

Section 2000

Eligibility and Application Requirements

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Section 2000

Eligibility

As a contracting entity (CE) for The Emergency Food Assistance Program (TEFAP), the organization accepts final administrative and financial responsibility for all sites at which the CE operates or delegates (to an approved subdistributing agency¹ or site²) TEFAP activities.

2100 Eligibility Requirements

CEs, subdistributing agencies, and sites must demonstrate adequate administrative and financial responsibility to manage an efficient and effective food distribution system to be considered to receive and distribute USDA Foods through TEFAP. An organization may be eligible to participate in TEFAP if the organization takes the following actions:

- Accepts final administrative and financial responsibility for TEFAP operations
- Is a non-profit organization or a public agency
- Attends all required Texas Department of Agriculture (TDA) training
- Provides adequate supervisory and operational personnel to effectively manage and monitor TEFAP operations
- Assumes responsibility for distributions of USDA Foods within contracted service areas
- Improves the accessibility to USDA Foods for all needy residents throughout the month and shortens the intervals between distributions
- Includes the needs of the elderly, persons with disabilities, shut-ins, and persons with transportation difficulties in plans to expand or improve TEFAP operations
EXAMPLES: Special efforts may include encouraging shut-ins to designate a proxy, arranging separate lines or pick-up times for elderly or disabled persons, and having volunteers help with applications.
- Cooperates, as necessary, with TDA to identify an area(s) within a contracted service area where subdistributing agencies or sites may be needed.

¹ For a definition of this term, see *TEFAP Handbook*, Section 9000, *Terms, Definitions, and Acronyms*.

² For a definition of this term, see *TEFAP Handbook*, Section 9000, *Terms, Definitions, and Acronyms*.

2110 Organizational Structure and General Requirements

2110.1 Organizational Structure

An organization is eligible to participate in TEFAP as a CE, subdistributing agency, or site only if it is a nonprofit organization with tax-exempt status or a public agency.

2110.2 Tax Exemption

Non-profit organizations must acquire and maintain tax-exempt status from the U.S. Internal Revenue Service (IRS) either individually or as part of a group ruling.

Although the IRS does not require certain organizations (e.g., church organizations) to seek a formal determination of tax-exemption, the IRS may issue a determination after application. If an organization acquired tax-exempt status under a group ruling, it must submit proof of affiliation with the parent organization that was given tax-exempt status.

If the IRS has given an organization tax-exempt status because it is a non-profit organization, the organization must submit either a

- formal determination of tax-exempt status from the IRS **or**
- proof of participation in another federally funded program that requires an IRS determination of tax-exempt status.

If an organization does not submit this proof of tax-exempt status, the application will be denied. If the IRS revokes tax-exempt status, the CE must notify TDA immediately.

2110.3 Special Filing for Small Tax-Exempt Organizations

The IRS maintains specific filing requirements for small tax-exempt organizations whose annual gross receipts are normally \$50,000 or less. The Pension Protection Act of 2006 (PPA) requires these organizations to file *Annual Electronic Filing Requirements for Small Exempt Organizations* (Form 990-N (also known as the *e-Postcard*)), or *Short Form Return of Organizations Exempt from Income Tax* (Form 990-EZ).

Failure to comply with the PPA could result in the revocation of an organization's tax-exempt status.

Additional information about the filing requirements, as well as information on how to apply for a tax exemption, can be found at www.irs.gov.

2110.4 IRS Automatic Revocation of Exemption List

CEs, subdistributing agencies, and sites must maintain their tax-exempt status. (Exceptions include governmental and many faith-based organizations.) The IRS maintains a list of organizations that lose their tax-exempt status at <http://www.irs.gov/Charities-&-Non-Profits/Automatic-Revocation-of-Exemption-List>.

At least annually, TDA will review the IRS list to ensure CEs have the required tax-exempt status.

At the initial application and at least annually afterward, CEs must check the list to ensure that their subdistributing agencies and sites are not on the list. If any organization appears on the list, the CE must take the following steps:

1. Notify the subdistributing agency or site in writing that it has 30 days to provide documentation that it has applied for reinstatement of tax-exempt status. If the organization does not provide documentation within 30 days, the organization will be terminated from TEFAP.
2. Forward documentation of IRS recognition of tax-exempt status to TDA within 180 days of the notification specified in step 1. If the organization does not provide proof within 180 days, the organization will be terminated from TEFAP.

A CE may grant one 90-day extension if the subdistributing agency or site demonstrates that its inability to obtain appropriate status during the initial period was due to circumstances beyond the organization's control.

2110.5 Single Audit Requirements

Nonfederal organizations must submit one or more of the following to verify their compliance with Single Audit requirements:

- A copy of an organization-wide or program-specific audit that has been determined to meet the Single Audit requirements.
- A completed *Annual Audit* form (via TX-UNPS or paper), certifying that the CE will obtain, if necessary, an acceptable audit that meets the Single Audit requirements.

Refer to *TEFAP Handbook*, Section 5000, *Visits, Reviews, and Audits*, "Audits" for specific information related to audit requirements.

2110.6 Debarment Certification

Debarment is an action taken by a debarring official to exclude a person or entity from participating in covered contracts. A person or entity excluded this way is “debarred.”

TDA requires CEs to provide debarment certifications for covered contracts. Three types of covered contracts exist:

1. Any nonprocurement transaction that involves federal funds of any amount. This type of transaction includes (but is not limited to) a subgrant between TDA and the CE or between the CE and either its subdistributing agency or site.
2. Any procurement contract for goods or services at or above the small-purchase threshold of \$50,000.
3. Any procurement contract for goods or services where a person or entity will have a critical influence on or substantive control over the covered transaction. Such a person or entity includes (but is not limited to) a
 - o consultant,
 - o principal investigator,
 - o provider of audit services required by TDA or a federal funding source, or
 - o researchers.

TDA offers the following three options for CEs to provide debarment certification for subdistributing agencies or for sites:

- Search the website The System for Award Management (SAM) and print the page that shows the person or entity is not debarred. Store the printed page with the covered contract records.
- Include the following debarment certification in the CE’s subcontracts: “By signing this Agreement, the subdistributing agency or site certifies that neither it nor any principal is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this Contract by any federal department or agency or by the State of Texas.”
- Obtain from the person or entity TDA’s *Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion for Covered Contracts* (Form H2048).

TDA will terminate the *The Emergency Food Assistance Program Agreement Between Contracting Entity and Texas Department of Agriculture* (“TEFAP Agreement”) if an organization fails to provide one of the options above for any subdistributing agency, site, person, or entity that meets the above criteria. Any contract that contains federal assistance and that is held by a CE who is excluded from entering into such contracts will be considered void, effective on the date of exclusion.

For a copy of *Certification Regarding Debarment Suspension, Ineligibility and Voluntary Exclusion for Covered Contracts* (Form H2048), go to <http://www.squaremeals.org/>, choose “Programs,” choose “The Emergency Food Assistance Program,” choose “TEFAP Administration and Forms,” and enter the form number in the appropriate field.

2200 Initial Applications and Renewals

2210 Initial Applicants

In the initial application process, applicants should submit a complete TEFAP Agreement, which is a permanent agreement between TDA and the CE. The *Application for Participation/Plan of Operation* must be completed online in the Texas United Nutrition Programs System (TX-UNPS) at <https://txunps1.texasagriculture.gov/txunps/Splash.aspx>. It must be submitted annually with all necessary supporting documentation. The *Application for Participation/Plan of Operation* provides information about the organization and how it plans to operate TEFAP.

If a potential CE submits an incomplete or incorrect application, TDA will request in writing that the information needed to complete the application be submitted within thirty (30) days. An incomplete *Application for Participation/Plan of Operation* will delay participation in TEFAP. If incomplete items are not corrected, an organization will not be eligible to participate. Upon approval of the TEFAP Agreement and *Application for Participation/Plan of Operation*, the CE will receive a copy of the signed TEFAP Agreement. The *Application for Participation/Plan of Operation* will be approved through TX-UNPS. TDA will not issue USDA Foods or reimbursement for administrative costs prior to executing the TEFAP Agreement and approving the *Application for Participation/Plan of Operation*. TDA’s Food and Nutrition program specialist who handles TEFAP may be contacted at CommodityOperations@TexasAgriculture.gov or at 1-877-TEX-MEAL (1-877-839-6325) to answer questions and provide technical assistance.

As part of the application process, an organization must meet the following requirements:

1. Provide proof of tax-exempt status if the organization is a non-profit entity
2. Demonstrate adequate administrative and financial responsibility to manage an effective food distribution system
3. Identify and execute agreements with subdistributing agencies, if needed, that will be responsible for distributing, transporting, or storing USDA Foods
4. Provide information for each proposed site
5. Visit each site before operating, in any capacity, TEFAP at the site
6. Submit a complete management plan that includes staffing needs and an administrative budget
7. Certify that the CE will train administrative and site personnel

The TEFAP Agreement is a legally binding document that specifies the rights and responsibilities of both the CE and TDA.

2220 Renewing Contracting Entities

Renewing CEs must complete the *Application for Participation/Plan of Operation* online in TX-UNPS at <https://txunps1.texasagriculture.gov/txunps/Splash.aspx>. It must be submitted annually with all necessary supporting documentation. This application, which provides information about the organization and how it plans to operate TEFAP, is reviewed and approved through TX-UNPS.

Each renewing CE must meet the following requirements:

1. Provide proof of that it has maintained tax-exempt status if the organization is a non-profit organization (For more information, see “IRS Automatic Revocation of Exemption List” in this handbook section.)
2. Identify and execute agreements with subdistributing agencies that will be responsible for distributing, transporting, or storing USDA Foods
3. Provide information for each proposed site
4. Visit each site before operating, in any capacity, TEFAP at the site
5. Submit a management plan that includes an administrative budget
6. Certify that the CE will train administrative and site personnel

The TEFAP Agreement is a legally binding document that specifies the rights and responsibilities of both the CE and TDA.

2230 Application

Budget. During the application approval process and as requested by TDA thereafter, CEs must submit budgets to project the costs of distributing USDA Foods during a specified period.

NOTE: A budget is a planning document and is not the amount TDA will reimburse the CE.

2230.1 Training

CEs must train each staff member before they assume any TEFAP duty at one or more sites. To ensure compliance with state and federal regulations, the staff and volunteers of CEs, subdistributing agencies, and sites must be trained and supervised, as appropriate to their assignments in the following activities:

- Properly transporting, storing, handling, and using USDA Foods
- Applying eligibility criteria for households
- Ensuring client rights (including civil rights requirements)

- Following complaint and monitor review procedures
- Processing applications or requests for meals in the contracted service area, including, when necessary, assisting applicant households to complete their applications
- Referring residents of other contracted service areas to locations where they may apply for USDA Foods

2230.2 Site Information

CEs must serve a county or other identifiable service area that directly or indirectly (through subdistributing agencies) distributes USDA Foods to emergency feeding organizations such as food pantries, soup kitchens, and housing authorities.

Prior to operating TEFAP at a specific site where USDA Foods are distributed or stored, the organization must conduct a visit to the site to verify that it will operate in full compliance with the requirements mandated in the TEFAP Agreement and the *Application for Participation/ Plan of Operation*. Refer to *TEFAP Handbook* Section 4000, *Managing the Program*, “Site Requirements,” and “Monitoring by CEs,” for specific instructions.

2230.3 General Requirements

Initially, and at least annually thereafter, CEs must means test each household to determine its eligibility for USDA Foods for home consumption. Refer to *TEFAP Handbook*, Section 4000, *Managing the Program*, “Income,” and “Exceptions to Income Eligibility Requirements,” for specific instructions.

CEs will distribute USDA Foods to eligible participants through prepared meals that are served on-site and food packages that may be used for home consumption.

CEs must make reasonable efforts to safeguard against households’ dual participation in TEFAP. At a minimum, CEs must 1) maintain a record of distributions to households to deter abuse and 2) train staff and volunteers to inquire whether a household receives TEFAP USDA Foods from other sources.

2230.4 Authorized Representatives for Contracting Entities

As designated on the organization’s *Application for Participation/Plan of Operation* and/or on *Certification of Authority for External Users* (Form FND-101), an authorized representative is any individual who is individually authorized on behalf of the contracting organization to

- make written agreements with TDA,
- sign documents or reports about the agreement, and
- present claims for reimbursement, when appropriate.

An authorized representative can be an employee of the organization, a volunteer, or a consultant.

2230.4 Amendments to the TEFAP Agreement

The *Application for Participation/Plan of Operation* stipulates that CEs will perform according to the TEFAP Agreement, supporting documents, and approved amendments. Therefore, approved amendments to the *Application for Participation/Plan of Operation* do not require an amendment to the TEFAP Agreement. CEs will request amendments to the *Application for Participation/Plan of Operation*, and TDA will respond to requests in TX-UNPS. CEs must include all supporting documentation to complete the amendment request.

CEs must request an application amendment whenever they wish to take the following actions:

- Add or eliminate an authorized representative
Note: CEs must also complete and submit a *Certificate of Authority for External Users* (Form FND-101,) when adding or eliminating an authorized representative.
- Make any other change that could potentially affect reimbursement

2230.5 Dun and Bradstreet Data Universal Numbering System (DUNS)

Nonfederal agencies and organizations that do business with the Federal government must use the Dun and Bradstreet Data Universal Numbering System (DUNS) as their identifier. The DUNS number will not replace the Employer Identification Number (EIN) but will become an identifier for a nonfederal entity to apply for funding under a Federal assistance program.

The DUNS number is a nine-digit number issued by Dun & Bradstreet to each business located in the Dun & Bradstreet database having a unique, separate, and distinct operation. The DUNS number is random and the digits have no apparent significance. It is a tool of the federal government to track how federal money is distributed.

To obtain a DUNS number, free of charge, call Dun & Bradstreet using the toll-free number, 1-866-705-5711 and indicate that the organization is a Federal grant applicant/prospective applicant. Organizations can also request a DUNS number at <http://fedgov.dnb.com/webform>. The waiting period to obtain a DUNS number can be anywhere from 24 hours to several weeks, so organizations should request their number as soon as possible.

Organizations applying for participation in any of the federal nutrition programs administered by TDA must obtain and provide to TDA their DUNS number with their application for participation.

2300 Selection of Contracting Entities (CEs)

TDA will only approve the participation of a CE that has submitted an application with sufficient information to enable a determination of eligibility.

2310 Review of Applications

TDA will notify the CE of the approval or denial of a complete application within thirty (30) days of receipt. If TDA denies the application, TDA will notify the organization in writing of the reasons for the denial. Refer to Section 8000, *Denials and Terminations* for additional information.

2320 Selection of Contracting Entities

USDA Foods and administrative funds are issued by USDA to TDA for service areas that TDA and its CEs pre-determine. TDA will approve applications and agreements only from organizations that will serve eligible participants in these areas.

TDA gives preference to organizations that have an established system for the receipt, storage, transportation, and distribution of USDA Foods. However, TDA does not contract exclusively with such organizations.

2320.1 Food Banks

Food banks operate in all pre-determined service areas of Texas, and food banks have an established system for the receipt, storage, transportation, and distribution of USDA Foods. Food banks 1) directly serve USDA Foods recipients; and 2) indirectly serve USDA Foods recipients through agreements with other agencies and organizations, such as food pantries and soup kitchens. As a result, TDA contracts with food banks to distribute USDA Foods in TEFAP.

2320.2 Alternate and Additional Contracting Entities

At TDA's discretion, TDA may contract with organizations that lack an established system for the receipt, storage, transportation, and distribution of USDA Foods to operate TEFAP. TDA might choose to contract with such an organization if, for example, a food bank cannot serve a predetermined service area.

Because TDA contracts with these organizations, they become CEs. There are two types of TEFAP CEs that are not food banks.

1. ***alternate contracting entity*** – *Organizations other than food banks that contract with TDA to distribute USDA Foods to the needy residents of a county or counties.*

Unless otherwise specified by TDA, food bank CEs will receive, handle, store, and distribute fair shares of USDA Foods to alternate CEs. Fair-share allocations

must be based on the number of residents in the counties served by the alternate CEs who live at or below the federal poverty level and the number of unemployed residents.

2. ***additional contracting entity*** – organizations that contract with TDA to distribute USDA Foods to the following persons:
 - *All needy persons who reside in an identifiable portion of a county or counties*
 - *Specific groups of needy persons (such as the elderly or disabled) who reside in a county or counties*

Additional CEs have service areas that overlap other contracted service areas. Unless otherwise specified by TDA, food bank CEs will receive, handle, store, and distribute to additional CEs a fair share of USDA Foods, based on historical or projected USDA Foods usage rates (such as the number of meals and/or households served), or by another method, as specified by TDA.

NOTE: Additional CEs receive Priority 1 TEFAP distributions (see “Distribution Priorities” in this handbook section).

TDA coordinates with the appropriate food bank CE to determine the need for alternate and additional CEs and, if necessary, to determine if eligible agencies or organizations are available and willing to distribute USDA Foods.

Alternate and additional CEs receive their allocations of USDA Foods from CEs that are food banks. If a food bank CE is not available to distribute USDA Foods to alternate or additional CEs, TDA will provide a different means for distribution (such as commercial distribution or delivery directly from USDA).

2330 Visit Prior to Approval of Initial Applications and Renewals

TDA conducts a visit prior to the approval of an applicant’s administrative offices and storage facilities to assess the potential for successful TEFAP operations and to verify information provided in the application. Prior to approving the *Application for Participation/Plan of Operation*, TDA may visit

- all CEs that did not participate in the program during the previous program year;
- all CEs that, as a result of significant operational problems noted during the previous program prior year, have been determined by TDA to need a visit prior to approval; and
- all sites that TDA has determined to need a visit prior to approval.