

Section 2

Program Application

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Section 2 Program Application

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

Useful Terminology

The following terms are useful for understanding this section. For more information about them and how they fit into TEFAP, refer to *TEFAP Handbook, Section 3, Managing the Program*.

Contracting Entity (CE) – an entity that holds a TEFAP Agreement¹ with the Texas Department of Agriculture (TDA) to receive, store, handle, and deliver USDA Foods.

Site – A place at which an emergency feeding organization (EFO) certifies applicant eligibility and/or distributes USDA Foods packages or meals to needy persons. A site may work directly with a CE or a subdistributing agency. A site can include, but is not limited to, a food pantry or soup kitchen. A site must be a nonprofit organization with tax-exempt status or a public agency.

Subdistributing Agency – An entity (usually a food bank) that holds a TEFAP Agreement with a CE. Not all CEs have subdistributing agencies. A subdistributing agency must be a nonprofit organization with tax-exempt status or a public agency.

Subagency – The collective term for subdistributing agencies and sites.

The following U.S. Department of Agriculture (USDA) terminology is also useful:

Eligible Recipient Agency (ERA) – A public or private entity that has an agreement with TDA or a CE to receive USDA Foods. Each site must be an ERA. An ERA cannot be a penal institution.

An ERA provides food assistance either

- exclusively to eligible persons for household consumption (according to a means test) or
- predominantly to eligible persons as prepared meals.

An ERA must fall into one of the following categories:

¹ For more information about the TEFAP Agreement, refer to “Agreements” in this handbook section.

- Emergency feeding organizations (including food banks, food pantries, and soup kitchens)
- Charitable institutions (including hospitals and retirement homes)
- Summer camps for children
- Child nutrition program providing food service (such as a CACFP site)
- Disaster relief programs

Emergency Feeding Organization (EFO) – An ERA that provides nutrition assistance to relieve situations of emergency and distress by providing food to eligible persons. Examples of EFOs include, but are not limited to, food banks, food pantries, and soup kitchens. In TEFAP’s priority system, EFOs have priority over other ERAs.

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 manage effectively and monitor TEFAP operations
- Assumes responsibility for distributions of USDA Foods within contracted service areas
- Improves the accessibility of 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.

General Requirements

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.

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.

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.

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 the above step. 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.

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,² certifying that the CE will obtain, if necessary, an acceptable audit that meets the Single Audit requirements.

Refer to *TEFAP Handbook*, Section 5, *Visits, Reviews, and Audits* for specific information related to audit requirements.

Debarment Certification

Debarment is an action taken by a debarment 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 non-procurement 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 its subdistributing agency or site.
2. Any procurement contract for goods or services at or above the small-purchase threshold of **\$100,000**.
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:
 - consultant,
 - principal investigator,
 - audit services provider required by TDA or a federal funding source, or
 - researcher.

TDA offers the following three options for CEs to provide debarment certification for subdistributing

² Located in the Texas Unified Nutrition Program System (TX-UNPS) accessed at www.SquareMeals.org. TX-UNPS is the web-based application and claims processing system for all food and nutrition programs managed by TDA.

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 cannot 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 the TEFAP Agreement or *Certification Regarding Debarment Suspension, Ineligibility and Voluntary Exclusion for Covered Contracts* (Form H2048), go to www.SquareMeals.org, choose "Programs," choose "The Emergency Food Assistance Program," choose "TEFAP Administration and Forms," and enter the form name or number in the appropriate field.

Unique Entity Identifier Number

As of April 4, 2022, the federal government stopped using the Dun & Bradstreet Data Universal Numbering System (DUNS) number as the identifier for entities doing business with the federal government. A Unique Entity Identifier (UEI) has replaced the DUNS number for all CEs. This transition allows the government to streamline the entity identification and validation process, making it easier and less burdensome for entities to do business with the federal government.

All CEs must complete the following steps:

1. Register and obtain a UEI from SAM.gov
2. Once your organization has a UEI, please email the number to nslp-sbp.bops@texasagriculture.gov

For more information, go to SAM.gov. Please note that TDA does not administrate the SAM.gov website. All requests for technical help should be directed to SAM.gov.

Note also that the UEI number will not replace the Employer Identification Number (EIN).

Agreements

Agreement Between Contracting Entity and the Texas Department of Agriculture

To start the application process to become a CE for TEFAP, the CE and TDA must complete and sign the *TEFAP Agreement Between Contracting Entity and Texas Department of Agriculture* (“TEFAP Agreement”).³ The TEFAP Agreement provides the terms and conditions for participation in TEFAP. Agreement topics include:

- Use, storage, and disposition of USDA Foods
- Accountability
- Certification
- Debarment, suspension, ineligibility, or voluntary exclusion for covered contracts
- Federal lobbying
- Subcontracts for goods and services
- Civil rights
- Program payments

TDA may terminate the TEFAP Agreement, as provided by federal regulations, state rules, and the terms and conditions of the agreement. Additionally, the agreement may be terminated immediately by mutual consent or by TDA, without mutual consent, for material breach of the agreement.

Agreement Between Contracting Entity and Subdistributing Agency

A subdistributing agency is an entity (usually a smaller food bank) that holds a TEFAP Agreement with a CE rather than directly with TDA. CEs must execute the *TEFAP Agreement Between Contracting Entity and Subdistributing Agency* with each agency. CEs must keep the executed agreement on file.

Agreement Between Contracting Entity and Site

A site is any place at which an emergency feeding organization (EFO) certifies applicant eligibility and/or distributes USDA Foods packages or meals to needy persons. CEs must execute the *TEFAP Agreement Between Contracting Entity and Site* with each site. CEs then keep the executed agreement on file.

Application Process

Application for Participation/Plan of Operation

In the initial application process, new applicants should submit a complete TEFAP Agreement, which is a permanent agreement between TDA and the CE. The *Application for Participation/Plan of Operation*

³ Go to <http://www.SquareMeals.org/> and choose “Programs,” “The Emergency Food Assistance Program,” “TEFAP Administration/Forms,” and enter the form name or number in the appropriate field.

should then be completed online in the Texas United Nutrition Programs System (TX-UNPS). 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 TEFAP Program Specialist 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, the potential CE 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 the TDA.

After TDA has approved the *Application for Participation/Plan of Operation*, it can be amended only with TDA's consent.

Contract Packet

The contract packet gathers information about the organization and how it plans to operate TEFAP. Applicants complete the entire packet once. Renewing CEs complete portions of the packet annually.

If an applicant submits an incomplete or incorrect application, TDA will request in writing that the necessary information be submitted within 30 days. An incomplete or incorrect contract packet will delay participation in TEFAP. If an applicant fails to address such items, the organization will be ineligible to participate.

The contract packet can be found in the Texas Unified Nutrition Programs System (TX-UNPS), which can be accessed at www.SquareMeals.org.

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.

Additional Requirements

The contract packet will also outline requirements for CEs to provide training for staff, monitor sites, and other general requirements of the program. CEs agree to verify that sites 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 3, *Managing the Program*, “Monitor Reviews by Contracting Entities” for specific instructions. CEs also must determine eligibility of participants as well as maintain and distribute USDA Foods properly and ensure that its sites do the same.

CEs also agree to 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.

CEs must 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.

Authorized Representatives for Contracting Entities

As designated on the organization’s *Application for Participation/Plan of Operation*⁴ and/or on the *User Access Manager Form* (FND-135), 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 must be an employee of the organization.

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*,

⁴ Located in TX-UNPS found at www.SquareMeals.org.

and TDA will respond to requests in TX-UNPS. CEs must include all supporting documentation to complete the amendment request.

Selection of Contracting Entities (CEs)

TDA will only approve the participation of a CE⁵ that has applied with sufficient information to enable a determination of eligibility.

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 8, *Denials and Terminations* for additional information.

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 service 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.

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.

Visit Prior to Approval of Initial Applications and Renewals

TDA **may conduct** 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.

⁵ For more information about CEs, refer to Section 3, *Managing the Program*.