



## **CHILD NUTRITION PROGRAM STATE WAIVER REQUEST TEMPLATE**

Child Nutrition Programs are expected to be administered according to all statutory and regulatory requirements; waivers to the requirements are exceptions. However, Section 12(l) of the Richard B. Russell National School Lunch Act, 42 U.S.C. 1760(l), provides authority for USDA to waive requirements for State agencies or eligible service providers under certain circumstances. When requesting the waiver of statutory or regulatory requirements for the Child Nutrition Programs (CNP), including the Child and Adult Care Food Program (CACFP), the Summer Food Service Program (SFSP), the National School Lunch Program (NSLP), the Fresh Fruit and Vegetable Program (FFVP), the Special Milk Program (SMP), and the School Breakfast Program (SBP), State agencies and eligible service providers should use this template. State agencies and eligible service providers should consult with their FNS Regional Offices when developing waiver requests to ensure a well-reasoned, thorough request is submitted. State agencies and eligible service providers are encouraged to submit complete waiver requests at least 60 calendar days prior to the anticipated implementation date. Requests submitted less than 60 calendar days prior to the anticipated implementation should be accompanied by an explanation of extenuating circumstances.

For more information on requests for waiving Program requirements, refer to SP 15-2018, CACFP 12-2018, SFSP 05-2018, Child Nutrition Program Waiver Request Guidance and Protocol- Revised, May 24, 2018.

**1. State agency submitting waiver request and responsible State agency staff contact information:**

California Department of Education (CDE) Nutrition Services Division, David Hazeleaf, Staff Services Manager II, [dhazeleaf@cde.ca.gov](mailto:dhazeleaf@cde.ca.gov)

**2. Region:**

Western Region

**3. Eligible service providers participating in waiver and affirmation that they are in good standing:**

The CDE requests this waiver on behalf of CNP operators in good standing, who are scheduled for an SFSP administrative review (AR) in Federal Fiscal Year (FFY) 2020–21. CNP operators must meet criteria outlined in Section 4 to be eligible under this waiver.

**4. Description of the challenge the State agency is seeking to solve, the goal of the waiver to improve services under the Program, and the expected outcomes if the waiver is granted. [Section 12(I)(2)(A)(iii) and 12(I)(2)(A)(iv) of the NSLA]:**

The California Department of Education (CDE) received notice on October 9, 2020, from the U.S. Department of Agriculture (USDA) that our Summer Food Service Program (SFSP) and Seamless Summer Option (SSO) program operator monitoring waiver request submitted on May 8, 2020, was approved until September 30, 2020. The CDE is grateful for this accommodation. **The CDE is requesting the SFSP portion of the waiver be extended through September 30, 2021 (see regulations in Section 5).**

California schools continue to be impacted by the Novel Coronavirus (COVID-19) pandemic and wildfires throughout the state. Most of our program operators are serving meals under the SFSP and SSO and will continue to do so until June 30, 2021, when the nationwide waivers are set to expire. As a result, SFSP claim reimbursements in Federal Fiscal Year (FFY) 2019–20 have dramatically increased and are almost 10 times the amount of our average claim reimbursements, which is normally around \$20 million. Subsequently, the CDE is facing an unprecedented amount of reimbursement that needs to be reviewed in FFY 2020–21 in order to fulfill the regulatory requirement under Title 7, *Code of Federal Regulations (7 CFR)*, Section 225.7(d)(2)(ii)(B), which requires states to annually review one-half of the total program meal reimbursements in the prior year. As of October 14, 2020, the CDE has the following reimbursement data:

- FFY 2019–20 reimbursement total: \$187,029,675
- One-half of reimbursement total: \$93,514,837

The CDE does not have the staff resources for the increase in size and the number of SFSP reviews, due to the increase in size and number of SFSP operations using the national waivers. Additionally, Los Angeles Unified School District (LAUSD) accounts for \$105,231,958 and Sacramento City Unified School District (SCUSD) accounts for \$8,446,003 of the total reimbursement in FFY 2019–20. The CDE reviewed LAUSD and SCUSD three out of the last four years. They are both in good standing and their previous SFSP reviews had no significant findings or fiscal action. If LAUSD and SCUSD are not reviewed in FFY 2020–21, the CDE will not be able to meet

the regulatory requirement under 7 CFR, Section 225.7(d)(2)(ii)(B), even if all other SFSP operators are reviewed. Reviewing LAUSD or SCUSD will not increase program integrity. If the waiver is approved, the CDE will still review problematic program operators.

The CDE is also requests an extension from the SFSP review cycle requirements for existing SFSP program operators who are in good standing. SFSP program operators are focusing on more urgent priorities related to COVID-19 and do not have the resources to complete a SFSP AR. Approval of this waiver request will allow program sponsors to focus their attention on local COVID-19 needs and services. If approved, the CDE will postpone and prioritize these SFSP reviews in the FFY 2021–22 workload. The CDE will continue to review new non-governmental agencies approved to operate the SFSP and any program operator that the FFY 2019–20 AR revealed to have experienced significant operational problems.

Additionally, the CDE is transitioning all child development programs, including the CACFP to the California Department of Social Services beginning July 1, 2021. The loss of CACFP monitoring staff will impact all areas of the division and drain the CDE's capacity to reorganize and complete more SFSP reviews with less monitoring staff resources.

**5. Specific Program requirements to be waived (include statutory and regulatory citations). [Section 12(l)(2)(A)(i) of the NSLA]:**

The CDE requests exemption from the following requirements:

- 7 CFR 225.7(d)(2)(ii)(B): Annually review a number of sponsors whose program reimbursements, in the aggregate, accounted for at least one-half of the total program meal reimbursements in the State in the prior year
- 7 CFR 225.7(d)(2)(ii)(D): Review each sponsor at least once every three years.

**6. Detailed description of alternative procedures and anticipated impact on Program operations, including technology, State systems, and monitoring:**

The CDE requests exemption from the SFSP review cycle requirements listed in Section 5. If approved, the CDE will also monitor site approval and claiming to identify potential program integrity issues. If an issue is identified, the CDE will investigate. There are no additional impacts on technology, State systems, or monitoring.

**7. Description of any steps the State has taken to address regulatory barriers at the State level. [Section 12(I)(2)(A)(ii) of the NSLA]:**

There are no regulatory barriers at the state level.

**8. Anticipated challenges State or eligible service providers may face with the waiver implementation:**

The CDE does not anticipate that the establishment of this waiver will pose any challenges at the state or sponsor level.

**9. Description of how the waiver will not increase the overall cost of the Program to the Federal Government. If there are anticipated increases, confirm that the costs will be paid from non-Federal funds. [Section 12(I)(1)(A)(iii) of the NSLA]:**

There is no impact on federal administrative cost.

**10. Anticipated waiver implementation date and time period:**

Upon approval, the waiver would be effective immediately and remain in effect through September 30, 2021.

**11. Proposed monitoring and review procedures:**

The CDE will assess FFY 2020–21 SFSP workload and identify which ARs will be postponed. Standard monitoring and review procedures will remain.

**12. Proposed reporting requirements (include type of data and due date(s) to FNS):**

The CDE will provide SFSP workload data to the Western Region office as requested.

**13. Link to or a copy of the public notice informing the public about the proposed waiver [Section 12(I)(1)(A)(ii) of the NSLA]:**

<https://www.cde.ca.gov/ls/nu/lr/cnpwaiver.asp>

**14. Signature and title of requesting official:**

*Kim Frinzell*

11/5/2020

**TO BE COMPLETED BY FNS REGIONAL OFFICE:**

*FNS Regional Offices are requested to ensure the questions have been adequately addressed by the State agency and formulate an opinion and justification for a response to the waiver request based on their knowledge, experience and work with the State.*

**Date request was received at Regional Office: 11.5.2020**

- **Check this box to confirm that the State agency has provided public  notice in accordance with Section 12(l)(1)(A)(ii) of the NSLA**
  
- **Regional Office Analysis and Recommendations:**  
**WRO finds CDE provided a reasonable request for an extension from SFSP review requirements accruing to 225.7(d)(2)(ii) for existing SFSP program operators who are in good standing. Approval of this waiver request will allow program sponsors to focus their attention on local COVID-19 needs and services. WRO agrees with CDE's plan to prioritize any exempted and SSO-SFSP reviews in the SY 21-22 workload. CDE will also continue to review any new non-governmental agencies approved to operate the SFSP and any program operator that the 2019–20 SY AR revealed to have experienced significant operational problems.**

**Timothy Thole 11.09.2020**