

APPENDIX C

TITLE IX COMPLIANCE REQUIREMENTS FOR RECIPIENTS

TITLE IX COMPLIANCE REQUIREMENTS FOR RECIPIENTS

<u>Requirement</u>	<u>Description of Requirement</u>	<u>Location in Regulation</u>
1. Remedial and Affirmative Action	<p>Recipients shall take remedial action as the Secretary deems necessary to overcome the effects of discrimination on the basis of sex.</p> <p>A recipient may take affirmative action to overcome the effects of discrimination.</p>	7 CFR 15a.3(a) 7 CFR 15a.3(b)
2. Self-evaluation	<p>Each recipient must evaluate its policies and practices and modify policies and practices that do not meet nondiscrimination requirements. Evaluation should be maintained for three years.</p>	7 CFR 15a.3(c)
3. Assurance	<p>Every application for participation in program benefits must contain or be accompanied by an Assurance Agreement that the applicant's program will be operated in compliance with all requirements of the USDA regulations.</p>	7 CFR 15a.4
4. Employment	<p>The obligation to comply with Title IX USDA Regulations does not alter obligations not to discriminate on the basis of sex imposed by Executive Order 11246, as amended; Title VII of the Civil Rights Act of 1964; the Equal Pay Act; and any other act of Congress or Federal regulation.</p>	7 CFR 15a.5
5. Designation of responsible employee	<p>Each recipient shall designate at least one employee to coordinate its efforts to comply with and carry out Title IX regulations.</p>	7 CFR 15a.7(a)

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<u>Requirement</u>	<u>Description of Requirement</u>	<u>Location in Regulation</u>
6. Complaint Procedure	A recipient shall adopt and publish grievance procedure providing for prompt and equitable resolution of student and employee complaints.	7 CFR 15a.7(b)
7. Dissemination of Policy	Notification of Policy - Each recipient shall implement specific steps to notify applicants for admission and employment, students and parents, sources of referral of applicants for admission and employment and all unions or professional organizations, that it does not discriminate on the basis of sex in educational programs. Publications - Each recipient shall include a statement of the nondiscrimination on the basis of sex policy. Distribution - Each recipient shall distribute without discrimination on the basis of sex its publications and shall apprise its admission and employment representatives of the nondiscrimination policy.	7 CFR 15a.8

APPENDIX D

**FINAL AGENCY GUIDELINES ON THE DEPARTMENT'S
REGULATIONS ON SECTION 504 OF
THE REHABILITATION ACT OF 1973**

FINAL AGENCY GUIDELINES ON THE DEPARTMENT'S REGULATIONS ON SECTION 504 OF THE REHABILITATION ACT OF 1973

The following Guidelines are designed to assist FNS Program recipients in implementing Section 504 of the Rehabilitation Act of 1973 which prohibits discrimination on the basis of handicap in Programs and activities receiving or benefiting from Federal financial assistance. These Guidelines are designed as a supplement to the Department's Section 504 Regulations, not as a substitute. It is essential that you use the Guidelines and the Regulations together.

<u>Requirement</u>	<u>Description of Requirement</u>	<u>Location in Regulations</u>
1. Assurance	Each application for Program participation must be accompanied by a written assurance agreement that the applicant's program will be operated in compliance with all requirements of USDA Regulations.	7 CFR 15b.5

Guideline: The assurance requirement can be met by incorporating the agreement in existing assurance agreements and/or Federal/State agreements. The assurance agreement shall state that the State agency will comply with 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, and provisions required by the implementing regulations of the Department of Agriculture, Department of Justice Enforcement Guidelines and FNS Directives and guidelines to the effect that no person shall, on the ground of race, color, national origin, age, sex, or handicap, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any Program or activity for which the Agency receives Federal financial assistance.

The State agency is held accountable for assuring that its local agencies or sub-recipients, and entities that it contracts with to carry out FNS related services will comply with provisions of the above cited laws and regulations.

Action: If not already accomplished, update all Federal/State agreements to include the prohibited areas or race, color, national origin, age, sex or handicap.

<u>Requirement</u>	<u>Description of Requirement</u>	<u>Location in Regulations</u>
2. Designation of a 504 Coordinator	Each recipient (grantee/subgrantee) that employs 15 or more persons shall designate at least one person to coordinate its efforts to comply with and carry out Section 504 regulations.	7 CFR 15b.6(a)

Guideline: Each recipient (grantee/subgrantee) that employs 15 or more persons shall designate a person to coordinate and handle Section 504 activities. It is not necessary to hire an additional employee. The person(s) responsible for coordinating and handling other civil rights matters such as Title VI and Title IX, may also be utilized to handle Section 504.

Action: Identify an employee responsible for coordinating and handling Section 504 activities.

<u>Requirement</u>	<u>Description of Requirement</u>	<u>Location in Regulations</u>
3. Complaint/ Grievance Procedures	Each recipient (grantee/subgrantee) that employs 15 or more persons shall adopt grievance procedures that incorporate appropriate due process standards and that provide for prompt and equitable resolution of complaints.	7 CFR 15b.6(b)

Guideline: Each recipient (grantee/subgrantee) that employs 15 or more persons shall have a grievance/complaint system in place. Grievance procedures required by other regulations are acceptable as long as they comply with due process standards and provide for the prompt and equitable resolution of complaints. Accordingly, recipients may forward grievances/complaints to the Secretary for handling in accordance with 7 CFR 15.6, Title VI Regulations, Nondiscrimination in Federally-Assisted Programs and Rules and Regulations, as amended.

If recipients (grantee/subgrantee) choose to establish their own grievance/complaint procedures, their procedures must be in compliance with this section of the regulations, 7 CFR 15b.6(b).

Action: Recipients (grantee/subgrantee) shall continue to forward complaints to the Secretary for handling until such time as recipients own complaint procedures have been approved by the Civil Rights and Equal Employment Opportunity (CR/EEO) Division.

NOTE: 7 CFR 15b.6(c) The Secretary may require any recipient (grantee/subgrantee) with fewer than 15 employees to designate a responsible employee and adopt grievance procedures when the Secretary finds a violation of this part or finds that complying with these requirements will not significantly impair the ability of the recipient to provide benefits and services.

<u>Requirement</u>	<u>Description of Requirement</u>	<u>Location in Regulations</u>
4. Public Notification	Each recipient (grantee/subgrantee) shall take appropriate initial and continuing steps to notify participants, beneficiaries, applicants and employees, including those with impaired vision or hearing, and unions or professional organizations holding collective bargaining or professional agreements with the recipient, that it does not discriminate on the basis of handicap in violation of Section 504. The notification shall state, where appropriate, that the recipient does not discriminate in admission or access to, or treatment or employment in, its Programs or activities. The recipient shall also identify the responsible employee designated in accordance with 15b.6(a) and identify the existence and location of accessible services, activities, and facilities.	7 CFR 15b.7(a)

Guideline: Each recipient (grantee/subgrantee) shall take appropriate initial and continuing steps to notify participants, beneficiaries, applicants and employees that it does not discriminate on the basis of handicap. The notice shall identify the responsible employee designee and the existence and location of accessible services, activities, and facilities. Methods of initial and continuing notification may include but are not limited to the posting of notices, placement of notices in the recipients publications, radio announcements, and the use of other visuals and aural media.

Action: A recipient (grantee/subgrantee) shall make the initial notification of its nondiscrimination policy on the basis of handicap within 90 days from the date of issuance of the final guidelines.

<u>Requirement</u>	<u>Description of Requirement</u>	<u>Location in Regulations</u>
4. Public Notification	If a recipient (grantee/subgrantee) publishes or uses recruitment material or publications containing general information that it make available to participants, beneficiaries, applicants or employees, it shall include in those materials or publications a statement of the policy in 15b.7(a).	7 CFR 15b.7(b)

Guideline: All information used by the recipient (grantee/subgrantee) to inform the public about the Program shall contain the following or similar nondiscrimination statement. "This is an equal opportunity program. If you believe you have been discriminated against because of race, color, nation origin, age, sex or handicap, write immediately to the Secretary of Agriculture, Washington, D.C., 20250." The notice may contain the address to the primary recipient agency if the recipient has an approved grievance/complaint system.

This requirement can be met by including appropriate inserts in existing material and publications. Also, when current materials, publications, pamphlets, and brochures have been exhausted, the nondiscrimination statement must be included on all reprints and new materials.

Action: Include handicap as a prohibited area of discrimination in all reprints and any new materials that will be developed.

<u>Requirement</u>	<u>Description of Requirement</u>	<u>Location in Regulations</u>
<p>5. Remedial/Voluntary Action/Self Evaluation</p>	<p>If the Secretary finds that a recipient (grantee/subgrantee) has discriminated against persons on the basis of handicap, the recipient shall take such remedial action as the Secretary deems necessary to overcome the effects of the discrimination.</p> <p>Where a recipient (grantee/subgrantee) is found to have discriminated against persons on the basis of handicap and where another recipient exercises control over the recipient that has discriminated, the Secretary, where appropriate, may require either or both recipients to take remedial action.</p> <p>The Secretary may, where necessary to overcome the effects of discrimination, require recipients (grantee/subgrantee) to take remedial action (i) with respect to handicapped persons who are no longer participants in the program when such discrimination occurred; or (ii) with respect to handicapped persons who would have been participants in the program had the discrimination not occurred; or (iii) with respect to handicapped persons presently in the program but not receiving full benefits or equal and integrated treatment within the program.</p>	

Guideline: Recipients (grantee/subgrantee) shall take remedial action as the Secretary deems necessary to overcome the effects of discrimination on the basis of handicap.

Action: When discrimination has been disclosed, recipients (grantee/subgrantee) shall take corrective action to overcome the effects of the discrimination.

Voluntary Action: A recipient (grantee/subgrantee) may take steps, in addition to any action that is required by this part, to overcome the effects of conditions that resulted in limited participation in the recipient's program or activity by qualified handicapped persons.

Guideline: Same as the requirement.

Self-Evaluation: A recipient (grantee) shall, within one year of the effective date of this part: (i) evaluate, with the assistance of interested persons, including handicapped persons or organizations representing handicapped persons, its current policies and practices and the effects thereof that do not or may not meet the requirements of Section 504; (ii) modify, after consultation with interested persons, including handicapped persons or organizations representing handicapped persons, any policies and practices that do not meet the 504 requirements; and (iii) take, after consultation with interested persons, including handicapped persons or organizations representing handicapped persons, appropriate remedial steps to eliminate the effects of any discrimination that resulted from adherence to these policies and practices.

A recipient (grantee) shall, for at least three years following completion of the self-evaluation, maintain a file, make available for public inspection and provide to the Secretary upon request: (i) a list of the interested persons consulted; (ii) a description of any modifications made and of any remedial steps taken.

Guideline: Same as the requirement. However, where a recipient (grantee) has completed a self-evaluation in the course of complying with regulations issued by other Federal agencies under Section 504, the self-evaluation requirement is met if all aspects of the recipient's programs have been adequately evaluated and appropriate modifications and corrective action has been implemented.

Action: Within one year of the effective date of this guidance, each recipient (grantee) shall evaluate its current policies and practices, modify any policies and practices that do not comply with the Section 504 requirements and take corrective action to eliminate the effects of any discrimination that resulted from adherence to these policies and practices. Maintain the self-evaluation on file for three years. It is not necessary to complete a self-evaluation if you are in compliance with one completed for another Federal agency.

Requirement	Description of Requirement	Location in Regulations
6. Employment	No qualified handicapped person shall, on the basis of handicap, be subjected to discrimination in employment under any program or activity receiving assistance from the Department.	7 CFR 15b.12
	<u>Reasonable Accommodation.</u> A recipient (grantee/subgrantee) shall make reasonable accommodations to the known physical or mental limitations of an otherwise qualified handicapped applicant or employee unless the recipient can demonstrate that the accommodation would impose an undue hardship on the operation of the program.	7 CFR 15b.13

Guideline: Same as requirements. However, there is information to be shared with reference to reasonable accommodations. A good resource on the subject is "Handbook of Reasonable Accommodation" published by the United States Office of Personnel Management in March 1980. This handbook defines reasonable accommodation as a logical adjustment made to a job and/or the work environment that enables a qualified handicapped person to perform the duties of that position. It is important to remember that accommodation can only be determined on a case-by-case basis, taking into consideration the applicant or employee, the specific disability and the existing limitations, the essential duties of the particular job, the work environment and the reasonableness of the proposed accommodation. In all instances, the applicant or employee should be consulted before an accommodation is made.

It should be noted that reasonable accommodation is required only for qualified applicants and employees.

Some actions that can be taken in connection with reasonable accommodation are attached. These were taken from the Handbook mentioned previously.

Action: Provide an equal opportunity for employment to handicapped persons. After a handicapped person has been hired, if necessary, make reasonable accommodation or adjustments to the job or environment that will allow the handicapped person to perform the duties of the job.

Undue Hardship: Recipients (grantee/subgrantee) are required to make reasonable accommodation for qualified handicapped applicants or employees unless the recipient can demonstrate that the accommodation would impose an undue hardship on the operation of the program. Factors to be considered in determine undue hardship are:

- (a) the overall size of the recipient's program with respect to the number of employees, number and type of facilities and size of budget;
- (b) the type of the recipient's operation, including the composition and structure of the recipients' workforce, and;
- (c) the nature and cost of the accommodation needed.

All alternatives should be explored to determine that the reasonable accommodation proposed is the most effective one for both the employee and the Agency.

A recipient (grantee/subgrantee) may not deny any employment opportunity to a qualified handicapped employee or applicant if the basis for the denial is the need to make reasonable accommodation to the physical or mental limitations of the employee or applicant.

It is suggested that when applying reasonable accommodation, you contact the applicant or employee and local State vocational rehabilitative agencies, VA hospitals, private rehabilitations centers and universities with rehabilitation units, so that a sound recommendation can be made on ways in which the job can be modified.

<u>Requirement</u>	<u>Description of Requirement</u>	<u>Location in Regulations</u>
7. Program Accessibility	A recipient (grantee/subgrantee) shall operate each assisted program or activity so that the program or activity, when viewed in its entirety, is readily accessible to and usable by qualified handicapped persons.	7 CFR 15b.18

Guideline: Same as the requirement. However, the method of achieving Program accessibility may vary by program. Also, the list of methods included in Section 15b.18(b) is not intended to be all inclusive. The self-evaluation should be used as a tool to determine what nonstructural changes are needed in a recipient's program. Particularly important to remember is the requirement to provide the most integrated setting appropriate in order for the handicapped person to obtain the full benefits of the Program.

It is important to know that the purpose of this sections is to make the Programs accessible, not necessarily to make buildings accessible. As explained in the Preamble to the regulations, structural changes to buildings and facilities must only be made when Program services cannot be adequately provided through other means. Methods of achieving Program accessibility for some of our Programs includes, but are not limited to: (i) home visits; (ii) mail-in applications; (iii) telephone interview; (iv) referrals to an accessible site. If Program accessibility cannot be achieved by alternative means and structural changes are necessary, one concept to remember is that it is not necessary to make structural changes to all sites within that area. For example, if a project area is not accessible to handicapped persons and structural changes are necessary, the project area will need to only make one local site accessible to meet the requirement. In some cases where the project area is not clearly defined, mostly in Special Nutrition Programs, the State may define the project area.

Information about the accessibility of a site to handicapped persons should be adequately publicized so that handicapped persons in the community will know where to go for services. This facility will continue to provide service to non-handicapped persons, therefore, the requirement of providing services in the most integrated setting is maintained. Some persons question whether this is a means of separating the handicapped from other Program applicants and participants. We see this as a flexible and cost effective approach to meeting the requirement.

In making a determination of which local site should be subjected to structural changes, factors to consider should include location of the site, whether it's accessible to all low-income persons, availability of public transportation and cost.

<u>Requirement</u>	<u>Description of Requirement</u>	<u>Location in Regulations</u>
7. Program Accessibility	<p><u>Time Period.</u> Where no structural changes are necessary, a recipient (grantee/subgrantee) shall achieve program accessibility within 60 days of the effective date of the regulations.</p> <p>In accordance with the regulation, program accessibility should have been achieved by August 10, 1982. Structural changes shall be made within three years of the effective date of the regulations and as expeditiously as possible. Structural changes must be completed by June 11, 1985.</p>	7 CFR 15b.18(f)

Guideline: Although the regulations require that program accessibility, without structural changes, be achieved within 60 days from the date of the regulations, we are extending this date to 60 days from issuance of the final guidance. Where structural changes are necessary, the timeframe remains June 11, 1985.

Action. Take action to provide accessibility to all program applicants and participants within 60 days from issuance of the final guidelines.

<u>Requirement</u>	<u>Description of Requirement</u>	<u>Location in Regulations</u>
7. Program Accessibility	<p>Transition Plan. If structural changes to facilities are necessary a recipient (grantee/Subgrantee) shall develop, within one year of the effective date of the regulations, a transition plan setting forth the steps necessary to complete such changes. The plan shall be developed with the assistance of interested persons, including handicapped persons. A copy of the plan shall be made available for public inspection. The plan shall, at a minimum:</p> <ul style="list-style-type: none"> (a) identify physical obstacles in the recipient's facilities that limit the accessibility of its program or activity to handicapped persons; (b) describe in detail the methods that will be used to make the facilities accessible; (c) specify the schedule for taking the steps necessary to achieve full program accessibility and if the time period of the transition plan is longer than one year, identify steps that will be taken during each year of the transition period; and (d) identify the person responsible for implementation of the plan. 	7 CFR 15b.18(g)

Guideline: Same as the requirement. Except the timeframe has been extended to within one year from issuance of the final guidelines.

Action: Where structural changes to facilities are necessary to achieve program accessibility, each recipient shall within one year of the effective date of the regulation, develop a transition plan which identifies the steps to be taken to complete the changes.

APPENDIX E

COMPLIANCE REQUIREMENTS FOR RECIPIENTS
AGE DISCRIMINATION ACT OF 1975

Compliance Requirements for Recipients

Age Discrimination Act of 1975

General

- Prohibits discrimination on the basis of Age in program or activities receiving Federal financial assistance.
- Applies to persons of all ages
- Exceptions
 - ▶ does not apply to any age distinction established under authority of any law which provides benefits or establishes criteria for participation on the basis of age. Regulations do not apply to age distinctions contained in Federal statutes, State statutes, or local statutes or ordinances adopted by elected, general purpose legislative bodies as a statutory objective.
 - ▶ does not apply where the age distinctions is necessary to the normal operation of the program to the achievement of a statutory objective.
 - ▶ employment practices except in programs funded under the public service employment titles of the Comprehensive Employment and Training Act (CETA).*

*Age Discrimination in Employment Act, ADEA, administered by EEOC, continues to be a Federal statute that prohibits employment discrimination against most person between 40 and 70 (except in Federal employment, where there is not upper age limit). 70 - private sector.

Definition

Normal operation - the operation of a program or activity without significant changes that would impair its ability to meet its objective.

Statutory objective - any purpose of a program or activity expressly stated in Federal, State or local statutes or ordinances adopted by an elected, general purpose legislative body.

Special Provisions - benefits to children and the elderly

If a recipient operating a program provides special benefits to the elderly or to children, such use of age distinctions shall be presumed to be necessary to the normal operation of the program.

Basic Administrative Requirements

1. **Assurance Agreement (written)**
2. **Notification to subrecipients and beneficiaries**
3. **Recipient Assessment of Age Distinctions** - as part of a compliance review or complaint investigation under this part, recipients may require a recipient employing 15 or more employees to complete a written self-evaluation, of any age distinctions imposed in its program or activity. Whenever the assessment of its program or activity indicates a violation, the recipient must take remedial action.
4. **Information Requirements** -
 - keep records in a form and containing information which may be necessary to determine recipient compliance.
 - provide upon request, information and reports which are necessary to determine compliance.
 - permit reasonable access of Federal officials to books, records and other recipient sources of information to the extent necessary to determine compliance.
5. **Compliance Reviews** - Federal agencies may conduct compliance reviews and preaward reviews, or use other similar procedures that will permit it to investigate and correct violations of the Act. These reviews may be conducted even in the absence of a complaint against a recipient.
6. **Complaints** - any person has a right to file a complaint.

Acceptance policy

Mediation Procedures - refer to Federal Mediation.

If mediation unsuccessful - refer back to agency for informal inquiry.
7. **Noncompliance Resolution** - same procedures as Title VI for voluntary, compliance/hearing/enforcement procedures.

APPENDIX F

EXAMPLE OF FORM DOJ-453