



**DATE:** January 14, 2025

**POLICY NO:** FD-069: The Emergency Food Assistance Program (TEFAP)

**SUBJECT:** Eligibility of Indian Tribal Organizations (ITOs) and other Tribal entities to participate in TEFAP (Revised)

**TO:** Regional Directors  
Supplemental Nutrition Programs  
MARO, MPRO, MWRO, NERO, SERO, SWRO, and WRO  
  
State Directors  
All TEFAP State Agencies

This memorandum provides guidance regarding the eligibility of ITOs and other Tribal entities to participate in TEFAP and to outline several best practices for working with ITOs and other Tribal entities in TEFAP.<sup>1</sup> TEFAP regulations at [7 CFR 251.4\(k\)](#) encourage TEFAP State agencies and eligible recipient agencies (ERAs) to expand or implement TEFAP distributions in Tribal areas. This in turn will strengthen the emergency food assistance network in Indian Country. ITOs and other Tribal entities are important partners in reaching underserved populations with emergency food assistance; and while they cannot enter into direct agreements with USDA to distribute USDA Foods through TEFAP, they may be eligible to participate as ERAs.

**ITO Eligibility to Participate in TEFAP as State agencies**

In accordance with Section 203B of the Emergency Food Assistance Act of 1983, as amended, TEFAP regulations at [7 CFR 251.3\(i\)](#) define a State agency as the unit of state government

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<sup>1</sup> This memo is intended to provide information on the eligibility of both Tribal organizations that are eligible to enter direct agreements with FNS to administer other FNS Programs (e.g., Federally recognized Tribes, Tribal consortiums, rancherias, pueblos, Alaska Native Villages, etc.) in addition to Tribal entities that are not eligible to enter into direct agreements with FNS to administer FNS programs (e.g., a Tribally managed nonprofit organization, a food pantry managed by and intended for Native people, etc.).

"designated by the Governor or other appropriate state executive authority" which enters into a food distribution agreement with USDA. Because ITOs are not states, they cannot be units of state government. ITOs are not eligible to enter into direct agreements with USDA to distribute USDA Foods through TEFAP and are therefore precluded from serving as State agencies in TEFAP.

### **ITO and other Tribal Entities' Eligibility to Participate in TEFAP as Eligible Recipient**

#### **Agencies**

The Federal definition of a TEFAP eligible recipient agency (ERA) can be found at [7 CFR 251.3\(d\)](#). The definition incorporates both public and private organizations and specifies that private organizations must have a "tax-exempt status under the Internal Revenue Code (IRC)."

**Both public and private ITOs and other Tribal entities that provide food assistance to individuals in need and that meet the definition at 7 CFR 251.3(d) are eligible to enter into agreements with State agencies or other ERAs (i.e., food banks) to serve as TEFAP ERAs.** A specific 501(c)(3) status is not required for private organizations to participate; and private organizations may have a tax-exempt status outside of a 501(c)(3) status. Many ITOs and other Tribal entities are also Tribal governments or agencies of Tribal governments and are therefore public organizations. A tax-exempt status is not required for public organizations to participate in TEFAP.

#### **Organizational Eligibility Determinations**

State agencies must ensure that determinations for ITOs and other Tribal entities to participate in TEFAP are only made based on the State agency's criteria for organizational eligibility outlined in the State agency's plan ([7 CFR 251.6\(a\)\(3\)](#)) and the priority systems outlined at [7 CFR 251.4\(h\)](#). If an ERA application is commingled with another application, such as one to distribute non-USDA Foods, the nonapplicable criteria must not be utilized when determining organizational eligibility to participate in TEFAP.

**Best Practices for Partnering with ITOs and other Tribal entities in TEFAP**

**Appendix A** outlines several best practices for working with ITOs and other Tribal entities in TEFAP.

State agencies should contact their respective [FNS regional office](#) with any questions about this memorandum.

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## APPENDIX A: Best Practices for Working with Indian Tribal Organizations (ITOs) and Other Tribal Entities in TEFAP

- **Understand history and context** – Many ITOs and other Tribal entities have a complicated relationship with governmental and nonprofit entities. Ensure that involved State agency staff and ERAs have, at minimum, a basic understanding of Native American history and Tribes’ historical interactions with governmental and nonprofit entities. If resources allow, invest in Tribal competency training for State agency and/or ERA staff who will work with ITOs or other Tribal entity.
- **Learn more about the ITO or Tribal entity** – To the greatest extent you can, learn about the ITO or Tribal entity’s history, geographical boundaries (if applicable), demographics, cultural norms, values, and language practices. For ITOs, learn whether the ITO is a Tribe, a Tribal advocacy group, a consortium of Tribes, as well as if a Tribe is [Federally recognized](#), State recognized, or non-Federally or -State recognized. Many ITOs and Tribal entities have publicly available webpages that can help State agency/ERA staff familiarize themselves with the ITO or Tribe and determine who to contact.

Leadership structures and processes also differ from ITO to ITO. Feel free to ask ITO representatives questions to enhance your understanding of how the ITO operates. Ensure State agency/ERA staff have a basic understanding of how the governing body of the ITO functions and which department or agency within the ITO may be involved with emergency food assistance. Note that it is often better to contact staff within these departments or agencies first before reaching out to Tribal leadership. ITO staff may decide to refer issues to Tribal leadership if warranted.

Many ITOs are also familiar with or participate in other federal programs administered by USDA such as the Food Distribution Program on Indian Reservations (FDPIR) and the Special Supplemental Nutrition Program for Women, Infants and Children (WIC), as well as other federal programs administered by USDA and other federal agencies. If the ITO operates FDPIR, the ITO’s FDPIR representative may be a good starting point given their understanding of how a food distribution program works and ITO storage and transportation capabilities. FDPIR ITO contacts are listed here: [Food Distribution Program on Indian Reservations Program Contacts | Food and Nutrition Service](#).

- **Build relationships** – Speak with the ITO or Tribal entity about your organization, what TEFAP is, your goals for the partnership, the TEFAP resources available for the collaboration, and the ITO or Tribal entity’s emergency food assistance needs. Determine whether there is an interest in collaboration. This may require multiple meetings and conversations which should be focused on building trust and

establishing a relationship with the ITO or Tribal entity as an equal collaborator and partner.

If you do not hear back from the ITO or Tribal entity after reaching out, you may need to try a different method of reaching out, reach out multiple times, or locate a better point of contact. If there is hesitation to collaborate, focus on identifying the ITO or Tribal entity's concerns and remedying them. Ensure that you are listening to the ITO or Tribal entity and engaging in meaningful dialogue.

- **Engage in Tribal consultation if desired or requested by the ITO**– Establish a formal consultation relationship between the State agency and the involved Tribes to discuss TEFAP matters that will affect the Tribes and their citizens, if the ITO requests it. For example, Tribes may want to consult about the frequency of TEFAP distributions, the location of the distributions, the types of USDA Foods that will be distributed, whether the ITO will act as a distribution site for another ERA, or act as an ERA itself, etc.

Consultation between Tribal governments and State agencies should be direct and involve two-way dialogue and feedback between elected Tribal leaders or their designees, and the highest-ranking State agency official involved in TEFAP administration at the State level (e.g., Commissioner of Agriculture). State agencies should work to identify the Tribes' preferences regarding Tribal consultation including what program-related events and changes would trigger consultation, the key individuals with whom the Tribe wants the State agency to consult, preferred notice timeframes for consultation, and a convenient in-person or virtual location for consultation. The [Supplemental Nutrition Assistance Program \(SNAP\) – Tribal Consultation Guiding Principles document](#) has additional best practices for State agencies carrying out Tribal consultation. The document is intended for SNAP State agencies but many principles in the document are also applicable for TEFAP State agencies.

- **Be flexible** – Understand that the State agency's or ERA's TEFAP distribution model may need to be tailored to meet the ITO or Tribal entity's needs. Consider allowable flexibilities to distribution processes, such as those addressed in [FD-149: Questions and Answers about Flexibilities in TEFAP to Streamline Distribution of Foods and Reduce Barriers to Participation](#).
- **Recognize Tribal independence and sovereignty**– Tribes are sovereign nations. Tribal leadership should be treated with the same respect you would show leadership of other governments. Understand that Tribal governments may have laws and regulations that may affect TEFAP distributions, such as laws related to who can enter Tribal lands or how data about program participants should be stored and shared. Lastly it may be helpful to familiarize yourself with indigenous food sovereignty principles, such as inclusion of [traditional foods, and](#) work to ensure that TEFAP

distributions respect these principles as best possible. The Department of the Interior, Bureau of Indian Affairs' [Why Food Sovereignty Matters webpage](#) is a good starting point for those unfamiliar with food sovereignty.