions the agency must take to remedy any findings of noncompliance as related to the issues.

(5) Within 30 days following receipt of the compliance review investigation letter of findings, the recipient will be required to provide notice to CR of the actions it will undertake to remedy any findings of noncompliance.

d Findings of Noncompliance

(1) When CR issues a noncompliance letter of findings (final USDA decision) following a compliance review investigation, CR will monitor the recipient until compliance has been achieved. When all corrective actions are completed, the review will be closed.

(2) If CR concludes, or the recipient presents adequate documentation that a violation noted during the review was corrected prior to review completion, the compliance review report and the letter of findings must state that a violation existed at the time of the review, but that it was voluntarily corrected by the recipient.

(3) When CR issues a letter of finding, CR shall send a copy of the letter to the head of the recipient organization, the Agency head, OGC, the appropriate Under or Assistant Secretary, the Assistant Secretary for Administration, and the Deputy Secretary. To the extent that the compliance review was initiated in response to complaints, and to the extent appropriate and lawful, CR will notify the complainant of the findings of the compliance review and of the actions taken or being taken to remedy the discrimination.

e Monitoring and Oversight

(1) When CR issues a noncompliance letter of findings (final USDA decision), the letter will cite the actions the recipient must take to achieve compliance. The CR will monitor and evaluate a recipient's efforts to remedy a violation to ensure compliance consistent with applicable civil rights requirements.

(2) When the recipient completes its program of corrective actions, CR will notify the head of the recipient

organization, the Agency head, OGC, the appropriate Under or Assistant Secretary, the Assistant Secretary for Administration, and the Deputy Secretary, following which the review will be closed.

f Enforcement of Compliance Requirements

(1) When a recipient refuses to provide CR with data and information necessary to a determination of the recipient's compliance status, CR will notify DOJ of the recipient's decision and request action to secure court enforcement of the recipient's obligation to provide access to information necessary to a determination of the recipient's compliance status.

(2) When a recipient refuses to undertake corrective actions set forth in a letter of finding, CR will notify DOJ of the recipient's decision and request an enforcement proceeding to secure a court order to require either the recipient's compliance or authority to terminate all USDA financial assistance to the recipient.

10 COMPLAINT PROCESSING

a Complainant's Right To File

(1) Any person who believes he or she or any specific class of individuals has been subject to discrimination by a recipient or believes that the *recipient* is otherwise in noncompliance with the provisions of an applicable civil rights requirement may file a complaint with the Office of Civil Rights, U.S. Department of Agriculture.

(2) If a complaint alleging discrimination or noncompliance is submitted to or filed with any agency within USDA other than the CR, the receiving agency will refer the complaint to CR within 5 calendar days of the date the complaint was received.

b Acknowledgment of Complaint

(1) CR will acknowledge receipt of the complaint in writing within 15 calendar days of receipt. The acknowledgment letter will, at a minimum, include: the date the complaint was received, the case number assigned, a statement that the complaint is under review to determine

CR jurisdiction, any other information that may be specifically required by the appropriate statute, notice that the complainant should consult an attorney regarding other legal rights he or she may have against the recipient that are unaffected by the filing of the complaint, and a contact name and number.

(2) Where CR determines that a complaint is incomplete, the acknowledgment letter also shall advise the complainant of the information needed to complete the complaint and that the information must be submitted within 15 days of the date of receipt of the acknowledgment letter.

(3) If a complainant does not respond to requests for information necessary to complete his or her complaint, the Director of CR may make an additional request, extending the timeframe for submitting the information, or may administratively close the complaint.

c Notice to Recipient and Agency

CR will notify the recipient and appropriate USDA Agency within 15 calendar days of receipt of a complaint alleging discrimination or noncompliance. The notice will:

- (1) contain a general statement of the alleged discriminatory act(s) or noncompliance activities;
- (2) advise of the Department's authority to pursue a resolution of the complaint;
- (3) include other information that may be necessary to facilitate complaint resolution; and
- (4) refrain from identifying or naming the complainant except when CR has received written authorization to do so from the complainant.

d Intake

- (1) CR will review each complaint to determine whether it is complete, timely filed, within USDA jurisdiction, subject to the authorities enforced by USDA, and to

determine whether the complaint must be resolved based on an investigation or is appropriate for early resolution or pre-investigation settlement.

(2) CR will make an appropriate referral of any complaints that are not within its jurisdiction or which are subject to concurrent jurisdictions with another Federal, State or local agency. The complainant will be notified of the referral in writing.

e Timeliness

(1) All complaints, to be timely, must be filed within 180 days of the last discriminatory act alleged.

(2) CR retains the authority to waive the timeliness requirement when it believes that good cause is shown.

f Investigation

(1) All investigations will be an impartial process limited to the facts and evidence pertinent and relevant to a factual determination of whether the complainant was subjected to discrimination in violation of Federal civil rights statutes or the recipient otherwise was in noncompliance with a, Federal civil rights requirement.

(2) The facts, evidence, and findings of the investigation must result in a record that will withstand legal scrutiny.

(3) In conducting complaint investigations of programs and activities receiving Federal financial assistance from USDA, CR will be guided by the legal standards, policies, and requirements that have been established in Federal statutes, regulations, Executive Orders, policies, and case law decisions related to discrimination based on race, color, national origin, gender, religion, age, disability, political beliefs, marital or familial status, or income status, and made applicable to recipients of Federal financial assistance and federally assisted programs and activities.

(4) CR will complete a complaint investigation within 180 days following complaint acceptance.

g Adjudication

(1) Upon completion of the investigation, CR will review, evaluate, and analyze the facts and evidence, and apply the appropriate standards and legal theories to ensure findings and conclusions consistent with the applicable statutory and regulatory requirements and case law.

(2) The findings of the adjudication process will be set forth in a recommended letter of finding for acceptance or rejection by the Director of the Office of Civil Rights.

h Letter of Finding

(1) The letter of finding must cite:

(a) each issue investigated,

(b) the applicable authority,

(c) a summary of the facts and evidence collected during the complaint investigation process,

(d) a statement of the findings of fact and conclusions of law for each issue, and

(e) a definitive statement as to whether the recipient is or is not in compliance with respect to the specific issues.

(2) The letter of finding may recommend no violation; - a violation finding accompanied by a further recommendation of specific remedial action (including damages); or a recommendation for a negotiated settlement.

(3) If the recommendation for settlement is accepted, the CR Director will have 30 working days in which to negotiate with the recipient. If the recipient concurs and a settlement agreement is reached, CR will notify the complainant and appropriate USDA agency advising of the final USDA decision and settlement agreement.

(4) The complainant may disagree with the settlement agreement and make a counteroffer within 15 days after receipt of the notice of the settlement proposal.

(5) If the complainant rejects terms of the compliance agreement or the CR Director rejects the complainant's counteroffer, the CR Director may go forward with the compliance agreement, direct that the case be closed, and notify the complainant of his/her right to pursue redress through other legal avenues.

(6) If the recipient declines the terms of the compliance agreement, CR will notify the recipient that CR finds the recipient in noncompliance and require the submission of a corrective action plan within 30 days of the letter of findings.

i Monitoring and Oversight

(1) When CR issues a non compliance letter of findings, CR will monitor the recipient until compliance has been achieved. When corrective actions are completed, the complaint will be closed.

(2) If CR concludes, or the recipient presents adequate documentation that the noncompliance has been corrected prior to or during the complaint investigation, the CR will issue a closure letter. The closure letter must state that a violation existed at the time the investigation commenced but that it was corrected prior to the investigation completion and, as a consequence, the agency is now in compliance based on its voluntary corrective action.

(3) When a recipient refuses to provide CR with data and information necessary to a determination of the recipient's compliance status following CR's receipt of a complaint, CR will notify the U.S. Department of Justice (DOJ) of the recipient's decision and request action to secure court enforcement of the recipient's obligation to provide access to information necessary to a determination of the recipient's compliance status.

(4) When a recipient refuses to undertake corrective actions set forth in a letter of finding, CR will notify DOJ of the recipient's decision and request enforcement proceeding to secure a court order to require either the recipient's compliance or authority to terminate all USDA financial assistance to the recipient.

CR will prepare and disseminate within CR and to agency civil rights organizations manuals, bulletins, and another instructional documents as necessary to implement the provisions of this Departmental Regulation.