

PART 405 – CIVIL RIGHTS COMPLIANCE IN PROGRAM DELIVERY

Subpart A - General

405.0 Purpose and Scope

This subpart provides policy and guidance on civil rights requirements in administering program activities provided by Natural Resources Conservation Service (NRCS). Minorities, women, persons with disabilities provided equal access and equal opportunity to participate in programs receiving Federal financial assistance. All persons eligible to participate in NRCS programs must be informed of NRCS' equal opportunity policy and encouraged to participate.

405.1 Policy

- A. It is the policy of NRCS that all USDA Federally-assisted and Federally-conducted programs be administered in accordance with the requirements of Title VI of the Civil Rights Act of 1964, Title IX of the Education Amendments of 1972, Section 504 of the Rehabilitation Act of 1973, the Age Discrimination Act of 1975, the Equal Credit Opportunity Act, Executive Orders, U.S Department of Justice (DOJ) regulations enforcing nondiscrimination requirements, and departmental rules and regulations. Compliance with the policies ensures access of program delivery to customers without regards to their race, color, national origin, sex, religion, age, disability, sexual orientation, marital status, family status, political beliefs, parental status, or because all or a part of an individual's income is derived from any public assistance program.
- B. The policy of NRCS is to use positive examples of program participation by minorities, women, persons with disabilities, and other individuals protected by Federal nondiscrimination law. This may be in the form of pictures and other visual and audio public information materials.
- C. 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 a civil rights violation.
- D. Any person or any specific class of individuals or minority groups who believes that he/she has been discriminated against in any NRCS program or activity may personally, or through a designated representative, file a complaint.

405.2 Major Authorities

- A. Statutory
 - (1) Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d-2000d-4, which prohibits discrimination based on race, color, or national origin
 - (2) Title IX of the Education Amendments of 1972, 20 U.S.C. 1681-1686, which prohibits discrimination based on sex

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- (3) Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. 794, which prohibits discrimination based on disability
 - (4) Age Discrimination Act of 1975, 42 U.S.C. 6101-6107, which prohibits discrimination, based on age
 - (5) Equal Credit Opportunity Act of 1974, Title VII of the Consumer Protection Act of 1974 (as amended), Section 701 of the Equal Credit Opportunity Act of 1974, Public Law 93-49, 15 U.S.C. 1691
 - (6) Civil Rights Restoration Act of 1987, Public Law 100-259, as amended, Civil Rights Act of 1991, Public Law 102-166
 - (7) Americans with Disabilities Act (ADA) of 1990, 42 U.S.C. 12101
 - (8) Title VIII of the Civil Rights Act of 1968, as amended by the Fair Housing Amendments Act of 1988, 42 U.S.C. 3601
 - (9) Food Stamp Act of 1977, as amended by the Food Stamp Improvement Act of 1994, 7 U.S.C. 2011
- B. Regulatory and Executive Orders
- (1) 7 CFR Part 2, Subpart P, Delegation of Authority by the Assistant Secretary of the Department of Agriculture
 - (2) 7 CFR Part 15, Nondiscrimination in Federally Assisted Programs of the Department of Agriculture – Effectuation of Title VII of the Civil Rights Act of 1964
 - (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) 7 CFR Part 15d, Nondiscrimination in Programs or Activities Conducted by the Department of Agriculture
 - (6) 7 CFR Part 15e, Enforcement of Nondiscrimination on the Basis of Handicap in Programs or Activities Conducted by the Department of Agriculture
 - (7) 12 CFR Part 202, Equal Credit Opportunity Regulation B
 - (8) 28 CFR Part 35, Nondiscrimination on the Basis of Disability in State or Local Government Services
 - (9) 28 CFR Part 35, Subpart F, Compliance Procedures
 - (10) 28 CFR Part 41, Implementation of Executive Order 12250, Nondiscrimination on the Basis of Handicap in Federally-Assisted Programs
 - (11) 28 CFR Part 42, Subpart F, Coordination of Enforcement of Nondiscrimination in Federally-Assisted Programs
 - (12) 28 CFR Part 42, Subpart H, Procedures for Complaints of Employment Discrimination against Recipients of Federal Financial Assistance
 - (13) 28 CFR 50.3, Guidelines for the Enforcement of Title VI, Civil Rights Act of 1964
 - (14) 45 CFR Part 90, Nondiscrimination on the Basis of Age in Programs and Activities Receiving Federal Financial Assistance

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- (15) Executive Order 12250, Leadership and Coordination of Nondiscrimination Laws
 - (16) Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations
 - (17) Executive Order 13125, Increasing Participation of Asian Americans and Pacific Islanders in Federal Programs
 - (18) Executive Order 13145, To Prohibit Discrimination in Federal Employment Based on Genetic Information
 - (19) Executive Order 13160, Nondiscrimination on the Basis of Race, Sex, Color, National Origin, Disability, Religion, Age, Sexual Orientation, and Status as a Parent in Federally Conducted Education and Training Programs
 - (20) Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency (LEP)
- C. Departmental Regulations/Policy
- (1) DR 4330-1, Nondiscrimination in USDA Conducted Programs and Activities, dated October 18, 2000
 - (2) DR 4300-3, Equal Opportunity Public Notification Policy, dated November 16, 1999
 - (3) DR 4300-5, Agency Civil Rights Programs, dated January 14, 1998
 - (4) DR 4300-6, Civil Rights Policy for USDA, dated June 30, 2000
 - (5) DR 4360-3, Communicating with Under-Served Communities, dated January 14, 1998
 - (6) Secretary's Memorandum 1010-4, Restructuring Departmental Administration, dated May 16, 1997

405.3 Definitions

- A. Allegation - an assertion, declaration, or statement made in a complaint by the alleging party.
- B. Applicant - a landowner, land user, group, individual applicant, or any other potential program beneficiaries, who has made a verbal or written request for assistance.
- C. Beneficiary – a person or group of persons with an entitlement to receive or enjoy the benefits, services, resources, and information; or participate in the activities and programs assisted in whole or in part by USDA.
- D. Bilingual Capability - a measure of bilingual personnel and materials available in an area where there is a concentration of persons with limited or no English language communicating ability.
- E. Civil Rights Compliance Review - a systematic evaluation of measured compliance in program delivery and Title VII NRCS programs.
- F. Civil Rights Compliance Review Report - a summary of the findings, recommendations, and corrective actions resulting from a periodic review of NRCS programs and activities.
- G. Complainant - an individual, group, or organization that alleges discrimination in program delivery of benefits or related services provided by NRCS.

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- H. Complaint - a verbal or written statement alleging discrimination which indicates that any NRCS program or activity is administered or operated in such a manner that it results in unequal treatment or services being provided to persons or groups of persons because of their race, color, national origin, religion, sex, age, or disability status.
- I. Contractor - a person or entity who agrees to perform NRCS-assisted, program-related services at a specified price, and abide by agency rules and regulations.
- J. Conservation District (CD) - a subdivision of a state that is organized pursuant to the applicable state soil conservation district law. In some states, it is called a conservation district, soil conservation district, soil and water conservation district, natural resource district, Resource conservation district, land conservation commission, or natural resource conservation district. The members of governing bodies of these organizations are known as supervisors, directors, or commissioners.
- K. Cooperator - an individual, group, organization, or government agency that has an understanding, working arrangement, or agreement to cooperate with a conservation district in planning and carrying out natural resource conservation programs.
- L. Decision maker - an owner, manager, or partner who is primarily responsible for the business in its dealings with NRCS.
- M. Director, Civil Rights Division (CRD) - develops and coordinates civil rights policy for the agency and advises the Chief of NRCS on all matters that relate to civil rights compliance.
- N. Disabled Beneficiary – a program participant who has a physical or mental impairment that substantially limits one or more major life activities, has a history of such impairment, or is regarded as having such impairment.
- O. Discrimination - unequal treatment of a person or persons because of their race, color, national origin, sex, religion, age, disability, sexual orientation, marital status, family status, political beliefs, parental status, or because all or a part of an individual's income is derived from any public assistance program. This treatment may involve quantity and quality of assistance, timing of assistance, or the method used to provide a benefit. Discrimination may have occurred if any beneficiary is:
 - (1) Denied any benefits provided under the program;
 - (2) Provided any benefit that is different or is provided in a different manner from that provided to others under the program;
 - (3) Subjected to segregation or disparate treatment; or
 - (4) Restricted from taking part in or enjoying any benefit that is enjoyed by others.
- P. District Board - governing body of locally elected and/or appointed officials responsible for governing a conservation district.
- Q. Facility - owned, leased, or free portions of buildings, structures, equipment, roads, walkways, parking lots of either real or personal property.
- R. Federally-Assisted Programs - those programs/activities for which Federal financial assistance is provided, directly or through another recipient. The recipient may be a state, its instrumentality, or political subdivision (to include District of Columbia and any territories and possessions), any public or private agency, institution, or organization.

Please note: Most of NRCS annually statutory funded programs are "Federally-Conducted Programs". They only become Federally-Assisted Programs when financial assistance is extended through sub agreements, contracts, etc. with recipients as defined above. Example: If NRCS National Headquarters (NHQ) contributes \$25,000 to a university communications department to produce a foreign language video on conservation practices, this would be a Federally-Assisted Program.

S. Federally-Conducted Programs - those programs/ activities that include the day-to-day operations of the NRCS. These programs/activities result in or contribute to the availability of or delivery of services, benefits, or resources to customers. Example: If NRCS NHQ routes \$25,000 to a state office for their Public Affairs Specialist (PAS) to produce the same video, this would be a Federally-Conducted Program.

T. Federal Financial Assistance – a grant, a local contract other than a procurement contract, a contract of insurance or guarantee, or any other arrangement by which NRCS provides or otherwise makes the following available:

- (1) Grants and Loans of Federal Funds.
- (2) The sale and lease of real or personal property, including transfers or leases of such property, and proceeds from subsequent transfers or leases of such property.
- (3) Direct Assistance from NRCS employees.
- (4) In the cooperative program relationships that NRCS provides through conservation districts to resource partners, it is construed as providing Federal financial assistance under Title VI of the Civil Rights Act of 1964 with the loan of Federal personnel or having Federal personnel providing training.

U. Individuals with Disability - any persons who have physical or mental impairment that substantially limits one or more major life activities, or have history of such impairments. As used in this definition, the phrase -

Physical or Mental Impairment includes:

- (1) Any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the human body systems.
- (2) Any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities. The term "physical or mental impairment" includes, but is not limited to, such diseases and conditions as orthopedic; visual, speech, and hearing impairments; cerebral palsy; epilepsy; muscular dystrophy; multiple sclerosis; cancer; heart disease; mental retardation; emotional illness; drug addiction; and alcoholism.

V. Language Minority Area - a service-delivery area in which potential beneficiaries have little or no English language proficiency or an area identified by the Bureau of the Census as falling into this category.

W. Limited English Proficiency (EO 13166) - to improve access to Federally- conducted and Federally-assisted programs and activities for persons whom, as a result of national origin, are limited in their English proficiency.

X. Major Life Activities - functions such as caring for oneself, performing manual tasks, walking, seeing, hearing, speaking, breathing, and learning.

Y. Minority - a person or group of persons belonging to the protected classes covered by the Civil Rights Act of 1964. They are the following:

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- (1) Blacks - not of Hispanic Origin. A person having origins in the black racial groups of Africa.
- (2) Hispanic - A person of Mexican, Puerto Rican, Cuban, Central or South American, or other Spanish culture or origin, regardless of race.
- (3) 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.
- (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) American Indian or Alaska Native - A person having origins in any of the original peoples of North and South America (including Central America) and who maintains cultural identification through tribal affiliation or communication recognition (includes Aleuts and Eskimos).

Z. Parity – is defined as providing service to minority groups within 10% of service provided to White, Non-Hispanic Males.

AA. Program - any activity or project for which NRCS provides financial assistance, technical assistance, or other benefits to individuals, or provides the facilities for furnishing such assistance or benefits. This definition applies even if the assistance and benefits are provided directly or through employees of the recipient of Federal financial assistance or are provided by others through contracts or other arrangements with the recipient, including work opportunities, cash, or a loan.

BB. Racial/Ethnic/National Origin category - Identifies applicants and program participants by race, color, national origin, and ethnicity for the purpose of collecting and reporting racial/ethnic data. For progress reporting purposes, the categories include the four above, and White (not of Hispanic origin), a person having origins in any of the original peoples of Europe, North Africa, or the Middle East.

CC. Recipient - any state, political subdivision of any state, or instrumentality of any state or political subdivision; any public or private agency, institution, or organization, or other entity; or any individual 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. Such term does not include any ultimate beneficiary under such program.

DD. Secondary Recipient - any entity receiving Federal financial assistance through an intermediary, such as a recipient. For example, a construction contractor who receives funding through an NRCS sponsor.

EE. Service Delivery Area - the area served by a service delivery point in the administration of NRCS-assisted programs.

FF. Service Delivery Point - the place in which NRCS assisted program services or benefits are administered to the public, usually a field office/service center serving a conservation district or districts, or an RC&D office supporting an RC&D Council.

GG. Technical Assistance – assistance designed to help individuals, groups, organizations, and units of government to conserve soil, water, and related resources.

405.4 Responsibilities

The Secretary of Agriculture has delegated the responsibility to administer and enforce civil rights laws and regulations to the Assistant Secretary for Civil Rights. The Assistant Secretary for Civil Rights has further delegated this responsibility to the Chief of NRCS.

A. It is the Chief's responsibility to:

- (1) Establish, implement, and maintain an effective, proactive, and comprehensive civil rights program to ensure that the intent of the different nondiscrimination laws and the Department's rules and regulations are effectively carried out in all programs and activities. The program will provide evaluation, monitoring, and quality assurance in accordance with USDA and other civil rights policies;
- (2) Ensure that adequate and appropriately trained and qualified staff and other resources are available to carry out agency's civil rights laws and regulations;
- (3) Inform USDA, Office of Civil Rights of indications of program irregularities; and
- (4) Ensure NRCS personnel are provided with the needed training to carry out civil rights responsibilities and to be sensitive to all possible instances of discrimination.

B. It is the Director of Civil Rights Division's responsibility to:

- (1) Develop and coordinate the implementation of a comprehensive civil rights program to ensure compliance with nondiscrimination provisions as outlined in Section 405.2, "Major Authorities;"
- (2) Serve as principal advisor and counsel to the Chief and other senior staff in regard to policy and operations covering nondiscrimination with respect to equal opportunity in conservation program delivery and act as liaison for the Chief with governmental, community, minority, and grass roots organizations or groups;
- (3) Develop standards and criteria for program activities that directly or indirectly involve NRCS equal opportunity and civil rights efforts such as, but not limited to, delivery of services, eligibility, compliance, monitoring, and data collection. Review program regulations, directives, procedures, and guidelines to ensure that they meet equal opportunity and civil rights requirements;
- (4) Ensure that all NRCS employees receive civil rights training on program discrimination complaint process, know how to recognize a program discrimination complaint, and be able to direct USDA applicants and participants to information regarding their right to file and how to file a complaint;
- (5) Act as Civil Rights Liaison for NRCS with USDA Office of Civil Rights, USDA Office of the General Counsel, Department of Justice, and the US Commission on Civil Rights;
- (6) Conduct civil rights reviews, and related inquiries of program administration at the NHQ, the National Technical Service Centers and the States to monitor and ensure compliance with civil rights laws and policies. The review will be based on the Civil Rights Compliance Review Guide (Revised May 4, 2001), and the Director of Civil Rights Division will approve the report at the completion of the review. The findings shall be discussed with State Conservationists or other appropriate NRCS managers in a close out session following each review. Any NRCS unit found to be in noncompliance will implement corrective actions designed to achieve compliance with Federal civil rights requirements;

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- (7) Develop national standards, policies, and procedures for NRCS civil rights compliance reviews, and review other program appraisal guidelines and directives that directly or indirectly affect compliance and program delivery;
 - (8) Assist in the development and implementation of public notification policy;
 - (9) Ensure the nondiscrimination statement is on all national NRCS-initiated leaflets, pamphlets, brochures;
 - (10) Assist in the review and development of NRCS data collection and progress reporting systems to ensure that such systems provide adequate data for analyzing participation by all beneficiaries in NRCS programs and activities. Ensure that the products generated by the collection systems satisfy needs of managers, the compliance review process, and the requirements of USDA;
 - (11) Provide technical assistance to program managers in preparing Civil Rights Impact Analyses (CRIA) to examine Civil Rights implications of proposed agency actions related to program development and delivery, and decision-making requirements;
 - (12) Forward all written complaints of discrimination in NRCS programs based on their race, color, national origin, sex, religion, age, disability, sexual orientation, marital status, family status, political beliefs, parental status, protected genetic information, or because all or a part of an individual's income is derived from any public assistance program to USDA, Office of Civil Rights;
 - (13) Monitor and evaluate progress to ensure equity in all program activities that directly or indirectly involve NRCS civil rights efforts, such as delivery of services, collection of program eligibility data, evaluation of parity in program participation, and monitoring compliance in civil rights activities;
 - (14) Provide guidance to State Conservationists on the implementation of USDA and NRCS civil rights directives, rules, regulations, guidelines, policies, and procedures to ensure that civil rights objective are met;
 - (15) Coordinate, collate, and prepare the state responses for bi-annual civil rights performance report for NRCS;
 - (16) Provide investigative or fact-finding assistance as needed;
 - (17) Provide assistance, as requested, to ensure that NRCS employees who have contact with the public are trained in both program and employment discrimination complaint processes; and
 - (18) Provide training, guidance, and assistance to individual state Civil Rights committees and SEPMs related to programs, projects, and activities. Attend meetings of the National Civil Rights Committee.
- C. It is the responsibility of Deputy Chiefs, Division Directors, and Managers to:
- (1) Implement civil rights policy through directives in consultation with the NRCS CRD Director in their areas of responsibility.
 - (2) Consult and coordinate with the NRCS CRD Director regarding development of civil rights impact analyses.
- D. It is the responsibility of the State Conservationists and Directors of the Caribbean and Pacific Basin Areas responsibility to:

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- (1) Implement civil rights policy through directives in consultation with the NRCS CRD Director in their areas of responsibility.
- (2) Consult and coordinate with the NRCS CRD Director regarding development of civil rights impacts analyses.
- (3) Direct and coordinate program activities to reflect the nondiscrimination requirements and provisions of this General Manual and other program regulations. Submit activity reports to the NRCS CRD Director, to assist with the preparation of civil rights reports.
- (4) Coordinate and monitor recipients' compliance with contractual agreements and memorandums of understanding to ensure that their procedures and practices conform to NRCS civil rights policies and requirements.
- (5) Ensure that states and field offices maintain files and related documentation on civil rights compliance in program delivery.
- (6) Promote the representation of women, minorities, and persons with disabilities on local boards, councils, and committees so that the natural resource interests and needs of such groups are received and addressed as conservation decisions are made and implemented.
- (7) Ensure that the Agency responses to discrimination complaints referred by the USDA Office of Civil Rights (OCR) are prepared by the appropriate State Conservationist and completed within the timeframe requested. Information and findings related to the complaints along with recommendations for corrective actions are reported to the Director, USDA OCR.
- (8) Include civil rights compliance goals, objectives and action items in strategic, business, or other operating plans.
- (9) Ensure that all employees receive annual civil rights training and that they fully understand their civil rights responsibilities.

405.5 Public Notification Procedures

- A. In compliance with Departmental Regulation (DR) 4300-3 "Equal Opportunity Public Notification Policy," the Chief of NRCS shall establish programs to ensure that all persons know about the availability of and how to use NRCS program services effectively and are encouraged to participate.
- B. Accordingly, NRCS must implement a public notification program that meets the following requirements:
 - (1) Include the appropriate nondiscrimination statement on all materials produced by USDA or NRCS and its recipients for public information, public education, or public distribution. If the material is too small to permit the full statement to be included, the material will, at minimum, include the statement "The USDA is an equal opportunity provider and employer," in print size no smaller than the text.
 - (2) Ensure through review processes that recipients are complying with public notification requirement.
 - (3) Ensure that notices of the USDA nondiscrimination statement are prominently posted in NRCS' and its recipients' offices. The USDA posters "And Justice for All" (Form AD-475A for NRCS offices and Form AD-475C for Recipient offices) and USDA

Secretary's nondiscrimination poster will be used for this purpose. The nondiscrimination statement shall be posted in languages appropriate for the local population.

- (4) Include appropriate reference to USDA equal opportunity policy in public speeches and meetings. Do not participate in meetings with the knowledge that the meetings were convened to avoid compliance with applicable nondiscrimination statements.
- (5) Provide materials in alternative means of communication (Braille, large print, audiotape, etc.) upon request.

405.6 Limited English Proficiency (LEP)

- A. Pursuant to Executive Order 13166, entitled "Improving Access to Services for Persons with Limited English Proficiency," the Natural Resources Conservation Service (NRCS) is committed to providing equal access to its programs and services by persons with Limited English Proficiency (LEP).
- B. The key to providing equal access for persons with LEP is to ensure that the individual is aware of NRCS programs and services and can communicate effectively with the service provider. The service provider must ensure that the person with LEP is given adequate information, is able to understand the services and benefits available, and is able to receive those for which he or she is eligible. NRCS must also ensure that the person with LEP can effectively communicate the relevant circumstances of his or her situation to the service provider.
- C. In reviewing complaints and conducting compliance reviews, NRCS will consider a program or activity to be in compliance with LEP requirements when the service provider effectively incorporates and implements the following four elements:
 - (1) *Assessment*. Conducts a thorough annual assessment of the language needs of the population to be served;
 - (2) *Development and Implementation of a Written Policy on Language Access*. Develops and implements a comprehensive written policy that will ensure meaningful communication. This plan is amended on an annual basis, as needed, depending on the local service population;
 - (3) *Training of Staff*. Takes steps to ensure that staff understands the policy and is capable of carrying it out; and
 - (4) *Monitoring*. Conducts regular oversight of the language assistance program to ensure that LEP persons can meaningfully access the program or activity. The failure to implement one or more of these measures does not necessarily mean noncompliance with Title VI. If implementation of one or more of these options would be so financially burdensome as to defeat the legitimate objectives of a service provider's program or activity, and if there are equally effective alternatives for ensuring that persons with LEP has meaningful access to programs and services, the service provider will not be determined or considered to be in noncompliance. However, in reviewing service provider's compliance, NRCS will seek documentation and evidence that the service provider considered and, when appropriate, incorporated these elements into their LEP programs.
- D. Barriers and Concerns in LEP

- (1) Providing services to LEP persons which are more limited in scope or lower in quality than those provided to other persons;
- (2) Subjecting LEP persons to unreasonable delays;
- (3) Limiting participation in a program or activity on the basis of English proficiency;
- (4) Providing services to LEP persons that are not as effective as those provided to persons proficient in English; and
- (5) Failing to inform LEP person of the right to receive free interpreter services or requiring them to provide their own interpreter.

405.7 Data Collection and Reporting

- A. 28 CFR Part 42.406 authorizes agencies to collect information on race, sex, national origin, and disability (RSNOD), as appropriate, to determine compliance in program delivery.
- B. Each state conservationist will be responsible for collecting and reporting participation and eligibility data from each NRCS program office. The data will be analyzed each year to measure delivery of program benefits in order that the benefits and services delivered to protected groups can be documented, evaluated, and compared to benefits delivered to non-minority groups and vice versa. The analysis shall be used to determine any disparities in delivery or program benefits by RSNOD categories and to identify areas of outreach efforts, provide status reports at the field office level, and measure progress made regarding program delivery on a nondiscriminatory basis.
- C. The reporting system that will collect and report data to measure program participation shall be the Agency's official database. The system will be used to identify:
 - (1) The composition of customers serviced by race, sex, national origin, and disability;
 - (2) The total number of applicants and participants in programs, activities and specific services or benefits, as appropriate, by race, sex, national origin, and disability;
 - (3) Memberships on local and national planning and advisory boards and committees by race, sex, national origin, and disability; and
 - (4) Data on service areas where persons with LEP reside by race and sex. This data should also include the primary language of each group, estimated number of persons in each group, and the number of Agency staff who are bilingual in the identified languages.

405.8 Representation on Boards, Councils and Committees

- A. The NRCS policy is to encourage, support, provide training, and assist all conservation boards, councils, and committees to achieve diverse representation of customer groups on such boards, councils, and committees. It is the responsibility of NRCS managers and supervisors to provide support, training, and assistance to Agency employees, as they work to identify and assist with this diversity effort.
- B. To implement the NRCS policy, the state conservationist will continue discussions with NRCS partners to promote an atmosphere of mutual understanding and cooperation and to address the issues of representation of minorities, women, and persons with disabilities

on such bodies. Such discussions should emphasize that diversity is in the best interest of their organization.

- C. The state conservationist shall take appropriate actions relative to the NRCS Plan of Action for Representation on Boards, Councils, and Committees, as contained in Section 405.19, Sample. This plan will remain in force until NRCS policy on the subject is revised or changed.

405.9 Civil Rights Compliance Reviews

- A. On site and desk audit compliance reviews in program delivery shall be conducted periodically to ensure that NRCS programs are operated in compliance with nondiscrimination requirements. Such reviews shall cover NRCS operations in all organizational units and recipients. It is NRCS policy to inform every recipient of the requirement to participate in civil rights compliance reviews. These reviews may be conducted separately or as part of a routine program appraisal.
- B. The NRCS CRD Director will develop annual and long-term schedules for civil rights compliance reviews of NRCS administrative units, including states and other NRCS units. The annual schedule will identify the locations and dates of compliance reviews to be conducted during the upcoming fiscal year. The long-term schedule will ensure compliance with Department of Justice (DOJ) and Departmental rules and regulations that mandate reviews be conducted every 3-5 years. The compliance reviews will evaluate and monitor progress in program delivery and assure continuous compliance with nondiscrimination regulations. Reports from reviews conducted by the Civil Rights Division will contain the signature of the CRD Director.
- C. State Conservationists shall conduct periodic (every 3 to 5 years) compliance reviews of area, field, and project offices to evaluate and monitor progress in program delivery compliance with nondiscrimination regulations.
- D. The office performing compliance reviews shall prepare and issue a report on the findings, noncompliance, recommendations, and commendable items to the reviewed entity after the on-site review is completed. Review reports will be provided to the appropriate NRCS official of the location being reviewed upon completion of the review. Report on the reviews conducted by the state should be completed within 10 working days following the review.
- E. If a review discloses noncompliance that results in required actions or recommendations, corrective actions must be taken or a plan to correct the deficiencies must be completed within 30 days after issuance of the review report. States are also required to respond to the recommendations and include them in their corrective action plan. An update status of the corrective actions must be provided quarterly to CRD until the deficiency is corrected. When all required actions are satisfactorily completed, the review will be closed. Copies of the last two civil rights reviews shall be retained in the reviewed office. This information shall be made available to all authorized personnel in NRCS, USDA, and DOJ upon request. All reports will include the statement "For Official Use Only."
- F. Special on-site or desk audit reviews will be conducted by the NRCS CRD Director, or when required, by USDA OCR. The selection of a particular state or area for a special compliance review is based on, but not limited to, such factors as:
 - (1) The number of discrimination complaints filed;

- (2) When NRCS receives an allegation that reflects prima facie evidence of noncompliance;
- (3) When NRCS determines that there is sufficient evidence of discrimination that requires immediate action;
- (4) When a review of NRCS statistical data reveals a disparity of 10 percent or more in program participation for 2 or more consecutive years; and
- (5) When it is reported to NRCS and USDA that a protected class is being discriminated against in a specific program in a particular location.

Part 405.10 Pre-award and Post-award Reviews

Pre-Award

- A. Compliance with applicable civil rights laws is a prerequisite for approval of an application for Federal financial assistance. In making decisions to render Federal financial assistance, NRCS will ensure that prospective recipients meet the requirements set out below:
 - (1) Assurances. Each applicant for Federal financial assistance must execute an assurance of compliance as a condition for receiving assistance. If the applicant refuses to sign the required assurance, NRCS will send a notice of noncompliance to the applicant and provide the applicant with an opportunity for a hearing or other statutory procedural options. If the applicant refuses its rights to a hearing or does not prevail at the hearing, then NRCS may exercise one of two options:
 - (i) Defer the decision on the provision of Federal financial assistance until such time as the applicant signs the assurance; or
 - (ii) Deny the applicant's request for Federal financial assistance. At no time during this stage of the process does NRCS have to allege or offer evidence of noncompliance; they only have to show a failure to sign the required assurance.
 - (2) Pre-Award Data Collection. In addition to providing an assurance of compliance, applicants for Federal financial assistance must also disclose, in writing, to NRCS a description of:
 - (i) All lawsuits and complaints filed against it;
 - (ii) Assistance applications that it has pending in other Federal agencies and other Federal assistance being provided;
 - (iii) Any civil rights compliance reviews it has undergone during the preceding two years; and
 - (iv) Any findings of noncompliance with any relevant civil rights requirements.
- B. Recipients of Federal financial assistance from NRCS are also required to obtain assurances of compliance and pre-award data from sub-recipients and to maintain the assurances and data on file, available for review by NRCS funding officials.
- C. If sub-recipients refuse or fail to execute an assurance of compliance or provide pre-award data, recipients are authorized to defer a decision on the sub-recipient's application, seek a voluntary resolution, or if no resolution is reached, refuse to award assistance (after complying with statutory procedural requirements.) In such situations, the recipient is required to provide notice of its actions to NRCS.

Post-Award

- A. *Scope.* It is within the discretion of the NRCS Chief or CRD Director to determine the scope of any post-award compliance review. A post-award compliance review may be a comprehensive onsite investigation or a desk audit, which is a limited review of the documentation submitted to NRCS or CRD by the recipient. Desk audits may include onsite visits.
- B. *Targeting Requirements.* While NRCS has a broad discretion in determining which recipients and sub-recipients will be targeted for post-award compliance, the selection of recipients and sub-recipients for such reviews must be:
- (1) Authorized by statute(s) to which the recipient is subject;
 - (2) Properly limited in scope; and
 - (3) Pursuant to evidence of an existing violation or an administrative plan containing specific neutral criteria.
- C. *Establishing Criteria.* In establishing criteria for targeting recipients and sub-recipients for post-award compliance reviews, NRCS will consider:
- (1) Objectives and initiatives targeted in NRCS strategic plans;
 - (2) Issues frequently identified as problems faced by program beneficiaries;
 - (3) Geographic areas where problems have been identified or geographic areas in which there has been little compliance activity;
 - (4) Issues raised in complaints or identified during complaint investigations that could not be fully covered within the scope of the complaint investigation process;
 - (5) Problems and concerns identified by community groups, advocates, and others representing beneficiaries and protected groups;
 - (6) Issues flagged to the recipient by its block grant recipients; and
 - (7) Issues and problems identified by other Federal, state or local civil rights agencies.
- D. *Recipient Compliance Obligations.* State agencies administering a continuing program which receives Federal financial assistance will establish a compliance program for themselves and other recipients that obtain Federal assistance through them. Each such program must provide for the assignment of civil rights responsibilities as they relate to Federally-assisted programs to designated state personnel and comply with the standards set for USDA agencies. ALL recipients will submit:
- (1) Periodic compliance reports to NRCS from which they receive Federal financial assistance;
 - (2) Where appropriate, reports of conducted field reviews of a representative number of its major sub-recipients; and
 - (3) Records and data necessary to self-monitor and to permit NRCS officials to determine their compliance status.

405.11 Resolution of Noncompliance Reviews

- A. A determination of noncompliance will result when any civil rights compliance reviewer of NRCS offices finds that a civil rights guideline, instruction, directive, regulation, or this issuance is not being adhered to in respect to program delivery. The NRCS CRD (230-GM, Amend. , May 2004

Director will make determinations of noncompliance under the nondiscrimination statutory provisions enumerated in this issuance. For reviews, the effective date of a finding of probable noncompliance is the date of issuance of the compliance review report.

- B. Departmental regulations require the resolution of noncompliance by voluntary means whenever possible. The NRCS CRD Director is responsible for notifying State Conservationists or other program managers in writing of the noncompliance status and to take appropriate actions to achieve compliance through voluntary means within 30 days. Direct contacts, correspondence, and meetings should be used to assist in achieving voluntary compliance.
- C. If all reasonable efforts fail to achieve compliance through voluntary means, the NRCS CRD Director will notify the Chief of NRCS, who in turn, will take appropriate action.

405.12 Complaints of Program Discrimination

- A. All written program discrimination complaints must be forwarded to the Secretary within 24 hours at the point of receipt. The Department will prepare and issue the acknowledgement letter to the complainant(s).
- B. When a potential beneficiary alleges discrimination informally, it is important to determine the exact problem or the cause for frustration. NRCS employees should use a common sense approach to manage these issues, and attempt to resolve the problem at the local level. Supervisors and managers are required to provide training and assistance on the management of these and other written complaints.
- C. In response to notification of formal discrimination complaints from USDA, OCR, the NRCS Director, CRD, will:
 - (1) Facilitate the agency response to allegations raised by the discrimination complaint and will submit to the Director, USDA, CR the official response within 24 days after receipt of the complaint. The response will contain:
 - (i) Admission of all statements/allegations in the complaint with which the Agency agrees;
 - (ii) Denials of all statements/allegations in the complaint with which the Agency does not agree;
 - (iii) Explanation of the Agency's inability to agree or disagree with any statements/allegations in the complaint
 - (iv) Explanation from the Agency's perspective of the event(s) that led to filing the complaint. Include any possible misunderstanding/miscommunication that occurred. The Agency's answer to each of the complainant's allegations of discrimination, along with suggested recommendations for corrective actions where appropriate;
 - (v) A statement of the law, policy, or other basis on which the Agency relied to justify the decision, action, or inaction;
 - (vi) The Agency's interpretation of such pertinent law, policy, or other basis;
 - (vii) Copies of pertinent laws, regulations, and policies;

- (viii) Comparative data/information, if available, relating to situations similar to the complainants which involved other customers of the Agency;
 - (ix) Additional material facts not mentioned in the complaint;
 - (x) A photocopy of the customer's file;
 - (xi) Other documents related to the complainant's allegations. Signed statements from Agency personnel may be included; and
 - (xii) No statements (written or oral) shall be taken from the complainant, or anyone who may be sympathetic to the complainant. Any such contact could be considered to be reprisal.
- (2) Attempt to resolve program complaints, where appropriate, using conciliation and other methods of early intervention.
 - (3) Review relevant data and related information with State Conservationists to substantiate suggested recommendations and/or corrective actions required.
 - (4) Monitor progress relative to corrective actions taken to achieve compliance.
 - (5) Conduct civil rights investigative reports as required.
 - (6) Act in a timely manner to follow through on civil rights investigative reports and recommendations, assist states in developing a corrective action plan, and submit periodic progress reports to Director, USDA, CR, as required.

405.13 Reprisal, Intimidation, or Retaliatory Acts

No agency, officer, or employee of USDA, including persons representing USDA and its programs, shall intimidate, threaten, harass, coerce, discriminate against or commit or seek reprisal against anyone who participates in any aspect of the discrimination complaint process.

405.14 Agency Contact with Complainant

The Agency is only permitted to contact the complainant with an offer of resolution. If the complainant refuses such contact, the Agency will not persist. Additionally, no contact is allowed with the complainant or anyone sympathetic to the complainant to gather additional information regarding the complaint, to take statements, etc.

405.15 Agency Resolution Efforts

During the 24-day Agency Response period:

- A. The agency should attempt to resolve the complaint.
- B. If the complainant refuses such contact/attempt, the agency shall not persist.
- C. If resolution is reached, the agency shall promptly forward the resolution to the USDA, OCR for review.

405.16 Adverse Inference

If an agency fails to submit a resolution or a response signed by the Agency's Director CRD within 24 days:

- A. USDA, CR will infer that the Agency agrees with all allegations in the complaint.
- B. The Agency may not thereafter challenge any facts alleged in the complaint.

405.17 Agency Implementation of Decision or Settlement

- A. Implementation must be within 10 business days following notification to the Agency from USDA, OCR.
- B. The Agency is to notify the USDA, OCR, in writing when implementation has taken place.
- C. If the USDA, OCR has not received notification of implementation within 10 business days, the Agency head will be notified and given 3 additional days to comply.
- D. If the Agency does not notify the USDA, OCR of implementation within a 3-day period, the director of USDA, CR, will implement.

405.18 Training

- A. All employees assigned or having program delivery responsibilities will receive civil rights compliance training within 6 months after assuming such responsibilities.
- B. All employees at all levels should receive periodic training in civil rights compliance as an effective means to reinforce awareness, knowledge, and understanding of the Agency's overall civil rights mission. Each NRCS planning and reporting unit or entity is required to provide civil rights training for its staff. Document the date, place, name, and number of participants, and the content of the training provided and/or received.
- C. All supervisors and managers will include civil rights as a topic in their staff meetings.
- D. Provide civil rights training to all NRCS employees to ensure that persons responsible for civil rights in program delivery understand those responsibilities. Provide the opportunity for civil rights training to NRCS' recipient officials and their employees. This training should include information regarding their roles and responsibilities with respect to civil rights.
- E. Training in civil rights laws and regulations should be an integral part of NRCS management training. Training should include employee's responsibility for delivery and/or supervision of NRCS program benefits to potential beneficiaries. Civil Rights training will include, but is not limited to, the following:
 - (1) A discussion of laws, rules, and regulations which are pertinent to the delivery of NRCS programs and services;
 - (2) The identification of specific supervisory and employee responsibilities and duties in the accomplishment of civil rights compliance in program delivery, consequences of any noncompliance status, the provisions of this GM issuance and related Departmental Regulations related thereto;
 - (3) The improvement in the operation of the civil rights compliance functions within the NRCS;
 - (4) The information needed to gain an understanding of programs subject to civil rights compliance and to recognize examples of compliance and noncompliance with nondiscrimination provisions in a program or activity;

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- (5) The identification of specific actions which are essential to eliminate or reduce possible discrimination in the delivery of NRCS programs and services;
- (6) The development of skills for conducting civil rights compliance reviews, giving attention to data needs, documentation, determining noncompliance or compliance, accomplishments, etc., that surface during the course of the review;
- (7) The discussion of positive benefits of civil rights compliance reviews as a management tool and the commitment of staffs to the review function, as an integral part of program administration;
- (8) The development of knowledge and skills in implementing program outreach initiatives as required under the Public Notification Plan;
- (9) The development of knowledge and skills in fully responding to the NRCS Compliance Review Guide;
- (10) The development of a clear concept of program participation data and its significance to achieve parity of program participation both in providing technical assistance and extending program benefits;
- (11) The development of an understanding in handling and processing potential formal program complaints of discrimination; and
- (12) The development of skills to evaluate the compliance posture of recipient groups or organizations for NRCS assistance prior to the approval of that assistance.