

Section 3

Managing the Program

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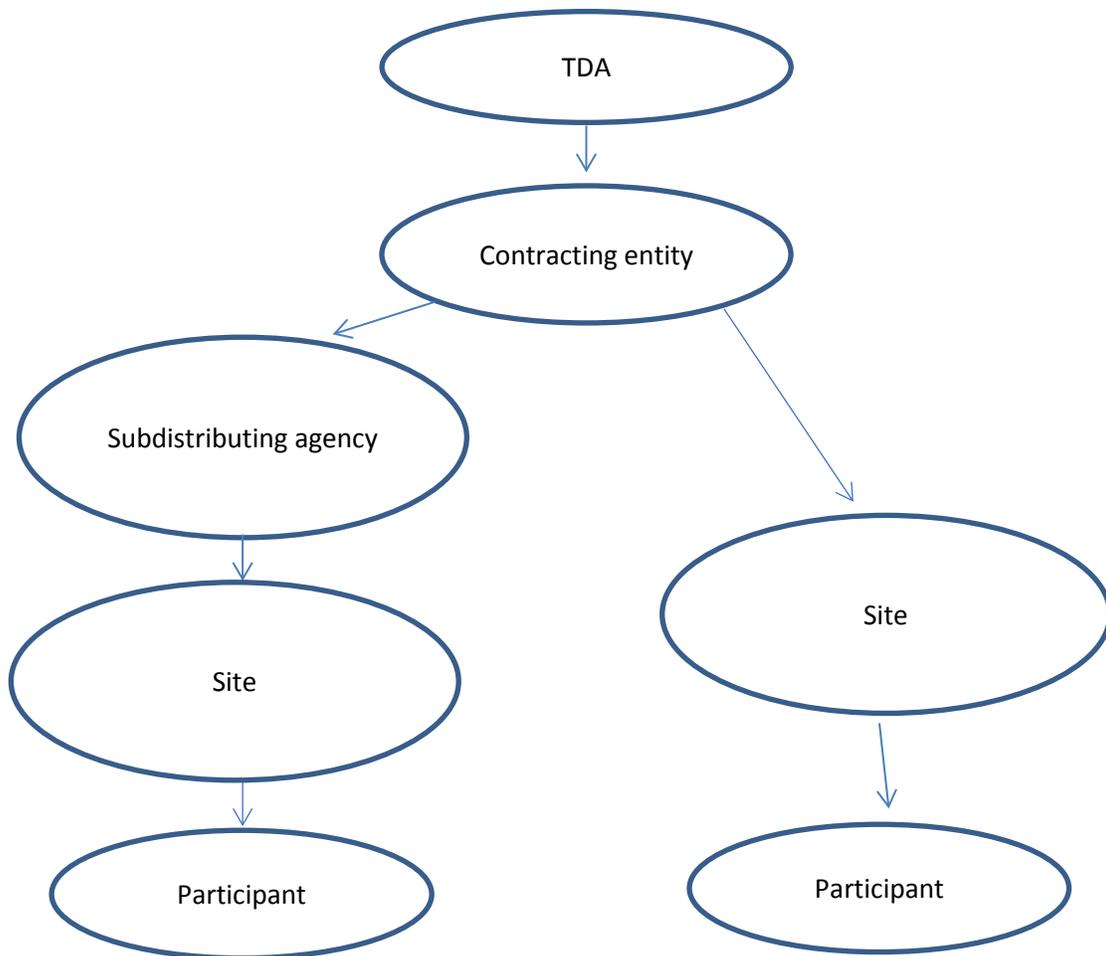
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Section 3 Managing the Program

TEFAP Structure

The graphic below defines and illustrates the existing structure between some entities involved in The Emergency Food Assistance Program (TEFAP). The terms are defined throughout this section, as necessary. The terms can also be found in *TEFAP Handbook*, Section 9, *Terms, Definitions, and Acronyms*.



Contracting Entities (CEs)

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

While operating TEFAP, CEs must comply with program requirements found in the following:

- *The Emergency Food Assistance Program Agreement Between Contracting Entity and the Texas Department of Agriculture (TEFAP Agreement)*, including:
 - Controlling inventory
 - Completing and submitting an annual inventory report
 - Completing and maintaining a record of storage facility reviews (completed in conjunction with the annual inventory)
 - Reporting changes that may affect the terms and conditions
 - Agreeing to be monitored by the U.S. Department of Agriculture (USDA) and TDA
 - Reviewing and monitoring subagencies to ensure TEFAP compliance
- *Application for Participation/Plan of Operation*
- Supporting documents
- Federal and state rules and regulations
- USDA policies, as issued by that agency
- TDA policies including those outlined in this Handbook

For more information about CEs, refer to Section 2, *Program Application*.

Subdistributing Agencies

subdistributing agency – An entity (usually a food bank) that holds a TEFAP agreement with a CE. Not all CEs have subdistributing agencies.

subagency – The collective term for subdistributing agencies and sites.

If a CE is unable to fulfill one or more of the requirements identified in the TEFAP Agreement and *Application for Participation/Plan of Operation*, the CE may be able to enter into a written agreement with a subdistributing agency to fulfill these requirements. These agreements are subject to TDA approval. TDA will approve or deny these agreements during the application process.

Sites

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.

Before operating TEFAP at a site where USDA Foods are distributed or stored, the CE or subdistributing agency must conduct a site visit to verify the site's ability to operate in full compliance with the

requirements of the agreement it holds.

CEs and subdistributing agencies must train sites to properly handle and store USDA Foods.

If USDA Foods remain after a household distribution or a prepared meal, the foods must be

- returned to the CE's or subdistributing agency's storage site **or**
- stored properly at the site according to the terms and conditions of the agreement it holds.

At the request of TDA or the subdistributing agency, sites that distribute prepared meals must provide certain documentation including, but not limited to, a health inspection certificate and current pest control records.

Sites located at religious organizations must adhere to additional guidance. For more information, refer to "Participant Rights and Responsibilities" in this handbook section.

Additional Terminology

The following terms are also used in regulations and guidance for TEFAP. Though not used as often in TDA's guidance, it may be useful to understand them.

Eligible Recipient Agency (ERA)

An Eligible Recipient Agency (ERA) is 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.

Additionally, an ERA provides food assistance either:

- exclusively to eligible persons for household consumption (according to a means test) or
- predominantly to eligible persons in the form of prepared meals.

Further, an ERA must fall into one of the following categories:

- Emergency feeding organizations (including food banks, food pantries, and soup kitchens)
- Charitable institutions (including hospitals and retirement homes)
- Summer camps for children
- Child nutrition programs that provide food service
- Disaster relief programs

(7 CFR §251.3(d))

Emergency Feeding Organization (EFO)

An Emergency Feeding Organization (EFO) is an eligible recipient agency (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. (7 CFR §251.3(e))

In TEFAP's priority system, EFOs have priority over other ERAs. For more information, see *TEFAP Handbook*, Section 4, *USDA Foods*.

Recipient Agency (RA)

A recipient agency (RA) is a public or private nonprofit agency or organization eligible to receive distributions of USDA Foods. Examples of RAs are CEs, subdistributing agencies, sites, emergency feeding organizations, charitable institutions (to the extent they serve eligible people), summer camps/nutrition programs for children, nutrition programs for the elderly, and disaster relief programs.

Program Administration

Training

CEs and subdistributing agencies must train staff and volunteers before they initially assume any TEFAP duty and each program year thereafter. CEs should notify all personnel of the date, time, location, and importance of attending a training session. Training must be documented, and the records retained for three years after the close of the fiscal year.

The staff and volunteers of CEs and subagencies must be trained in the following tasks:

- Properly transporting, storing, handling, and using USDA Foods
- Applying eligibility criteria for households
- Following written application procedures
- Ensuring client rights (including civil rights requirements)
- Following complaint procedures
- Processing household applications or requests for meals in the contracted service area
- Assisting applicant households to complete their applications
- Referring residents from other contracted service areas to locations where they may apply for USDA Foods

Monitor Reviews by Contracting Entities

CEs must monitor their administrative and site personnel and subagencies to make certain the following steps are taken:

- Ensure program compliance
- Investigate reported problems
- Determine whether to operate a site during the following program year
- Verify and ensure proper use of USDA Foods

CEs record and track compliance or operational issues¹ on their compliance monitoring forms.

NOTE: TDA recommends that CE's select sites for monitoring where site supervisors have had a poor performance record during previous program years or where supervisors were unable to implement or complete corrective action. Depending on the nature of the previous performance problems, TDA may not approve such sites at the time of renewal.

Independently or in coordination with TDA, as appropriate, CE's will review subdistributing agencies and the sites served by those agencies to take the following steps:

- Evaluate their operations and activities (including evaluating the extent to which the agencies inform eligible populations of the availability of USDA Foods)
- Ensure TEFAP compliance, according to the terms and conditions of their agreements, including (but not limited to) the following:
 - Receiving, handling, distributing, and using USDA Foods, according to the *TEFAP Agreement and Application for Participation/Plan of Operation*
 - Adhering to nondiscrimination requirements
 - Providing eligible persons and households equal access to USDA Foods (including the elderly, persons with disabilities, and homebound persons)
 - Means-testing households
 - Evaluating the frequency of meal service or USDA Foods distribution, the quantity of USDA Foods included in meals or food packages, and other factors, as may be necessary

Filing and Submitting Monthly Claims

A CE's claim is the actual participation report submitted to receive financial assistance with administrative costs associated with TEFAP operations. TDA reimburses claims depending on the availability of funds.

Only a person authorized on *Certificate of Authority for External Users* (Form FND-101)² may enter the claim in TX-UNPS.

Due Dates

Monthly reimbursement claims must be received by TDA in TXUNPS in a timely manner. TDA recommends no later than 60 days after the claim month has ended.

All claims must be submitted no later than November 29, which is 60 days after the close of the federal fiscal year. TDA will not accept claims for reimbursement of costs of distributing USDA Foods after this date.

¹ For a definition of this term, see *TEFAP Handbook*, Section 9, *Terms, Definitions, and Acronyms*.

² Go to www.SquareMeals.org. Choose "Programs" then "The Emergency Food Assistance Program;" click on "TEFAP Administration and Forms," then input the proper form number into the appropriate search field.

Identifying Costs Separately

Monthly claims must separately identify the direct and indirect costs of distributing USDA

Foods. As authorized by contracts and as funds are available, CEs must include special transportation costs on monthly claims, as instructed by TDA. CEs may also include on claims the reimbursable costs of distributing non-USDA Foods.

Reallocation of Administrative Funds

After the end-of-the-year due date, and after TDA has reimbursed all CEs as it determines to be appropriate, TDA will take the following steps:

- Use the appropriate allocation method to reallocate funds and reimburse any remaining allowable costs of distributing USDA Foods to CEs who exceed their Letter of Credit amounts
- With any remaining funds, reimburse CEs their allowable costs of distributing non-USDA Foods

Adjusted Claims

Adjusted claims that result from a TDA review of a CE must be submitted to the Program Specialist.³

If TDA processes an adjusted claim for a month in the current program year, TDA will reconcile any overpayment or underpayment against any outstanding claims for the current program year. If the outstanding claims are not sufficient to reconcile the adjusted claim, TDA will process payment to the CE for any underpayment and will require the CE to submit any remaining overpayment.

Public Notice

CEs must give notice to the public of distributions of USDA Foods.⁴

Public notices must meet the following requirements:

- Target eligible⁵ households whose members are unemployed or have low incomes and households that include elderly or disabled people
- Include the locations of sites
- Provide the days and hours of distributions

If applicable, CEs or subagencies should post a public notice to explain why a scheduled distribution is canceled.

TDA encourages CEs to inform the public of all USDA Foods distributions through their own established and customary communication methods. Suggested methods to advertise the availability of USDA Foods

³ Email CommodityOperations@TexasAgriculture.gov.

⁴ Per Texas Administrative Code (TAC), Title 4, Part 1, §26.105.

⁵ An eligible person is one who, because of economic status, is eligible to receive food assistance from a public or private, nonprofit institution.

include, but are not limited to, the following:

- The media (TV, radio, and newspaper)
- Civic and religious organizations
- City and county governments
- Social service organizations, upon request

Reimbursement Limits: “Letters of Credit”

After USDA notifies TDA of Texas' share of federal administrative funds, TDA calculates each CE's share of funds. Individual notices to CEs include “Letter of Credit” amounts, which are the reimbursement limits for the program year.

TDA may divide a CE's yearly reimbursement limit into monthly reimbursement limits.

NOTE: TDA may reimburse more than “Letter of Credit” levels only if reallocated or if other funds become available.

Actual Reimbursement Rate

Actual reimbursement rates or amounts depend on the amount of available administrative funds and the allocation method used.

Notification of Change in Reimbursement Rate

TDA will provide prior notice to CEs of a change in the allocation and/or the reimbursement rate or amount.

Claims for Reimbursement

TDA reimburses CEs for their actual, allowable costs of storing, transporting, and distributing USDA Foods, as administrative funds are available, according to the terms and conditions of the TEFAP Agreement.

Annual TEFAP Budgets

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

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

Enrolling Participants

Any person or household has the right to apply for, and, if eligible, to receive USDA Foods for home consumption without regard to race, color, national origin, sex, age, or disability.

Eligibility

Only TDA may establish eligibility criteria for TEFAP foods. CEs and subagencies must not impose their own eligibility criteria.

Congregate Meals

Participants seeking congregate meals⁶ are assumed eligible simply because they are seeking a meal. In other words, there are no eligibility requirements for congregate meals. This includes, but is not limited to,

- residency,
- identity,
- income, and
- citizenship.

USDA Foods must be provided without regard to race, color, national origin, age, sex, or disability. Congregate meals must be served equitably. TDA recommends first come, first serve.

NOTE: A disaster organization may provide USDA Foods to emergency relief workers at congregate meal sites who are engaged in providing relief assistance.

Household Distributions

Residency. At the time of application, households must have established residency within the service area. While federal regulations state that a minimum length of residency is not required to establish eligibility, the intent of the program is to serve individuals who live in the area and are not visiting temporarily. Overnight residency or an overnight stay does not meet the intent of the regulation.

With TDA approval, a CE may make exceptions to the service area.⁷

EXAMPLE: A CE may allow an exception for an applicant household that resides in a location that is closer to another service area in Texas. Exceptions require agreement and coordination between both affected CEs.

CEs and subagencies may ask but must not require any applicant or participant to provide proof of residency. CEs and subagencies must provide USDA Foods to all participants even if they cannot or will

⁶ *Congregate meals* – A meal prepared with USDA Foods and provided to eligible persons who gather in a setting to participate.

⁷ Contact TDA at commodityoperations@texasagriculture.gov or call 877-TEX-MEAL (877-839-6235).

not provide proof of residency. Further, CEs and subagencies must clarify the following points to applicants and participants:

1. The inability or unwillingness to provide proof of residency is not a barrier to participation.
2. Participants will receive USDA Foods without proof of residency.

Examples of documents that prove residency include, but are not limited to, bills that show the proper address; state-issued ID cards; and driver license.

Identity. CEs and subagencies may request but **must not require** any applicant or participant to provide proof of identification (ID). CEs and subagencies must provide USDA Foods to all participants even if they cannot or will not provide ID. Examples of ID include, but are not limited to, birth certificates, driver's license, military ID, and state-issued ID.

CEs and subagencies must clarify the following points to applicants and participants:

1. The inability or unwillingness to provide proof of ID is not a barrier to participation.
2. Participants will receive USDA Foods without proof of ID.

Citizenship. There are no citizenship requirements. CEs and subagencies must not request or require any applicant or participant to prove citizenship through any means whatsoever.

Income Eligibility for Household Distributions

Initially, and at least annually thereafter, CEs must means test households to determine their eligibility for USDA Foods distributed by TEFAP. The income eligibility process is as follows.

1. Obtain a verbal report from the household of total weekly, monthly, or yearly gross⁸ earned and unearned income. Proof of income is not allowed unless the information provided is questionable. If income is from farming or self-employment, eligibility is based on net income. Determine the net earned income of farmers and self-employed persons by subtracting the cost of doing business from gross earnings.
2. Determine the household's total **countable** income (see "Countable Income and Income Exclusions" below) by adding together the gross earned and unearned incomes of all household members.

EXCEPTION: Add the net earned income of any household members who are farmers or self-employed. Compare countable income to the maximum allowable income for the household, which varies according to household size.
3. Determine the household to be either
 - o eligible for USDA Foods if countable income is equal to or less than the maximum allowable income amount, or
 - o ineligible for USDA Foods if countable income exceeds the maximum allowable income amount.

⁸ Gross earned income is the amount before deductions.

USDA annually publishes the *TEFAP Income Eligibility Guidelines* (Form H1640), which contains household qualifying income cut-offs for annual, monthly, and weekly income levels per number of household members. The eligibility guidelines cover the period from July 1 of one year through June 30 of the following year. TDA releases this information to each CE's executive director via email. The income guideline tables are also published on the TDA website at www.SquareMeals.org. Choose Programs, The Emergency Food Assistance Program, TEFAP Income Eligibility Guidelines.

Categorical Eligibility

A household is automatically (or categorically) eligible for USDA Foods if it currently receives assistance from one of the following programs:

- Supplemental Nutrition Assistance Program (SNAP), formerly Food Stamps
- Temporary Assistance for Needy Families (TANF)
- Supplemental Security Income (SSI)
- National School Lunch Program (NSLP) free or reduced-price meals
- Non-institutional Medicaid

Countable Income and Exclusions

Most household income is countable, which means that it is used to determine the household's eligibility for TEFAP. Countable income includes

- wages,
- Social Security benefits,
- most veteran's benefits, and
- other types of benefits.

However, some household income and assistance must be excluded as income, which means that it is not used to determine the household's eligibility for TEFAP. Excluded income and assistance include the following:

- SNAP
- Vendor payments
- Loans
- In-kind benefits
- Filipino Veterans Equity Compensation Fund payments authorized by the American Recovery and Reinvestment Act of 2009 (ARRA) for certain veterans or surviving spouses of veterans who served in the military of the Government of the Commonwealth of the Philippines during World War II
- A lump sum or periodic payments from the *Cobell* settlement
- Family Subsistence Supplemental Allowance
- National Flood Insurance Program (NFIP) payments
- Certain other types of benefits

Contact the Program Specialist⁹ with questions.

Household Crisis Eligibility

Even if household income exceeds the means test, certain circumstances allow some households to receive USDA Foods. The household must currently be paying or, during the month of application, must have paid an expense (of any amount) that was a direct result of a household crisis. The crisis must have occurred during the month the household applied for TEFAP or during the five consecutive months immediately before the application month.

Characteristics of a Household Crisis	Unexpected Costs of a Household Crisis (The CE or site may define and document other circumstances)
1. Unexpected 2. Temporary 3. Beyond the household's control	1. Necessary medical treatment of a household member 2. Burial expenses of a household member 3. Uncontrolled loss of employment 4. The repair or replacement, because of a household crisis ¹⁰ , of the household's <ul style="list-style-type: none">• home,• home contents, or• vehicle

The CE or subagency must document the reason a household is eligible for crisis food assistance and will estimate the number of months (up to a maximum of six) the household will need such food assistance. Some household circumstances require a seven to twelve-month certification period. TDA must approve, in writing, certification periods of seven to twelve months.

Household Application

Written Application Procedures

CEs must maintain written procedures for the application process. The procedures must be available for compliance reviews at all levels of distribution — the CE level, the subdistributing agency level, and the site level. The CE is responsible to train subagencies on the application procedures.

Request but Don't Require

Sites may request but must not require proof of application information, including, but not limited to, the following:

- Identification
- Address
- Income

⁹ CommodityOperations@TexasAgriculture.gov or call 1-877-TEX-MEAL (1-877-839-6325).

¹⁰ A household disaster may include fire, flood, hurricane, tornado, car repairs, and other circumstances or incidents as defined and documented by the CE or subagency.

Participants and applicants have the right to refuse to provide proof of application information. Nevertheless, sites must provide USDA Foods to eligible participants who refuse to provide proof — in other words, refusal to provide proof of ID or address must not be perceived as a barrier to participation.

Household Application for USDA Foods (Form H1555)

CEs should use the *Household Application for USDA Foods (Form H1555)*¹¹ to certify participants because the form contains federally allowed information. However, CEs may create forms to collect 1) federally allowed information and 2) additional data for other services — for example, clothing aid or assistance with bills.

CEs requesting additional data must ensure that the federally allowed information to determine TEFAP eligibility is collected *before* the CE requests any additional data. Further, the collection of additional data must not be a real or perceived barrier to participation in TEFAP. If a CE uses other forms during the TEFAP application process, the form must specify that a participant (or eligible applicant) will receive USDA Foods through TEFAP even if a participant refuses to provide the additional data. **Only the information collected on the *Household Application for USDA Foods (Form H1555)* can be requested for a participant to obtain USDA Foods.**

NOTE: The certification statement and nondiscrimination statement¹² must be included on the CE-created form.

If a CE uses the *Household Application for USDA Foods (Form H1555)* and adds extra pages to collect additional data, the extra pages must specify that they are not required by the TDA and that a participant will receive USDA Foods through TEFAP even if a participant refuses to provide the additional data. Further, the information to determine TEFAP eligibility must be collected *before* the CE requests additional data.

If utilizing additional documents or pages in conjunction with the H1555, the CE must include the current nondiscrimination statement.

Application of Staff or Volunteers

When staff or volunteers of subagencies apply for USDA Foods, the same eligibility criteria apply as for any other applicant.

Electronic Information

A CE and subagency may record participant and applicant information, including signatures, electronically. CEs and subagencies must protect electronic information to ensure confidentiality.

¹¹ Go to www.SquareMeals.org; choose Programs, The Emergency Food Assistance Program, TEFAP Administration and Forms, and enter the form number in the appropriate search field.

¹² For the wording of these statements, refer to Form H1555.

Confidentiality

CEs and subagencies must protect the confidentiality of any information that has been provided on an application for eligibility, whether the application is paper or electronic. The information may be used only to determine eligibility for TEFAP benefits and to verify income. Do not release any information that contains a TEFAP participant's name or other individual information.

Ineligible Applicants

Occasionally applicants are ineligible. Nevertheless, a *Household Application for USDA Foods (H1555)* must be completed (if possible) and retained as a record of the application. See “Record Retention” in this handbook section for more information.

Certifying Participants

The certification period is a period of consecutive months during which a household is eligible to receive a distribution of USDA Foods.

A certification period

- begins the first month the household receives the USDA Foods, and
- may not exceed 12 months.

To continue receiving USDA Foods after a certification period has ended, the household must be recertified by reapplying and meeting eligibility requirements again.

The Proxy

A proxy is a person designated by a participant to act for the participant as necessary throughout every process of TEFAP. For example, proxies can provide a signature on forms. Proxies may also act for the participant at application, certification, food package distribution, and recertification. A proxy must provide proof of identification before picking up a food package.

Requirements

CEs must collect at least the following information:

1. Participant's name
2. Name of site
3. Authorization, including proxy name
4. Participant's signature
5. Duration of proxy

The CE must maintain each written proxy designation on file. Proxy identification must be reviewed at each application, certification, food package distribution, and recertification.

Proxy Change

There are two ways to change a proxy:

- In a written, signed statement
- In-person at the CE or site, where proxy changes are noted and maintained in the participant file

Multiple Proxies

A participant may designate as many proxies as necessary to ensure that the food package is picked up. Likewise, a single proxy can be designated by multiple participants.

TEFAP Foods for Children

In general, CEs, subagencies, and sites can provide USDA Foods to a child if the child's household is certified as eligible for TEFAP. This item provides additional guidance for CEs, subagencies, and sites that use TEFAP foods to operate programs intended only for child participants, such as Kids Café and Backpack.¹³

Except as mentioned in this item, all applications, monitoring, and USDA Foods requirements still apply.

Eligibility

Congregate Meals

There are no eligibility criteria for congregate meals; individuals are presumed eligible because they seek meals at a TEFAP site. Any child at any congregate meal site must receive a meal.

Household Distributions

Children are categorically eligible for TEFAP USDA Foods if they are eligible for

- free or reduced-price meals under the National School Lunch Program (NSLP) or School Breakfast Program (SBP), or for
- free milk under the Special Milk Program (SMP).

¹³ Guidance is based on USDA Policy Memo FD-041, *Distribution of TEFAP Foods to Children*.

Site Responsibilities

Permission to Participate

Parents or caregivers must accept household distributions for children in writing — for instance, by signing a permission slip. A household member under age 18 can sign the permission slip only if there are no household members 18 or older. Permission slips must include at least the following information:

- A brief description of the way that the program works
- Clauses that allow parents or guardians to opt-in or out of the program
- The nondiscrimination statement found in *TEFAP Handbook*, Section 6, *Civil Rights*, “Public Notification”

The site must keep the returned permission slips on file.

Record of Participants Served

On each distribution day, sites must record the names of participants. TDA recommends that schools report this information to CEs monthly.

Other information that schools may want to collect includes:

- Site name
- Month and year
- Program coordinator at the school
- Week number of distribution (week 1, week 2, week 3, etc.)
- Date of distribution
- Stories of ways the food helped participants
- Comments
- Concerns

Signature of Receipt

A site representative (or the agency that receives the USDA Foods for the site) must sign a receipt to indicate that the food was received. The receipt must be kept on file per the “Record Retention” guidance in this handbook section.

Contracting Entity Responsibilities

Agreement

CEs must have agreements with sites that specify the following:

- Distribution plan (see “Distribution Plan,” below)
- Contact information for site personnel responsible for the program

- The site’s reporting requirements (at a minimum: names of participants on each distribution date)
- A statement certifying that site personnel understand and agree to the proper use of USDA Foods
- USDA’s civil rights assurance language¹⁴

Distribution Plan

If providing household distributions, the CE must submit to TDA¹⁵ a distribution plan, which must include the following information:

1. How will the food packages be distributed?

EXAMPLE: A school site might distribute weekly, near dismissal, in the office, etc.

2. What is the certification period?

EXAMPLE: 3 distributions, 6 distributions, the entire school year, etc.

3. The specification that the site must record the names of participants that receive USDA Foods for each distribution.

NOTE: TDA recommends that schools report this information monthly.

After TDA approves the distribution plan, the CE may use the plan for all children’s household sites for TEFAP.

Participant Rights and Responsibilities

TEFAP Participant Rights and Responsibilities Form

TEFAP applicants and participants have rights and responsibilities that are listed in the *TEFAP Participant Rights and Responsibilities* form.¹⁶ CEs are not required to give applicants or participants a copy of the form. However, CEs must make the form available during the household application and recertification process. CEs may read the form to applicants, if necessary, or applicants may read it to themselves.

EXAMPLE: Some sites present a laminated copy of the *TEFAP Participant Rights and Responsibilities* form to each applicant as part of the application process. Applicants read the form themselves or the site staff reads the form to the applicants.

¹⁴ For more information, refer to *TEFAP Handbook*, Section 6, *Civil Rights*.

¹⁵ Submit to CommodityOperations@TexasAgriculture.gov.

¹⁶ Found at www.SquareMeals.org. Choose Programs, The Emergency Food Assistance Program, TEFAP Administration and Forms, then input the form’s name into the appropriate search field.

Sites Located at Religious Organizations

TEFAP distribution can involve several different organizations. For instance, some religious organizations administer a site, while other religious sites provide space for TEFAP without administering the program itself. Federal civil rights laws address explicitly religious activities at such sites:

- Organizations must not engage in explicitly religious activities as part of TEFAP, including overt religious content such as worship, religious instruction, or proselytization.
- An explicitly religious activity at a site must be separated in time or location from TEFAP services.
- Organizations must not require participants or applicants to participate in explicitly religious activities to receive TEFAP.

TEFAP and Explicitly Religious Activities

The following table provides examples to guide explicitly religious activities at TEFAP sites. TDA encourages CEs to contact the Program Specialist¹⁷ with questions about specific circumstances.

<i>It is acceptable to . . .</i>	<i>It is unacceptable to . . .</i>
Hang a cross on a wall at the TEFAP site.	Require participants to stand by a cross and recite a prayer before TEFAP distribution.
Place a menorah on a table at the site during the holiday season.	Refuse USDA Foods to participants who do not practice the Jewish faith.
Display faith-based pamphlets at the front or back of the site for interested people.	Insert faith-based pamphlets into TEFAP bags or boxes that will be distributed to participants.
Have a religious official, such as a pastor, assist with TEFAP distribution.	Require or encourage participants to have a religious conversation before TEFAP distribution.
Hold a prayer service on the second level of a church building while TEFAP distribution occurs on the lower level.	Hold a prayer service in the same room and at the same time as TEFAP distribution.
Invite participants or applicants to participate in a voluntary — and clearly separate — prayer before TEFAP distribution.	Lead participants in prayer at the beginning of TEFAP distribution.

¹⁷ Email CommodityOperations@TexasAgriculture.gov or call 877-TEX-MEAL (877-839-6325).

Written Notice of Beneficiary Rights

Sites located at faith-based or religious organizations must protect applicants' and participants' rights regarding participation in religious activities. (Applicants and participants are referred to here as "participants.")

Sites must display *The Emergency Food Assistance Program Written Notice of Beneficiary Rights*¹⁸ near the "And Justice for All" poster to inform participants of the following information¹⁹:

- The site must not discriminate against participants based on religion or religious belief; a refusal to hold a religious belief; or a refusal to attend or participate in a religious practice.
- The site must not require participants to attend or participate in any explicitly religious activities. Participants' participation in these activities must be purely voluntary.
- The site must separate, in time or location, any privately funded, explicitly religious activities from activities supported with USDA direct assistance.
- If the participant objects to the religious character of the site, then the site²⁰ must make reasonable efforts to make a referral to an alternative provider to which the participant has no objection, with the understanding that the site cannot guarantee that an alternate provider will be available in every instance.
- Applicants and participants may report violations of these protections (including denials of services or benefits) by either a site, a subdistributing agency, or a CE. Go to www.SquareMeals.org.

Upon the request of a participant, CEs and subagencies must provide a copy of the written notice.

The CE and site must maintain written procedures for the application process. The written procedure must include providing the *Written Notice of Beneficiary Rights* to applicants. The procedures must be available for compliance reviews at all levels of distribution — the CE level, the subdistributing agency level, and the site level. The CE and subdistributing agencies are responsible to train sites.

Beneficiary Referral Request

When an applicant or participant objects to the religious character of a site, the site²¹ must make reasonable efforts to refer them to an alternative site. "Reasonable efforts" depend on the situation. At a minimum, the CE or subagency must 1) attempt to identify an alternative provider, and 2) determine the service that the provider offers. A referral may be made to non-USDA funded providers if necessary and if the provider can accept the beneficiary.

*The Emergency Food Assistance Program and the Commodity Supplemental Food Program Beneficiary Referral Request*²² form documents the referral efforts. Copies of the form must be easily available at

¹⁸ Located at www.SquareMeals.org. Choose Programs, The Emergency Food Assistance Program, TEFAP Administration and Forms then input the form name into the appropriate search field.

¹⁹ Guidance is based on USDA Policy Memo FD-138, *Written Notice and Referral Requirements for Beneficiaries Receiving TEFAP and CSFP Benefits from Religious Organizations*.

²⁰ The site may seek help from the CE.

²¹ The site may seek help from the CE or subdistributing agency.

²² Located at www.SquareMeals.org. Choose Programs, The Emergency Food Assistance Program, TEFAP

each site.

All entities — CEs, subdistributing agencies, and sites — must maintain TEFAP records. Regardless of the type of entity, records, including referral records, must be kept for three years from the close of the fiscal year to which they pertain. Upon request, referral records must be made available to TDA, CEs, and subdistributing agencies (as applicable).

Refusal of USDA Foods

Recipients may refuse any USDA Foods they cannot use or do not want. Refusal will not affect eligibility.

Household Responsibilities

Households bear the following responsibilities:

- Cooperate (to the extent the household is capable) to clarify or provide the information needed to establish eligibility
- Repay, on-demand, to the CE the value of USDA Foods received if an error in eligibility is found because of erroneous information provided by the household. If the household received multiple food packages, the CE may deny to the household distributions of USDA Foods for the same number of months as the extra issuances.
- Not sell or exchange USDA Foods
- Report changes in circumstances, such as income or household size

NOTE: During a certification period, CEs must act on reported changes affecting eligibility or amount of benefits and document changes that include pertinent information (such as a change of address). CEs must act on other changes only when/if the household requests recertification.

Orderly Distribution

Participants have the responsibility to contribute to an orderly distribution.

An orderly distribution allows participants to be served in a safe and nonthreatening atmosphere. Occasionally, however, a site might face recurring issues with a disruptive participant. In such a case, the site can coordinate with local law enforcement officials to ensure the safety of volunteers and participants. Contact the Program Specialist²³ with questions, comments, or concerns.

When the participant is no longer disruptive, he or she can receive a food package at that distribution. However, the distribution might end before the disorderly participant is calm enough to receive a distribution. In this case, the CE or subagency must serve the participant at his or her next regularly scheduled distribution.

Administration and Forms, then input the form name into the appropriate search field.

²³ Email CommodityOperations@TexasAgriculture.gov or call 1-877-TEX-MEAL (1-877-839-6325).

Fraud, Negligence, and Misuse

CEs, subdistributing agencies, sites, and participants must report fraud, misuse, or negligence.

fraud – The intentional concealment or willful misrepresentation of information to receive USDA Foods.

negligence – Improper distribution or use of USDA Foods; or failure to properly store, handle, or care for the food.

misuse of USDA Foods – Includes (but is not limited to) selling, trading, or giving them to ineligible persons.

Procedure for Reporting

CEs must create and follow written procedures for reporting fraud, negligence, and misuse of foods, whether the offense occurs on the part of CEs, subdistributing agencies, sites, or participants. The procedure must include information such as the amount of USDA Foods involved, location of the incident, suspected parties, and other details and facts.²⁴ CEs assume financial liability for negligent or fraudulent administration of TEFAP if CEs are aware of such activity but choose not to report to TDA.

As always, record maintenance is required. CEs, subdistributing agencies, and sites must keep and maintain records for three years after the end of the program year to which they pertain.

Program Documentation

TDA can only observe the CE's daily operation of the program when conducting compliance reviews and audits. Therefore, TDA must rely on the records that the CE retains to determine compliance with TEFAP requirements and to verify the reimbursement to which the CE is entitled. If a CE's records do not support eligibility or claims for reimbursement, the CE will be required to repay the unsupported amount.

Record Retention

CEs must retain all documents relating to participation in TEFAP, such as claims and supporting documents that are specific to a particular program year, for three years from the end of that program year. These documents include, but are not limited to, eligibility determinations, financial documents, supporting documents, distribution receipt, and statistical records.

EXAMPLE: All documents specific to TEFAP program year 2018 must be retained until September 30, 2021.

Every application creates a record, even an application denied because of ineligibility. Therefore, denied

²⁴ To read more about fraud, see *TEFAP Handbook*, Section 8, *Denials and Terminations*.

applications are subject to record retention requirements. For more information, see “Ineligible Applicants” in this handbook section.

However, if audit findings, claims, litigation, or investigation findings have not been resolved, all forms and records must be retained beyond the required period until all issues are resolved. These issues are considered resolved when a final order is issued in litigation, or when the CE and TDA sign a written agreement indicating that the audit findings, claims, or investigation findings have been resolved.

Availability of Records

Each CE, as well as each of its subagencies, must allow TDA, USDA, U.S. Government Accountability Office (GAO), and representatives of other appropriate agencies to inspect facilities and records and to audit, examine, and copy records during normal working hours.

CEs must maintain separate records for each subagency, and TEFAP records must be maintained separately from records of other programs. CEs must make records available to TDA upon request. Such records include, but are not limited to, the following:

- CE findings of subdistributing agencies
- Number of participants served
- Salvage license

Record maintenance requirements apply even if the *TEFAP Agreement and Application for Participation/Plan of Operation* are terminated or not renewed.

Statistics by County

CEs are required to provide annual statistics by county in the areas served. This information is based on data from the previous program year and is due by November 30 of each year. This information should be submitted to the Program Specialist²⁵ electronically on a spreadsheet, with the fields listed in the order below:

- Name of CE
- Name of county
- Number of subagencies in the county
- The quantity of USDA Foods received by the CE for the program year (total pounds)
- The total value of USDA Foods received by the CE for the program year
- Quantity of USDA Foods distributed by the CE for the program year (total pounds)
- Quantity of USDA Foods distributed by county for the program year
- Percentage of total USDA Foods distributed by county
- The total amount of TEFAP administrative funds that have been reimbursed to the CE during the program year
- Total administrative CE expense for the program year
- TEFAP administrative expense for the county for the program year

²⁵ Email CommodityOperations@TexasAgriculture.gov.