



Food and
Nutrition
Service

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Alexandria
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March 31, 2021

Mr. Robert M. Leshin, Director
Office for Food and Nutrition Programs (FNP)
MA Department of Elementary and Secondary Education
75 Pleasant St.
Malden, MA 02148

Dear Mr. Leshin:

This letter is in response to the March 15, 2021, revised waiver request from the Massachusetts Department of Elementary and Secondary Education (MA DESE). MA DESE requested to waive the following statutory and regulatory requirements:

National School Lunch Program (NSLP)

- 42 USC 1769c(b)(1)(C)(i) and 7 CFR 210.18(c) Timing of administrative reviews and cycle;
- 7 CFR 210.19(a)(5) Food Service Management Company (FSMC) review cycle requirements;
- 42 USC 1769c(b)(6)(A) and 7 CFR 245.11 (a)-(b) Notification of second review of applications;
- 7 CFR 210.8(a)(1) & 220.11(d)(1) SFA reviews by February 1;
- 7 CFR 210.9 (c)(7) Afterschool care reviews;

Summer Food Service Program (SFSP)

- 7 CFR 225.7(d)(2)(ii)(A) Review new sponsors within the first year of operating;
- 7 CFR 225.7(d)(2)(ii)(B) Annually review sponsors whose reimbursements count as half the aggregate from the previous year;
- 7 CFR 225.7(d)(2)(ii)(C) Annually review sponsors who had operational issues the year prior;
- 7 CFR 225.7(d)(2)(ii)(D) Review every sponsor at least once every three years;
- 7 CFR 225.7(d)(2)(ii)(E) Conduct reviews of at least 10 percent of each sponsor's sites or one site, if that is greater;
- 7 CFR 225.7(d)(3) Conduct follow up reviews of sponsors and sites as necessary;
- 7 CFR 225.7(d)(6) Inspect FSMC facilities;
- 7 CFR 225.15(d)(2) Visit sites at least once during the first week of operation;
- 7 CFR 225.15(d)(3) Review food service operations at each site at least once during the first four weeks of operation;

Child and Adult Care Food Program (CACFP)

- 42 USC 1766(d)(2)(C)(i) and 7 CFR 226.6(m)(6) Frequency and number of required institution reviews. Annually review at least 33.3% of all institutions according to the schedule:

- (i) Review independent centers and sponsoring organizations of 1 to 100 facilities at least once every three years and include reviews of 10% of their facilities;
- (ii) Review sponsoring organizations with more than 100 facilities at least once every two years and include reviews of 5 percent of the first 1,000 facilities and 2.5 percent of the facilities in excess of 1,000; and
- (iii) Review new institutions that are sponsoring organizations of five or more facilities within the first 90 days of Program operations;
- 42 USC 1766(d)(1)(B)(i)(I) and 7 CFR 226.16(d)(1) Pre-approval visits;
- 7 CFR 226.16(d)(4)(ii) Reconciliation of meal counts;
- 42 USC 1766(d)(2)(B)(i)(I), 42 USC 1766(d)(2)(B)(ii), and 7 CFR 226.16(d)(4)(iii) Frequency and type of required facility reviews. Review each facility three times each year, unless averaging. In addition:
 - (A) At least two of the three reviews must be unannounced;
 - (B) At least one unannounced review must include observation of a meal service;
 - (C) At least one review must be made during each new facility's first four weeks of Program operations; and
 - (D) Not more than six months may elapse between reviews;
- 7 CFR 226.16(d)(4)(iv) Averaging of required reviews;
- 7 CFR 226.16(d)(4)(v) Follow-up reviews; and,
- 7 CFR 226.16(d)(4)(vi) Notification of unannounced reviews.

The Food and Nutrition Service (FNS) recognizes that due to Program operation changes as the result of *COVID 19: Child Nutrition Response #59*, allowing the SFSP and the NSLP Seamless Summer Option (SSO) to continue to operate through June 30, 2021, many Child Nutrition Program monitoring requirements will be difficult for State agencies and local operators to meet. In light of this, FNS will waive program monitoring requirements when a State agency provides a waiver request with an alternative plan that ensures program integrity is continued this year.

In its waiver request, MA DESE proposed an alternative oversight plan that includes pausing formal monitoring and focusing on technical assistance and training this year. MA DESE's requested to extend both the four-year administrative review (AR) cycle and FSMC review cycle by two years to operate six-year cycles ending in school year (SY) 24-25. On behalf of sponsors and SFAs in NSLP, MA DESE requested to waive SFA reviews and afterschool care reviews due to limitations in off-site monitoring during the pandemic. MA DESE also requested to pause formal SFSP reviews for one year and extend the review cycle by one year, ending in fiscal year (FY) 23-24. On behalf of SFSP sponsors, MA DESE requested to waive review requirements due to limitations in off-site monitoring. For CACFP, MA DESE is requesting to pause formal reviews and extend their three-year cycle by two years to operate a five-year cycle ending in FY 24-25. On behalf of CACFP sponsoring organizations, MA DESE has requested to waive monitoring requirements due to the limitations in off-site reviews

and constraints during the pandemic. In lieu of traditional monitoring, MA DESE will offer increased, targeted technical assistance for all sponsors.

To ensure program integrity in the NSLP, MA DESE will conduct off-site assessments and technical assistance sessions for 144 SSO sponsors that began operating in September 2020. MA DESE will train staff on SSO waiver flexibilities and provide sponsors with guidance for completion of virtual assessments. Each Program will receive a targeted technical assistance session on key areas such as food safety, procurement, menus, counting and claiming, enrollment and eligibility, civil rights, training, waiver participation, and additional guidance and best practices, as needed. Claims monitoring will include monitoring for fraudulent activities to ensure claims are not submitted under multiple programs for the same meals, days, or participants. MA DESE program review staff will use the off-site assessments as an opportunity to review documentation that might indicate fraudulent activity and would require follow-up. MA DESE offered new and existing SFAs operating SSO several training opportunities at the start of the school year. MA DESE will continue to provide regular technical assistance opportunities with sponsors via monthly “Town Hall” sessions and peer-to-peer trainings.

To ensure program integrity in the SFSP, sponsors currently on-cycle for a review in FY21 will be reviewed in FY22, with the remaining reviews shifted by one year following the paused year. By the end of FY24, MA DESE will resume the three-year SFSP review cycle. In lieu of traditional monitoring this year, MA DESE will offer increased, targeted technical assistance for all SFSP sponsors. MA DESE will conduct off-site assessments during summer 2021 and use an online review module and tracking spreadsheet to record all information collected. Any critical issues of non-compliance will be issued corrective action and a fiscal assessment as needed. Technical assistance calls with SFSP program operators will include confirmation of site data, meal service operations, monthly claim data, food safety, home and mobile delivery plans, and area eligibility. MA DESE’s Special Nutrition Team has scheduled biweekly calls to discuss operations in more than one CNP, meal service delivery flexibilities, site approval, working with community partners, facilitating outreach, and any sponsor activity that could potentially impact integrity. MA DESE will also provide training during monthly “Check-In” sessions, “Town Hall” webinars for SFSP sponsors, and virtual trainings during summer 2021.

To ensure program integrity in the CACFP, MA DESE will conduct the reviews scheduled for FY20 in FY22, those scheduled for FY21 in FY23, and those scheduled in FY22 in FY24. MA DESE will resume the three-year CACFP review cycle in FY25. While formal reviews are paused, MA DESE will conduct off-site targeted technical assistance assessments for every CACFP sponsor previously scheduled and operating. Each institution will receive a targeted technical assistance session on key program areas such as food safety, procurement, menus, counting and claiming, enrollment and eligibility, civil rights, training, waiver participation, and additional guidance and best practices. The off-site assessment will include claim validations using records such as

menus, meal counts, enrollment roster, eligibility summary, and expenses. In addition, MA DESE's Special Nutrition Team has scheduled biweekly calls with CACFP sponsoring organizations and will leverage regular communication to ensure program integrity and minimize risk for improperly submitted claims. MA DESE will provide new sponsor training and new director training. MA DESE is also requiring all CACFP institutions to receive training on how to ensure program integrity, which will address requirements including recordkeeping, meal counting and claiming, and required edit checks.

Given the numerous flexibilities and waivers that FNS has provided during the novel coronavirus public health emergency, many of the current monitoring requirements and regulations do not efficiently address the oversight of the Child Nutrition Programs. Since these flexibilities alter the normal operations of the Programs, monitoring strategies must adapt. This waiver request, and activities within, does not increase the overall costs of the Program(s) to the Federal Government, rather it allows the State agency to alter its oversight activities in order to strengthen program integrity and conduct efficient monitoring. Through implementation of this waiver, the State agency will continue to fulfill its oversight responsibilities and provide technical assistance which is critical to ensure that current program requirements are met.

Pursuant to section 12(l) of the Richard B. Russell National School Lunch Act (NSLA), (42 USC 1760(l)), FNS approves MA DESE's waiver request effective through:

- June 30, 2021, for NSLP monitoring requirements;
- September 30, 2021, for SFSP and CACFP monitoring requirements;
- September 30, 2024, for the SFSP review cycle extension;
- June 30, 2025, for the NSLP AR cycle and FSMC review cycle extension; and,
- September 30, 2025, for the CACFP review cycle extension.

Please note that this only extends the review cycles and does not waive the requirement itself for a review cycle. FNS has determined that, in light of the exceptional circumstances of the current novel coronavirus public health emergency and other program flexibilities provided by FNS, waiving the above statutory and regulatory requirements will facilitate MA DESE's ability to successfully carry out the purpose of the Programs.

MA DESE's oversight plan, as discussed above, provides assurance that MA DESE will continue to conduct oversight and provide technical assistance upon approval of this waiver. These actions will help Program operators effectively operate Child Nutrition Programs that meet the nutritional needs of eligible Program participants. In addition, as part of this waiver, MA DESE must take program integrity measures to identify any misuse of Federal funds and identify fraudulent activities.

The waiver authority at section 12(l)(5) of the NSLA requires that FNS review the performance of any State that is granted a waiver and terminate the waiver if the performance of the State has been inadequate to justify a continuation of the waiver.

Beginning on July 1, 2021, FNS is requiring that for the duration of this waiver, MA DESE provide the FNS Northeast Regional Office (NERO) a quarterly written report. The report must provide information on how MA DESE is implementing its oversight plan and quantify the impact of the waiver, as described below.

The report must include:

- A description of how the waiver impacted meal service operations and eligible participants access to nutritious meals and snacks;
- A description of how the waiver has facilitated the State agencies oversight abilities and responsibilities;
- A summary of program integrity measures taken to identify any misuse of Federal funds and identify fraudulent activities, and, if anything was identified, any actions taken;
- A description of how the waiver impacted the quantity of paperwork necessary to administer the Program(s); and
- A summary of any technical assistance measures that were provided.

Should MA DESE determine this waiver is no longer necessary prior to the expiration of the dates listed above, please notify the FNS NERO.

FNS understands that these are challenging times for all and that many State agencies and Program operators face significant resource and time constraints. We are committed to supporting State agencies and Program operators as they strive to run successful programs and meet Child Nutrition Program requirements in order to provide nutritious food to eligible participants.

If you have any questions or concerns, please contact the FNS NERO.

Sincerely,

A handwritten signature in blue ink, appearing to read "Saracino", is written over a horizontal line.

Jessica Saracino
Acting Director
Program Monitoring and Operational Support Division
Child Nutrition Programs