



Food and
Nutrition
Service

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DATE: November 28, 2016

POLICY NO: FD-141: The Emergency Food Assistance Program (TEFAP),
Commodity Supplemental Food Program (CSFP)

SUBJECT: Questions and Answers Related to the 7 CFR Part 16: Equal
Opportunity for Religious Organizations Final Rule

On April 4, 2016, the Department published the final rule entitled [Federal Agency Final Regulations Implementing Executive Order 13559: Fundamental Principles and Policymaking Criteria for Partnerships With Faith-Based and Other Neighborhood Organizations](#) (Final Rule). Subsequently, we issued [Policy Memorandum FD-138: Written Notice and Referral Requirements for Beneficiaries Receiving TEFAP and CSFP Benefits from Religious Organizations](#). Following the publication of the Final Rule and Policy Memorandum FD-138, FNS received several questions regarding compliance with the new requirements of the Final Rule.

This memorandum provides answers to those questions to assist State, local, and eligible recipient agencies in implementing the provisions of the Final Rule and is being released in conjunction with [Policy Memorandum FD-142: Further Clarification on Explicitly Religious Activities](#). Any additional questions should be addressed to the appropriate [State agency](#) or [FNS Regional Office](#).

/s/ Original Signature on File

Laura Castro
Director
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Attachment

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The Emergency Food Assistance Program (TEFAP) and the Commodity Supplemental Food Program (CSFP):

7 CFR Part 16: Equal Opportunity for Religious Organizations Final Rule

Publication Date: April 4, 2016

Effective Date: May 4, 2016

Questions & Answers

Provision: Purpose and Applicability 7 CFR Part 16.1

- 1. Do the requirements of this rule apply to all religious organizations participating in TEFAP and CSFP, even if they do not have a signed agreement directly with the State agency?**

Yes, all organizations that receive USDA Foods or administrative funding under TEFAP or CSFP are subject to the requirements of 7 CFR Part 16. State agencies must ensure that all local or eligible recipient agencies that receive USDA Foods or administrative funding as part of TEFAP or CSFP are aware of the requirements at 7 CFR Part 16. Local or eligible recipient agencies must record any successful or unsuccessful referrals to alternate providers and report any unsuccessful referral attempts or request assistance in identifying an alternate provider to their respective State agency. Regardless of how local or eligible recipient agencies record referrals, State agencies are responsible for the compliance of sub-recipients with these Federal regulations.

Provision: Explicitly Religious Activities 7 CFR Part 16.4

- 2. Can a pastor announce that a prayer is about to take place in 5 minutes to allow TEFAP beneficiaries who do not want to participate to leave the room so that those who want to participate can do so prior to meal service?**

No. Per 7 CFR Part 16.4(b), the provision of services funded with USDA direct assistance must be kept separate in time or location from explicitly religious activities. Under the scenario above, TEFAP beneficiaries are gathering at a scheduled time to receive TEFAP services and then a prayer is being held in the same location as

the provision of services. Although beneficiaries are given the option to “leave the room,” this scenario violates the requirement to keep explicitly religious activities separate in time or location from the provision of TEFAP services. Once TEFAP beneficiaries have gathered for meal service, having even a voluntary prayer that interrupts the meal service would prevent a true separation of activities.

The organization could meet the requirements of 7 CFR Part 16 by scheduling the prayer at a different time or in a different location than the TEFAP meal service and making it clear to beneficiaries that participation in the prayer is not a condition of receiving the meal. There needs to be a sufficient amount of separation between the explicitly religious activity and the provision of TEFAP, such that TEFAP beneficiaries that choose not to participate in the explicitly religious activity are not impacted. For example, the organization could schedule a prayer for 11:45 am in the same space as meal service and schedule the meal service at 12 pm. The prayer would need to be completely finished before the TEFAP distribution started. Alternately, the organization could schedule both the prayer and meal service at the same time, but in separate locations and invite interested TEFAP beneficiaries to join the prayer held in a separate room, making it clear that participating in the prayer was voluntary. In both of these examples, TEFAP beneficiaries could then decide for themselves whether or not to attend both the prayer and meal service or just to attend the meal service. Importantly, in either case, the organization would need to make sure that there were no additional benefits for participating in the prayer with regards to receiving TEFAP (for example, those attending the prayer service getting to line up early for the meal service).

3. Can TEFAP or CSFP volunteers gather to participate in a prayer before they begin TEFAP or CSFP food distribution?

Yes, at the volunteer’s personal discretion. Federal regulations at 7 CFR Parts 16, 247, and 251 are not intended to impact the activities and services conducted by religious organizations outside of the provision of services supported with USDA direct assistance. Rather, these regulations are intended to ensure that beneficiaries of USDA direct assistance are not required to participate in explicitly religious activities in order to receive federal benefits. An individual can choose to participate in an explicitly religious activity at their own discretion.

If an organization conducts explicitly religious activities, the activities must be offered separately, in time or location, from the programs or services supported with USDA direct assistance, and participation must be voluntary for beneficiaries of the programs or services supported with such USDA direct assistance.

4. Are religious organizations required to prohibit a beneficiary from saying a personal prayer during meal service or food distribution?

No. Federal regulations at 7 CFR Parts 16, 247, and 251 are not intended to infringe on an individual’s right to participate in explicitly religious activities, including personal

prayer. Rather, these regulations are intended to ensure that beneficiaries of USDA direct assistance are not required to participate in explicitly religious activities in order to receive federal benefits. An individual can choose to participate in an explicitly religious activity at their own discretion.

If an organization conducts explicitly religious activities, the activities must be offered separately, in time or location, from the programs or services supported with USDA direct assistance, and participation must be voluntary for beneficiaries of the programs or services supported with such USDA direct assistance.

5. Can a religious organization play religious music during food distributions?

Yes, provided the music is intended as background sound for aesthetic enjoyment. In other words, the audio cannot simply be a recorded sermon or prayer. In addition, the music should be played at low levels that would not rise above normal conversations at the distribution sites. The organization should be sensitive to the preferences of the clients they serve and consider forgoing playing religious music during the distribution of USDA Foods if requested by beneficiaries and prospective beneficiaries of TEFAP and CSFP.

If an organization conducts explicitly religious activities, such as playing the audio of recorded sermon or prayer, the activities must be offered separately, in time or location, from the programs or services supported with USDA direct assistance, and participation must be voluntary for beneficiaries of the programs or services supported with such USDA direct assistance.

6. Is it acceptable to have a moment of silence, rather than a prayer, before a food distribution?

Yes, if the moment of silence is not accompanied with any explicitly religious activity, a moment of silence would be acceptable before a food distribution. However, if the moment of silence is conducted with an explicitly religious activity, for example a short religious statement to focus the moment of silence, it would be considered an explicitly religious activity.

If an organization conducts explicitly religious activities, such as a moment of silence directed toward religious contemplation or reflection, the activities must be offered separately, in time or location, from the programs or services supported with USDA direct assistance, and participation must be voluntary for beneficiaries of the programs or services supported with such USDA direct assistance.

Provision: Beneficiary Protections – Written Notice 7 CFR Part 16.4(f)**7. Must the notice to beneficiaries always be given in writing? Are there any exceptions?**

Yes, the notice to be beneficiaries must be given in writing. For CSFP, the written notice must be provided to each individual at the time they apply for benefits. For TEFAP, an individual written notice will be impractical during brief, potentially one-time interactions between a provider and a beneficiary, such as at a soup kitchen or food pantry. Accordingly, for TEFAP, the written notice requirement can be met by posting a prominent poster or placard in the service area in lieu of providing individual written notices. A sample form for providing individual written notice and a sample poster for posting written notice are included as attachments to Policy Memorandum FD-138.

8. Is the Non-Discrimination Statement required on the Beneficiary Notice?

Yes, the Beneficiary Notice (both individual and posted) must include the short Non-Discrimination Statement (NDS). As a reminder, the current short NDS for documents State and local agencies produce is: “This institution is an equal opportunity provider.”

9. How many times do we have to give written notice? Does it have to be provided annually?

The written notice of beneficiary protections required per 7 CFR Part 16.4(f) must be given to beneficiaries and prospective beneficiaries prior to the time they enroll in TEFAP or CSFP or receive services from such programs. The individual written notice should be provided to beneficiaries and prospective beneficiaries at the time of application for TEFAP or CSFP (see the following paragraph for guidance on posting written notice in TEFAP). The notice is not required annually nor at each recertification, given the notice was provided at the time of application, but if a participant changes the location where they receive services and begins receiving services at a religious organization, the written notice must be provided at the time of certification for the new location or during their first distribution.

For religious organizations operating TEFAP that are posting a written notice, the written notice must be posted at each TEFAP food distribution. If beneficiaries and prospective beneficiaries do not have to apply to receive benefits, as is the case for the provision of prepared meals in TEFAP, and the religious organization chooses to provide individual written notice, it must be provided to each beneficiary and prospective beneficiary at each food distribution.

10. Why does CSFP have to provide individual written notice and TEFAP can post the written notice?

The exception to individual written notice applies when the service provided to the beneficiary involves only a brief interaction between the provider and the beneficiary,

and the beneficiary is receiving what may be a one-time service from the provider. Whereas TEFAP was designed to provide emergency food assistance to low-income families, CSFP was designed to be a monthly food package program – with additional service requirements and certification periods – the nature of CSFP precludes it from falling under the “brief interaction” or “one time service” definition in order to qualify for the exception.

11. Do religious organizations have to provide a copy of the written notice to beneficiaries or just have them sign and date the notice and keep it in their case record?

Federal regulations do not require a signed copy of the individual notice of beneficiary protections to be maintained in each individual case file. However, beneficiaries and prospective beneficiaries should be given the option to receive a copy of the written notice, if requested. Local and eligible recipient agencies should follow the application procedures of the specific program, which can vary by State, in regards to receiving and recording applicant signatures. Local and eligible recipient agencies should clearly document that providing written notice is part of the TEFAP or CSFP application process and should maintain records of specific application procedures for TEFAP or CSFP for review by State agencies or FNS.

12. Do religious organizations providing individual written notice need to document the date the client was notified and maintain that in their case files?

Since individual written notice of beneficiary protections must be provided at the time of application, local and eligible recipient agencies should follow the application procedures of the specific program, which can vary by State, in regards to documenting the date of notification. For beneficiaries which were already enrolled prior to the effective date of the rule, local and eligible recipient agencies should document the date of notification for review by their State agency or FNS. Recording the date of notification in the client’s case file or maintaining a list of dates that beneficiaries received their notification are both acceptable methods of providing verification of notification of beneficiaries which were enrolled prior to the effective date of the rule.

13. If a religious organization conducts its TEFAP or CSFP distribution at a non-religious location, does it have to provide written notice to beneficiaries?

Yes, Faith-based or religious organizations that receive USDA Foods or administrative funds for TEFAP or CSFP must comply with the written notice and referral requirements for program beneficiaries at 7 CFR Part 16 and the further guidance provided in Policy Memorandum FD-138, regardless of whether or not there are any overt signs of religion in the distribution facility. If the organization providing TEFAP or CSFP services is a religious organization, then TEFAP or CSFP beneficiaries must be given written notice and provided referrals upon request per 7 CFR Part 16.

14. If a non-religious organization conducts its TEFAP or CSFP distribution at a church or other religious distribution site, does it have to provide written notice to beneficiaries?

No, if the organization providing TEFAP or CSFP services is not a religious organization it would not be required to comply with the written notice and referral requirements for program beneficiaries at 7 CFR Part 16 simply because of its distribution location. If the organization providing TEFAP or CSFP services is a religious organization, then TEFAP or CSFP beneficiaries must be given written notice and provided referrals upon request per 7 CFR Part 16.

Provision: Beneficiary Protections – Referral Requirements 7 CFR Part 16.4(g)

15. What do you mean by “reasonable efforts” to identify an alternate provider?

Per 7 CFR Part 16.4(g), if a beneficiary or prospective beneficiary of TEFAP or CSFP objects to the religious character of an organization that provides services under the program, that organization must promptly undertake reasonable efforts to identify and refer the beneficiary to an alternate provider, if available, to which the prospective beneficiary has no objection. While the definition of reasonable efforts may depend on the circumstances, at a minimum, the service provider should attempt to identify an alternate provider and make a reasonable effort to ascertain the availability and services of that alternate provider. In order to fulfill the “reasonable effort” requirement, a provider need not, however, spend more than approximately two hours of staff time to identify an alternate provider. If a provider is unable to identify an appropriate alternate provider during this time, the provider should keep a record and then promptly notify the State agency which will in turn notify FNS. If a local or eligible recipient agency is unsure of whether or not they are making reasonable efforts, they can contact their State agency, which can in turn contact FNS for assistance. 7 CFR Part 16 does not require State and local or eligible recipient agencies to follow-up with individuals to determine if services are used.

16. Can a referral be made to another faith-based organization? Can a referral be made to a non-USDA funded organization?

The referral requirement in the final regulations does not specify the nature of the funding of the alternate provider. A referral may be made to another faith-based organization, if the beneficiary has no objection to that provider. But, if the beneficiary requests a secular provider, and a secular provider is available, then a referral must be made to that provider. A referral may be made to non-USDA funded organizations, including non-TEFAP and non-CSFP providers, if necessary and available. However, should a referral be made to a non-USDA funded organization, the beneficiary should be advised that the provider does not participate in USDA programs. Additionally, a referral may be made to another organization within the same network of organizations to which the referring organization belongs, if the beneficiary has no objection to that provider.

17. Are States required to provide local agencies with information regarding alternate providers?

No, 7 CFR Part 16 does not require States to provide local agencies with information regarding alternate providers. The Final Rule, and Policy Memorandum FD-138, offer this as an alternative method of referral that State agencies can choose to provide to their local agencies. However, a local or eligible recipient agency that receives a request for assistance in identifying an alternate provider may request assistance from the State agency. The State agency is ultimately responsible for ensuring an alternate provider is identified, if available.

18. What if there is not an alternate provider available?

FNS acknowledges that in some cases, such as when services are being provided in a remote location, or due to other extenuating circumstances, an alternate provider may not be available. The service provider must, however, undertake reasonable efforts to identify an alternate provider, and must report any unsuccessful referral attempts or request assistance in identifying an alternate provider to the State agency.

Provision: Compliance 7 CFR Part 16.6**19. How will FNS monitor compliance with these new requirements?**

FNS will primarily use Management Evaluation Reviews to monitor compliance with this, and all, statutory and regulatory provisions in TEFAP and CSFP. However, compliance could be monitored through other program oversight mechanisms such as unscheduled site visits and case record reviews.

20. What responsibilities do TEFAP and CSFP State agencies have in monitoring compliance with these new requirements?

State agencies must ensure compliance with the provisions of Executive Order 13559, 7 CFR Part 16, and Policy Memorandum FD-138. State agencies should continue to follow existing regulatory requirements and program mechanisms in regards to monitoring and enforcement of these requirements, including compliance with the minimum notice and referral requirements and maintenance of records related to referrals.

21. What records do we have to keep? Do we have to have a record for every client that we gave them notice?

State and local agencies must continue to follow record keeping requirements in accordance with current program regulations for both TEFAP and CSFP and 7 CFR 250.19. Record keeping should provide Federal and State program reviewers with the opportunity to assess whether or not the State or local agency is compliant with these, and other, federal program requirements.

For example, a reviewer would probably look for the posted written notice in a TEFAP soup kitchen or food pantry or for application materials documenting the individual written notice procedure in a CSFP local agency. If a referral is requested, religious organizations should keep a record of the request and the follow-up actions. 7 CFR Part 16 does not require State and local or eligible recipient agencies to follow-up with individuals to determine if services are used. A sample form for recording a beneficiary referral request is included as an attachment to Policy Memorandum FD-138. All records must be maintained for a period of three years from the close of the fiscal year to which they pertain.

Provision: Miscellaneous

22. Will FNS be issuing the sample documents in other languages?

FNS does not plan to translate the sample documents into other languages. However, getting applications and forms translated is an allowable use of TEFAP and CSFP administrative funding.

23. Can the State or local agency alter the sample documents, for example can a logo/header be added to the sample documents from Policy Memorandum FD-138?

Yes, a State or local agency can add their logo/header to the sample documents. It is important to keep the language as required by the memorandum, but the format can be modified to fit the document printing requirements of the State or local agency. Service providers may develop their own notice of beneficiary rights as long as it includes the information required under the regulation.