

**The Emergency Food Assistance Program
State Plan**

**Department of Labor and Industrial Relations
Office of Community Services**

April 2024

Table of Contents

Purpose	4
Legal Authority	4
Definitions	4
State Operations	7
Eligibility	7
Home Consumption (Food Pantry)	7
Prepared Meals (Soup Kitchens)	9
Nondiscrimination Statement	9
Agreements between OCS and the Local Agency	10
Agreements between the Local Agency and the ERA	11
Staff Changes	11
Eligibility Determinations for the ERA	11
USDA Foods Preference	13
Storage and Inventory of USDA Foods	13
Safe Storage and Control	13
Inventory Management	14
Inventory Limitations	14
Inventory Protection	14
Loss of USDA Foods	14
Transfer of USDA Foods	15
Commercial Storage Facilities or Carriers	15
Food Recall	16
Bill of Ladings and Distribution System	16
Declared Disaster or Emergency	17
Civil Rights Requirement	17
Civil Rights Assurances to Recipients	17
Posting of Nondiscrimination Statement	17
Limited English Proficiency (LEP) Protections	18
Mandatory Civil Rights Training and Limited Exemption	18
Requirements for Maintenance of Civil Rights Records	18
Written Notice and Referral Requirements for Participants Receiving TEFAP Benefits from Religious ERAs	19
Participant Protections: Referral Requirements	19
Explicitly Religious Activities	20

Records and Reports.....	21
Monitoring Requirements	21
Audits	22
Termination.....	22

Purpose

The Emergency Food Assistance Program (TEFAP) is a federally funded program that helps supplement the diets of low-income American, including elderly people, by providing them with emergency food assistance at no cost. Through TEFAP, the U.S. Department of Agriculture (USDA) purchases a variety of nutritious, high quality USDA foods, and makes those foods available to the States, which then distributes the USDA Foods to the Local Agencies, which then distributes the USDA Foods to the ERAs, such as soup kitchens and food pantries which directly serve the general public. These include such foods as canned fruits and vegetables, pasta, beans, grains, protein and dairy.

The amount of food each State receives is based 60 percent (60%) on the number of persons in households within the State with incomes below the Federal poverty level and 40 percent (40%) on the number of unemployed persons within the State.

Legal Authority

The Department of Labor and Industrial Relations, Office of Community Services (OCS) is the designated agency in the State of Hawaii to administer TEFAP pursuant to the legal authorities granted to the Office of Community Services through the Governor's letter dated June 28, 2018. The program is administered in accordance with Code of Federal Regulations Title 7 CFR, Parts 250 & 251. Title 7 CFR, Part 251, The Emergency Food Assistance Program (TEFAP) is the Federal government primary guidance outlining the program. Title 7 CFR, Part 250, provides general operating provisions for all USDA Foods obtained through the USDA. Additional information and clarification are provided through the USDA's policy memos.

Definitions

The following terms, acronyms and definitions are used throughout this State Distribution Plan for administration of TEFAP in Hawaii. This list is for convenience of reference only. In case of conflict, the definitions contained in Title 7 CFR Part 251 and Title 7 CFR Part 250 apply.

Code of Federal Regulations (CFR)

The *Code of Federal Regulations* contain the regulations governing all federal programs. Regulations for TEFAP are Title 7 CFR Part 251 and Title 7 CFR Part 250.

USDA Foods

Food donated by the United States Department of Agriculture (USDA) for distribution through TEFAP.

Disaster

Disaster means a Presidentially declared disaster or emergency, in accordance with Section 412 or 413 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5179-5180), in which Federal assistance, including donated food assistance, may be provided to persons in need of such assistance as a result of the disaster or emergency.

Distribution

The actual transfer of USDA Foods from the USDA to the Local Agency to the ERAs and to eligible individuals and/or household recipients.

Eligible Recipient Agency (ERA)

An Eligible Recipient Agency is an organization that has signed an agreement with the Local Agency to provide distribution services for USDA Foods in a specified community or geographical area within the county that the Local Agency serves. The performance of an ERA is under the direct supervision of its Local Agency, but OCS may suspend or terminate the operations of an ERA, or otherwise require modifications in its operations, if OCS deems such intervention to be warranted.

Federal Poverty Eligibility Guidelines

Federal Poverty Eligibility Guidelines are issued each year in the Federal Register by the Department of Health and Human Services (HHS). The guidelines are a simplification of the poverty thresholds for use for administrative purposes, for instance, determining financial eligibility for certain federal programs. The *Federal Register* notice for the poverty guidelines is at <https://aspe.hhs.gov/poverty-guidelines>.

Federal Fiscal Year (FFY)

A twelve-month period used for accounting and reporting purposes, which runs from October 1 of one year to September 30 of the next year.

First-In-First-Out (FIFO)

The practice in which the first products manufactured within a given product line should be the first products distributed.

Food and Nutrition Service (FNS)

The agency within the USDA responsible for the distribution of USDA Foods and allocation of funds for several federal nutrition assistance programs including TEFAP (Title 7 CFR Part 251.2 (a)).

Food Bank

A nonprofit, charitable organization that is qualified under the provisions of Section 501(c)(3) of the Internal Revenue Code of 1986. *Food bank* means a public or charitable institution that maintains an established operation involving the provision of food to food pantries, soup kitchens, hunger relief centers, or other food or feeding centers that, as an integral part of their normal activities, provide meals or food to feed needy persons on a regular basis.

Food Pantry

A public or nonprofit organization that distributes food to low-income and unemployed households, including food from sources other than the Department of Agriculture, to relieve situations of emergency and stress.

Household

Any of the following individuals or groups of individuals, exclusive of boarders or residents of an institution:

- 1) An individual living alone;
- 2) An individual living with others, but customarily purchasing food and preparing meals for home consumption separate and apart from others; and
- 3) A group of individuals living together who customarily purchase and prepare meals in common for home consumption.

Local Agency

The Local Agency is responsible for administering the TEFAP program in accordance with the provisions of Title 7 CFR Part 250 and 251, as applicable. The food banks are referred to as “The Local Agency” in this State Plan. Pursuant to Title 7 CFR Part 251.3, the Local Agency:

- Is a public agency, or a private entity possessing tax exempt status pursuant to Section 501(c)(3) of the Internal Revenue Code of 1986;
- Is not a penal institution;
- Provides food assistance exclusively to persons in need for household consumption, pursuant to a means test established by Title 7 CFR Part 251.5, or predominantly to persons in need in the form of prepared meals pursuant to Title 7 CFR Part 251.5; and
- Falls into one or more of the following categories:
 - emergency feeding organizations (including food pantries and soup kitchens);
 - charitable institutions (including hospitals and retirement homes);
 - summer camps for children or child nutrition programs providing food service;
 - nutrition projects operating under the Older Americans Act of 1965 (Nutrition Program for the Elderly), including projects that operate nutrition sites (Senior Markets and SNAP) and projects that provide home-delivered meals; and
 - disaster relief programs.

Situation of Distress

Situation of Distress means a natural catastrophe or other event that does not meet the definition of disaster in this section, but that, in the determination of the distributing agency, or of FNS, as applicable, warrants the use of USDA Foods to assist survivors of such catastrophe or other event. A situation of distress may include, for example, a hurricane, flood, or explosion.

Soup Kitchen

A public or charitable institution that, as in integral part of the normal activities of the institution, maintains an established feeding operation to provide food safety to needy homeless persons on a regular basis.

United States Department of Agriculture (USDA)

The United States Department of Agriculture (USDA) is the cabinet-level department responsible for Federal programs related to agriculture, including TEFAP.

Web Based Supply Chain Management (WBSCM)

Web Based Supply Chain Management (WBSCM) is a fully integrated, web-based ordering and procurement system. All federal food and commodity orders, solicitations, offers, awards, deliveries, invoices, and payments occur in WBSCM, and all business partners in the commodity program are required to use this system.

State Operations

OCS partners with three local agencies to administer the TEFAP program in Hawaii. Each of the four counties is served by a local agency that distributes food to eligible needy persons through an Eligible Recipient Agency (ERA). Presently, there are 106 ERAs in the City and County of Honolulu; 18 ERAs in the County of Kauai; 50 ERAs in the County of Maui and 75 ERAs in the County of Hawaii. The Local Agencies under contract with OCS are as follows:

City and County of Honolulu	County of Kauai	County of Maui (includes Lanai and Molokai)	County of Hawaii
Hawaii Foodbank, Inc. 2611 Kilihau Street Honolulu, HI 96819	Hawaii Foodbank, Inc. Kauai Branch 4241-A Hanohao Place Lihue, HI 96766	Maui Food Bank, Inc. 760 Kolu Street Wailuku, HI 96793	The Food Basket, Inc. 40 Holomua Street Hilo, HI 96720

OCS and the Local Agency is responsible for administering the TEFAP program in accordance with the provisions of Title 7 CFR Part 250 and 251, as applicable. The following are the responsibilities of OCS and the Local Agencies:

1. Prior to making any USDA Foods or administrative funds available, the Local Agency must enter into a written agreement with the eligible ERA to which they plan to distribute USDA Foods and/or administrative funds.
2. The Agreement must contain the information as specified in the Agreement between OCS and the Local Agency, except that Agreements between the Local Agency and the ERA may be terminated by either party upon 30 days' written notice.
3. The Local Agency must ensure that they provide the ERA, on a timely basis, any information on changes in program administration, including any changes resulting from amendments to Federal regulations or policy.

Eligibility

Home Consumption (Food Pantry)

A Food Pantry is a public or nonprofit organization that distributes food to low-income and unemployed households, including food from sources other than the Department of Agriculture, to relieve situations of emergency and stress.

A Food Pantry must verify that an individual or household is eligible to receive USDA Foods. Applicants are automatically eligible for TEFAP if the individual or an individual in the household participates in one or more local, state, or federal means-tested programs provided that the individual or household resides in the State of Hawaii. Verification of participation in the program(s) may be collected by the Food Pantry but is not required to determine categorical income eligibility for TEFAP. The TEFAP income eligibility is updated annually and is based on 300% of the Federal Poverty Level, which is established according to the number of persons in the

household and based on gross income. An example is if a child in the household receives free or reduced-price meals through the National School Lunch Program (NSLP), the then household is automatically income eligible to receive TEFAP services. Homeless individuals are subject to the same income requirement (Title 7 Code of Federal Regulations Part 251.5).

For the purposes of determining income eligibility, the following are not considered income:

1. Student aid assistance received from a program funded by Title IV;
2. Employer-or union-paid noncash benefits such as health insurance, food or rent received in lieu of wages, etc.; and
3. Value of noncash benefit programs, such as Medicare, Medicaid, reduced-price student meals, housing assistance, utility assistance, etc.

Federal regulations do not require that an individual or household provide verification of income, for example pay stubs. Therefore, individuals and households applying to participate in TEFAP activities are only required to self-certify that they are within the TEFAP income guidelines. An individual's or household's income eligibility can be determined via self-attestation in lieu of signatures. Since income eligibility is based on 300% of the Federal Poverty Level and federal poverty guidelines are updated annually, the Local Agencies must ensure that the ERAs provide a chart of the most recent eligibility level when monitoring the ERAs.

When applying to receive USDA Foods, a Food Pantry must include on its application or form notifying applicants that the individual or household is required to report changes in eligibility information immediately.

A signature to confirm income eligibility is optional, but not required. Individuals and households may not be asked to supply proof of income or social security number. Household eligibility may be determined on either monthly or annual income; it is not necessary to qualify on both. Eligibility may occur during any month that the individual or household meets the TEFAP income guidelines. Eligibility may occur based on annual income, even if the current month's earnings exceed the monthly income guideline.

A Food Pantry must sign a receipt of commodity with the Local Agency for the foods they received. A Food Pantry shall obtain the following information from each participant:

1. Name of the household member receiving USDA Foods;
2. Self-declaration of residency of the household (to the extent practicable. Ex. Island and/or zipcode);
3. The number of people in the household; and
4. A total income no greater than 300% of the Federal Poverty Level.

A Food Pantry must also maintain an accurate record of households served at TEFAP distributions. A Food Pantry can meet this requirement by maintaining a list of eligible applicants served at each distribution or by having the recipient sign a receipt of commodity (TEFAP Commodity Distribution Form) at each distribution.

The number of USDA Foods distributed shall be determined by the household size by the ERA. The rates will vary according to availability, but a household of a certain size should be provided the same number of USDA Foods as another household of the same size.

Confidential applicant and participant information is any information about an applicant or participant, whether it is obtained from the applicant or participant, another source, or generated as a result of TEFAP application, certification, or participation, that individually identifies an applicant or participant and/or family member(s). Applicant or participant information is confidential, regardless of the original source and exclusive of previously applicable confidentiality provided in accordance with other Federal, State, or local law.

State and local agencies must restrict the use or disclosure of information obtained from TEFAP applicants or participants to persons directly connected with the administration or enforcement of the program. With the consent of the participant, the State or local agency may share information obtained with other health or welfare programs for use in determining eligibility for those programs, or for program outreach. However, the State agency be in agreement with the administering agencies for these programs to ensure that the information will be used only for the specified purposes, and that agencies receiving such information will not further share it. Administering Agencies must state if they will be using participant information for further use, like extending help to participants to other programs or outreach.

Prepared Meals (Soup Kitchens)

A Soup Kitchen is a public or charitable institution that maintains an established feeding operation to provide food to needy homeless persons on a regular basis. When ERAs provide prepared meals for predominately persons in need, all persons they served are deemed eligible. No means test is required to determine eligibility for persons served through such programs.

TEFAP does not require participants to complete the TEFAP commodity log. Participants who consume meals prepared with USDA Foods are presumed eligible if the Soup Kitchen can demonstrate that it predominately serves persons with low incomes.

The Soup Kitchen does not have to maintain a record of the names of people to whom they serve meals and the meal recipients do not have to sign for their meals. The Soup Kitchen must count and report to the Local Agency:

1. The number of meals served per month and
2. The number of people served per month.

Nondiscrimination Statement

In accordance with Federal civil rights law and U.S. Department of Agriculture (USDA) civil rights regulations and policies, the USDA, its Agencies, offices, and employees, and institutions participating in or administering USDA programs are prohibited from discriminating on the basis

of race, color, national origin, sex (including gender identity and sexual orientation), disability, age, or reprisal or retaliation for prior civil rights activity.

Program information may be made available in languages other than English. Persons with disabilities who require alternative means of communication to obtain program information (e.g., Braille, large print, audiotape, American Sign Language) should contact the responsible state or local agency that administers the program or USDA's TARGET Center at (202) 720-2600 (voice and TTY) or contact USDA through the Federal Relay Service at (800) 877-8339.

The State and local agency must protect the confidentiality, and other rights, of any person making allegations or complaints against another individual participating in, or administering TEFAP, except as necessary to conduct an investigation, hearing, or judicial proceeding, as applicable. To file a program discrimination complaint, a Complainant should complete a Form AD-3027, USDA Program Discrimination Complaint Form which can be obtained online at: <https://www.usda.gov/sites/default/files/documents/USDA-OASCR%20P-Complaint-Form-0508-0002-508-11-28-17Fax2Mail.pdf>, from any USDA office, by calling (866) 632-9992, or by writing a letter addressed to USDA. The letter must contain the complainant's name, address, telephone number, and a written description of the alleged discriminatory action in sufficient detail to inform the Assistant Secretary for Civil Rights (ASCR) about the nature and date of an alleged civil rights violation. The completed AD-3027 form or letter must be submitted to USDA by:

1. **mail:**
U.S. Department of Agriculture
Office of the Assistant Secretary for Civil Rights
1400 Independence Avenue, SW
Washington, D.C. 20250-9410; or
2. **fax:**
(833) 256-1665 or (202) 690-7442; or
3. **email:**
program.intake@usda.gov

This institution is an equal opportunity provider.

Agreements between OCS and the Local Agency

Copies of the contract between OCS and the Local Agency shall be kept on file by both parties. The Agreement shall include the following information:

1. That the Local Agency agree to operate the program in accordance with the requirements of Title 7 CFR Part 251, and, as applicable, Title 7 CFR Part 250;
2. The name and address of the ERA's receiving USDA Foods and/or administrative funds under the Agreement;
3. Commitment to adhere to program regulations;
4. Description of any:

- a. Delegated functions;
 - b. Restrictions on distributions or administrative funds; and
 - c. Other conditions imposed by OCS;
5. An assurance that the Local Agency will not subject any person to discrimination under the program on the grounds of race, color, national origin, age, sex or disability;
6. An assurance that the Local Agency will comply with all requirements relating to food safety and food recalls; and
7. The agreement is considered permanent, with amendments to be made as necessary.

Agreements between the Local Agency and the ERA

The Local Agency and the ERA must enter into a written agreement prior to making USDA Foods and/or administrative funds available. The agreements should be kept on file by both parties to the agreements and must contain the following information:

1. Name and Address of each ERA;
2. Donated non-USDA Foods may not be sold, exchanged or otherwise disposed of. The ERA is responsible for any improper distribution, use or damage caused by their fault or negligence;
3. The Agreement may be terminated without cause by either party upon 30 days' notice;
4. The ERA agrees to operate the program in accordance with the requirements of Title 7 CFR Part 251 and, as applicable 250;
5. Food Safety Guidelines, including:
 - a. USDA Foods may not be distributed beyond their expiration date;
 - b. Food storage requirements and temperatures; and
 - c. USDA Foods may not be re-packaged;
6. Compliance with civil rights.

Staff Changes

The ERA must notify the Local Agency any time there is a staff change in:

1. Executive Director;
2. Operations Manager;
3. Agency Relations; or
4. Financial Management.

Eligibility Determinations for the ERA

The Local Agency must ensure that an organization applying for participation in TEFAP meets the definition of an "eligible recipient agency". The ERAs must meet the following criteria:

1. ERAs distributing USDA Foods to households for home consumption must limit the distribution of USDA Foods provided under Title 7, CFR Part 251.5 to those households which meet the eligibility criteria established by OCS;
2. ERAs providing prepared meals must demonstrate, to the satisfaction of OCS and to the Local Agency, to which they have applied for the receipt of USDA Foods, that they serve predominantly needy persons. OCS may establish a higher standard than “predominantly” and may determine which organizations meet the applicable standard by considering socioeconomic data of the area in which the organization is located, or from which it draws its clientele. OCS may not, however, require ERAs to employ a means test to determine that recipients are needy, or to keep records solely for the purpose of demonstrating that its recipients are needy;
3. ERA’s must:
 - a. Be currently operating another Federal program requiring tax-exempt status under the Internal Revenue Code (IRC) or
 - b. Possess documentation from the Internal Revenue Service (IRS) recognizing tax-exempt status under the IRC or
 - c. If not in possession of such documentation, be automatically tax exempt as “organized or operated exclusively for religious purposes” under the IRC or
 - d. If not in possession of such documentation but required to file an application under the IRC to obtain tax-exempt status, have made application for recognition of tax-exempt status. If the IRS denied a participating ERA’s application for recognition of tax-exempt status, the ERA must immediately notify OCS or the Local Agency of such denial, and OCS or the Local Agency will terminate the ERA’s agreement and participation immediately upon receipt of such notification. If documentation of IRS recognition of tax-exempt status has not been obtained and forwarded to the appropriate agency within 180 days of the effective date of the organization’s approval for participation in TEFAP, OCS or the Local Agency must terminate the ERA’s participation until such time as recognition of tax-exempt status is actually obtained, except OCS or the Local Agency may grant a single extension not to exceed 90 days if the ERA can demonstrate, to OCS or to the Local Agency’s satisfaction, that its inability to obtain tax-exempt status within the 180 day period is due to circumstances beyond its control. It is the responsibility of the ERA to document that it has complied with all IRS requirements and has provided all information requested by IRS in a timely manner;
 - e. Is not a penal institution;
 - f. Falls into one of the following categories:
 - i. Emergency feeding organizations (including community action agencies; food banks; food pantries and meal programs);
 - ii. Charitable institutions (including hospitals and retirement homes);
 - iii. Child nutrition programs providing food service;
 - iv. Nutrition projects operating under the Older Americans Act of 1965 (Nutrition Program for the Elderly), including projects that operate congregate Nutrition sites and projects that provide home-delivered meals; and
 - v. Disaster relief programs.

The Local Agency must ensure that the following criteria are used by the ERA for determining the eligibility of households to receive USDA Foods provided for home consumption:

1. Enable OCS to ensure that only households who are in need of food assistance because of inadequate household income receive USDA Foods;
2. Include income-based standards and the methods by which households may determine eligibility under such standards; and
3. Include a requirement that the household reside in Hawaii at the time of applying for assistance, but length of residency shall not be used as an eligibility criterion.

USDA Foods Preference

The Local Agencies can provide input on the commodity preferences and the needs of the ERAs. The Local Agency shall submit a Top 10 likes and dislikes list to OCS with the preferences of the USDA Foods offered to the TEFAP participants by the start of each contract period. In addition to the annual Top 10 List, the Local Agency will provide quarterly updates to OCS on any preferences and dislikes to the USDA Foods by reporting it on the Quarterly TEFAP Program Report. (USDA memo dated April 15, 2019).

Storage and Inventory of USDA Foods

The Local Agency and the ERA must provide for storage of USDA Foods that protects them from theft, spoilage, damage or destruction, or other loss. The Local Agency and the ERA may contract with commercial facilities to store and distribute USDA Foods. The required standards for warehousing and distribution systems, and for contracts with storage facilities are outlined below:

Safe Storage and Control

The Local Agency or the ERA (which may include commercial storage facilities under contract with either the Local Agency or the ERA) must provide facilities for the storage and control of USDA Foods that protect against theft, spoilage, damage, or other loss. Accordingly, such storage facilities must maintain USDA Foods in sanitary conditions, at the proper temperature and humidity, and with adequate air circulation. The Local Agency must ensure that storage facilities comply with Federal, State, or local requirements relative to food safety and health and procures for responding to a food recall, as applicable, and obtain all required health inspections.

The Local Agency and the ERA must ensure that USDA Foods that are out-of-condition at any of its storage facilities are removed, destroyed, or otherwise disposed of, in accordance with FNS instruction and State or Local requirements pertaining to food safety and health. The Local Agency must obtain an inspection of USDA Foods by State or local health authorities to determine their safety and condition, as necessity, or as directed by FNS.

The Local Agency and the ERA must follow all applicable Federal, State or local requirements for USDA Foods subject to a food recall. Further, in the event of a recall, Departmental guidance is

provided, including procedures or instructions for all parties in responding to a food recall, replacement of recalled USDA Foods, and reimbursement of specific costs incurred because of such actions.

Inventory Management

The Local Agency and the ERA must ensure that USDA Foods at all storage facilities used by the Local Agency or the ERA are stored in a manner that permits them to be distinguished from other foods and must ensure that a separate inventory record of USDA Foods is maintained. The Local Agency and the ERA's system of inventory management must ensure that USDA Foods are distributed in a timely manner and in optimal condition. A physical inventory of all USDA Foods must be conducted annually at each storage and distribution site where these USDA Foods are stored. Results of the physical inventory must be reconciled with inventory records and maintained on file by OCS and the Local Agency. The Local Agency must report USDA Food losses to OCS, who will report it to FNS, and ensure that restitution is made for such losses. The ERA must report food damage to the Local Agency, who then reports it to OCS.

Inventory Limitations

The Local Agency and the ERA are subject to the following limitations in the amount of donated food inventories on-hand, unless FNS approval is obtained to maintain larger inventories:

1. Inventories of each category of donated food in the food package may not exceed an amount needed for a six-month period, based on the average amount of donated food that the Local Agency or the ERA can reasonably utilize in that period.

Inventory Protection

The Local Agency must obtain insurance to protect the value of USDA Foods at its storage facilities. The amount of such insurance must be at least equal to the average monthly value of donated food inventories at such facilities in the previous fiscal year. The Local Agency must also ensure that the ERA and/or the commercial storage facility under contract with the Local Agency, obtain insurance to protect the value of their donated food inventories, in the same amount required of the Local Agency.

Loss of USDA Foods

Upon receipt of USDA Foods, each Local Agency and ERA is responsible for such USDA Foods and shall be legally liable to OCS in the event of theft, damage, destruction, deterioration or loss of USDA Foods caused by any event.

In the event of loss, the Local Agency will notify OCS of such loss by submitting a **Commodity Loss Report** no later than two (2) business days after such loss is discovered. OCS will notify FNS within five (5) additional business days of such loss.

OCS shall report all claims for losses of USDA Foods pursuant to the requirements stated in FNS Instruction 410-1(rev. 2).

If and to the extent that the USDA may hold OCS legally liable for the loss of any USDA Foods, the affected Local Agency or ERA shall indemnify OCS and hold it harmless for the loss.

Transfer of USDA Foods

The Local Agency may transfer USDA Foods from its inventories to another Local Agency in order to ensure that such foods may be utilized in a timely manner and in optimal condition. However, the Local Agency must request FNS approval. FNS may also require a Local Agency to transfer donated food at the Local Agency's storage facilities or at a processor's facility, if inventories of USDA Foods are excessive or may not be efficiently utilized. If there is a question of food safety, or if directed by FNS, the Local Agency must obtain an inspection of USDA Foods by OCS or local health authorities, as necessary, to ensure that the USDA Foods are still safe and not out-of-condition before transferring them. The Local Agency is responsible for meeting any transportation or inspection costs incurred, unless it is determined by FNS that the transfer is not the result of negligence or improper action on the part of the Local Agency. The Local Agency must maintain a record of all transfers from its inventories, and of any inspections related to such transfers.

Commercial Storage Facilities or Carriers

The Local Agency or the ERA may obtain the services of a commercial storage facility to store and distribute USDA Foods, or a carrier to transport USDA Foods, but must do so in compliance with procurement requirements in Title 2 CFR Part 200, subpart D, and USDA implementing regulations at Title 2 CFR Parts 400 and 416. The Local Agency or the ERA must enter into a written contract with a commercial storage facility or carrier, which may not exceed five years in duration, including any extensions or renewals. The contract must include applicable provisions required by Federal statutes and executive orders listed in Title 2 CFR Part 200, Appendix II, Contract Provisions for Non-Federal Entity Contracts Under Federal Awards, and USDA implementing regulations at Title 2 CFR Parts 400 and 416. The contract must include, as applicable to a storage facility or carrier, provisions that:

1. Assure storage, management, and transportation of USDA Foods in a manner that properly safeguards them against theft, spoilage, damage or other loss, in accordance with the requirements in this part;
2. Assure compliance with all Federal, State, or local requirements relative to food safety and health, including required health inspections, and procedures for responding to a food recall;
3. Assure storage of USDA Foods in a manner that distinguishes them from other foods, and assure separate inventory recordkeeping of USDA Foods;
4. Assure distribution of USDA Foods to eligible recipient agencies in a timely manner, in optimal condition, and in amounts for which such recipient agencies are eligible;
5. Include the amount of insurance coverage obtained to protect the value of the USDA Foods;

6. Permit the performance of on-site reviews of the storage facility by OCS, the Local Agency, the United States Department of Agriculture, or any of its duly authorized representatives, in order to determine compliance with the requirements;
7. Establish the duration of the contract, and provide for extension or renewal of the contract only upon fulfillment of all contract provisions;
8. Provide for expeditious termination of the contract by the distributing agency for noncompliance with its provisions; and
9. Provide for termination of the contract by either party for other cause, after written notification of such intent at least 60 days prior to the effective date of such action.

Food Recall

Local Agencies must follow all applicable Federal, State or local requirements for foods subject to a food recall. In the event of a recall, OCS will notify the Local Agency and the Local Agency in turn, must notify all affected ERAs. The Local Agency and the ERA must remove, destroy or otherwise dispose of, in accordance with FNS instruction and State or local requirements pertaining to food safety and health.

The Local Agency and the ERA also needs to keep track of any distributed food recall of USDA Foods. The Local Agency and the ERA will need to keep a master list of the USDA Foods that should include number received, number issued, number in inventory and the locations of where the recalled USDA Foods were distributed.

If the USDA Foods were distributed, the Local Agency and the ERA will need to notify the participants that 1) they should refrain from eating the recalled USDA Foods and 2) dispose of the recalled USDA Foods. Notifications may be done via word of mouth or fliers and signs at the distribution sites.

Bill of Ladings and Distribution System

USDA will ship USDA Foods directly to each of the Local Agencies based on OCS' allocation at the start of the Federal Fiscal Year. OCS will notify the Local Agency of OCS' purchases from USDA, advising them of anticipated delivery schedules and the types and quantities of USDA Foods. If OCS learns of any changes in delivery schedules, OCS will notify the affected Local Agency.

In order to meet USDA timelines for reporting receipt, each Local Agency must report to OCS receipt of USDA Foods within one (1) day of receiving such USDA Foods. The Local Agency will be required to provide documenting proof of delivery and notify OCS of any USDA Foods damages or discrepancies.

The Local Agency will distribute USDA Foods to the ERAs, within their respective counties, on a monthly basis at minimum, unless otherwise agreed. Food should be distributed using a first in, first out methodology. If needed, the Local Agency will either conduct or assist in conducting periodic mass distributions to eligible individuals and households.

In the operation of TEFAP, the ERAs shall, to the maximum extent practicable, use volunteer workers and foods that have been donated, pursuant to Title 7 CFR Part 251.10(g).

Volunteers shall not consume USDA Foods unless they are otherwise eligible to receive donated USDA Foods and they have already filled out and signed all relevant certifications of eligibility. The quantities and types of USDA Foods given to eligible volunteers for their personal consumption must not differ from the quantities and types of USDA Foods regularly distributed to all others at the site.

Declared Disaster or Emergency

During a declaration of a disaster affecting the State of Hawaii or a “situation of distress” resulting from a disaster or emergency, The Local Agency and the ERAs may distribute USDA Foods for congregate feeding or mass distributions.

For disaster-related congregate feedings or mass distributions to individuals and households, the Local Agency or the ERA that coordinates the distribution shall prepare a distribution report to OCS in the form specified by OCS.

Civil Rights Requirement

Civil Rights Assurances to Recipients

In accordance with Title 7 CFR Part 250.5, OCS, the Local Agency and all ERAs receiving USDA Foods shall comply with the Department’s nondiscrimination regulations (Title 7 CFR Part 15, 15(a) and 15(b), Title 7 CFR Part 251.10) and the FNS civil rights instructions to ensure that in the operation of TEFAP, no person is discriminated against on protected bases as such bases apply to each program. The purpose of the regulation is to effectuate that the provisions of title VI of the Civil Rights Act of 1964 to the end that no person in the United States shall, on the ground of race, color or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity of an applicant or recipient receiving Federal financial assistance from the Department of Agriculture or any Agency thereof.

There shall be no discrimination in the distribution of foods for home consumption or availability of meals prepared from non- USDA Foods donated under this part because of race, color, national origin, sex, age, or handicap. (Title 7 CFR Part 251.10)

Posting of Nondiscrimination Statement

The Local Agencies and the ERAs must include a public notification system to inform all participants, applicants and potentially eligible persons of the program availability, program rights and responsibilities, the policy of nondiscrimination, and the procedure for filing a complaint. All information materials and sources, including Web sites used by the Local Agency or the ERAs, to inform the public about the TEFAP program must contain the nondiscrimination statement be

included on every page of the program information web site. At the minimum, the nondiscrimination statement, or a link to it, must be included on the home page of the program information. If the material is too small to permit the full statement to be included, the material will at a minimum, include the statement, in print size no smaller than the text that “This institution is an equal opportunity provider.” The Local Agency and the ERAs must prominently display the USDA nondiscrimination poster “And Justice for All” at all sites. (FD 113-1)

Limited English Proficiency (LEP) Protections

As is required by FD 113-1, all Local Agencies and ERAs must take reasonable steps to provide access to the information and services they provide to all eligible persons regardless of their proficiency in speaking, reading, or writing in the English language. Recipient agencies and sites that fail to provide services to participants or potentially eligible persons with LEP or deny them access to federally assisted programs and activities may be discriminating on the basis of national origin. OCS recommends that all Local Agencies and ERAs maintain a Bilingual List of staff and/or volunteers who can be used and/or shared with other ERAs to provide service to those with LEP.

Mandatory Civil Rights Training and Limited Exemption

All employees of the Local Agency; the ERA and the volunteers who interact with TEFAP participants need to take the civil rights training class annually. The Local Agency is responsible for training the ERA’s on civil rights annually. The Local Agency and the ERA needs to keep a log of all employees and volunteers who take the civil rights training class.

All staff should receive training on all aspects of Civil Rights compliance, including, but not limited to:

1. Collection and use of data;
2. Effective public notification system;
3. Complaint procedures;
4. Compliance review techniques;
5. Resolution of noncompliance;
6. Requirements for reasonable modifications for persons with disabilities;
7. Requirements for language assistance;
8. Conflict resolution; and
9. Customer service.

Requirements for Maintenance of Civil Rights Records

Each Local Agency and ERA shall maintain records of the civil rights training for their staff and volunteers. Such records shall be maintained for a minimum of three years which may be subject to audit during monitoring of the Local Agency or the ERA.

Written Notice and Referral Requirements for Participants Receiving TEFAP Benefits from Religious ERAs

Faith based or Religious ERAs that receive USDA Foods or administrative funds for TEFAP must give written notice in the manner prescribed by this policy memorandum to all beneficiaries (hereinafter referred to as “participants”) and prospective participants of the right to be referred to an alternate provider when available. The written notice must state that:

1. The ERA may not discriminate against participants on the basis of religion or religious belief, a refusal to hold a religious belief, or a refusal to attend or participate in a religious practice;
2. The ERA may not require participants to attend or participate in any explicitly religious activities that are offered by the ERA, and any participation by the participant in such activities must purely be voluntary;
3. The ERA must separate in time or location any privately funded explicitly religious activities from activities supported by direct Federal financial assistance;
4. If a participant objects to the religious character of the ERA, the ERA will undertake reasonable efforts to identify and refer the participant to an alternate provider to which the prospective participant has no objection; the ERA may not be able to guarantee, however, that in every instance, an alternate provider will be available; and
5. Participants may report violations of these protections (including denials of services or benefits) by an ERA to OCS. OCS will respond to the complaint and report the alleged violations to their respective USDA FNS Regional office.

ERAs, inclusive of all recipient agencies and local agencies certifying potential beneficiaries and providing TEFAP benefits to participants, must provide the written notice, per the program specific requirements described below, to applicants prior to the time they enroll in the program or receive services from such programs.

Religious ERAs can comply with federal regulations and meet the requirements of this guidance by providing TEFAP applicants with the TEFAP Written Notice of Beneficiary Rights at the time of application or by incorporating the required notification language at Title 7 CFR Part 16.4(f) into their existing TEFAP applications or another format of their choice, provided that each individual participant or prospective participant received an individual written notice.

Participant Protections: Referral Requirements

In accordance with Title 7 CFR Part 16.4(g), if a participant or prospective participant of TEFAP objects to the religious character of an ERA that provides services under the program, that ERA must promptly undertake reasonable efforts to identify and refer the participant to an alternate provider, if available, to which the prospective participant has no objection.

In some cases, a referral option may not be available. What constitutes “reasonable efforts” will depend on the situation. ERAs should at a minimum attempt to identify an alternative provider, is in reasonable geographic proximity; offers services that are similar in substance and quality;

determine what services the alternate provider offers; and determine whether the alternative provider is accepting new referrals. Below are the standards that must be followed:

1. In making the referral, the ERA must comply with all applicable State and local privacy laws and regulations;
2. A referral may be made to another faith-based ERA, if the beneficiary has no objection to that ERA. But if the beneficiary requests a secular ERA, and a secular ERA is available, then a referral must be made to that ERA;
3. The referral must be to an alternate provider that is in reasonable geographic proximity to the ERA making the referral and offers services that are similar in substance and quality to those offered by the ERA, if one is available. The ERA also should have the capacity to accept additional clients, if one with capacity to accept additional clients is available. A referral may be made to non-USDA funded organizations, including non-TEFAP providers, if necessary and available; and
4. If the ERA determines that it is unable to identify an alternate provider, the organization must promptly notify the Local Agency, with which it has an agreement. The Local Agency must determine whether there is any other suitable alternate provider to which the beneficiary may be referred. The Local Agency that receives a request for assistance in identifying an alternate provider may request assistance from OCS. OCS is ultimately responsible for ensuring an alternate provider is identified, if available.

Explicitly Religious Activities

ERAs may not engage in explicitly religious activities as part of TEFAP. This includes activities that involve overt religious content, such as worship, religious instruction or proselytization.

If there is an explicitly religious activity that takes place at the distribution site, it must be separate in time or location from the provision of TEFAP services. Separate in time or location means that if there is an explicitly religious activity happening in the same location it must be at a different time than the provision of TEFAP services or if an explicitly religious activity is happening at the same time, it must be in a different location than the provision of TEFAP services. There can be no overlap.

ERAs must not require program participants or prospective participants to participate in explicitly religious activities to receive TEFAP services. Participation in any explicitly religious activities must be voluntary.

ERAs cannot use TEFAP funds to support any explicitly religious activities, speech or materials.

Program Specific Examples for Organizations Operating TEFAP	
<i>It is acceptable to:</i>	<i>It is unacceptable to:</i>
Have a cross hanging on a wall at the food distribution facility	Require beneficiaries to stand by the cross and recite a prayer prior to receiving USDA Foods
Have a menorah on a table at the USDA Foods distribution facility during the holiday season	Refuse USDA Food to beneficiaries who do not practice the Jewish faith

Have a display stand at the front/back of the USDA Foods distribution facility that contains faith-based pamphlets for anyone interested	Insert faith-based pamphlets in bags or boxes when distributing USDA Foods
Have a pastor or other religious official assist with the distribution of USDA Foods	Require or encourage beneficiaries to have a religious conversation with the pastor or official prior to receiving USDA Foods
Have a prayer service on the second level of a church building while the distribution of USDA Foods is happening on the lower level	Have a prayer service in the same room and at the same time as the distribution of USDA Foods
Invite beneficiaries to participate in a voluntary prayer before, and clearly separate from, the distribution of USDA Foods	Lead beneficiaries in a prayer at the beginning of the distribution of USDA Foods

If the Local Agency or ERA is unsure of whether a specific activity is explicitly religious, they can contact OCS.

Records and Reports

The Local Agency and the ERAs must maintain records to document the receipt, disposal, and inventory of USDA Foods received. ERA's must sign a receipt for program USDA Foods which they receive for distribution to households or for use in preparing meals, and records of all such receipts must be maintained.

All records must be retained for a period of 3 years from the close of the Federal Fiscal year to which they pertain, or longer if related to an audit or investigation in progress. OCS may take physical possession of such records. However, all records must be reasonably accessible at all times for use during management evaluation reviews, audits or investigations.

The Local Agency must submit the following reports to OCS:

1. Fiscal Report Form 300 due quarterly to OCS on the fifteenth of the following month;
2. Physical Inventory due semi-annually to OCS on the last day of the following month;
3. TEFAP Progress Report due quarterly to OCS on the last day of the following month;
4. List of ERAs due January 1 to OCS;
5. USDA Annual Commodity Self Review Form due annually to OCS on October 31; and
6. Bill of Lading due 24 hours to OCS after the delivery to the Local Agency.

Monitoring Requirements

Pursuant to Title 7 CFR Part 251.10 (e) (2), OCS shall monitor the TEFAP operations of all Local Agencies to ensure that USDA Foods are being administered in accordance with Federal and State requirements. Unless specific exceptions are approved in writing by FNS, the OCS monitoring shall be on the following schedule:

1. An annual monitoring of at least twenty-five percent (25%) of all Local Agencies provided that each such agency must be monitored no less frequently than once every four (4) years and

2. An annual monitoring of one-tenth or twenty (20), whichever is fewer, of all ERAs that receive USDA Foods and/or administrative funds.

Monitoring sessions will be conducted, to the maximum extent feasible, to observe the actual distribution of USDA Foods and/or meal service, and eligibility determinations, if applicable.

Each monitoring session will encompass, as applicable, eligibility determinations, storage and warehousing practices, inventory controls, approval of distribution sites, reporting and record keeping requirements, and compliance with civil rights requirements (Title 7 CFR Part 251.10(e)(3)).

OCS reserves the right to revisit and or investigate any ERA at any time. If deficiencies are identified through the monitoring session, OCS shall report its findings within 60 days and require that corrective action be taken to eliminate the deficiencies identified. OCS shall state:

1. Description of the identified deficiency;
2. Description of corrective action(s) required or request for corrective action(s), and
3. Timeline for corrective action(s) and a request for documentation as needed to confirm compliance.

Failure of an ERA to take corrective action within sixty (60) days will result in termination from further participation in TEFAP operations.

Audits

In accordance with Section 501 of the OMB's Uniform Guidance (Title 2 CFR Part 200.501) any Local Agency that expends \$750,000 or more in Federal awards (inclusive of food value) in a given school or fiscal year must obtain an audit for that year. All Local Agencies shall comply with the audit requirement in Title 2 CFR Part 200, as applicable.

Termination

OCS must notify the Local Agency in writing of the termination, the reason for the action, and the effective date.

The Local Agency may terminate the program, in whole, or in part, upon written notification to OCS, stating the reasons and effective date of the action and must provide the Local Agency with an opportunity to appeal. Either party must provide, at minimum, 30 days' written notice.

The Local Agency's program may also be terminated, in whole or in part, if both OCS and the Local Agency agree that the action would be in the best interest of the program. The two parties must agree upon the conditions of the termination, including the effective date. Specific actions and procedures relating to program termination are more fully described in Title 2 CFR Part 200, Subpart D, and USDA implementing regulations Title 2 CFR Parts 400 and 415.

SUBMISSION OF THE STATE PLAN

This plan was reviewed and signed by the Governor's Designee: Mr. Rey Domingo, Executive Director, State of Hawaii Department of Labor and Industrial Relations, Office of Community Services.

Date

Rey Domingo, Executive Director