



Food and  
Nutrition  
Service

May 25, 2022

Braddock  
Metro Center

Kimberly Vumbaco  
New York State Education Department  
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Albany, NY 12234

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Dear Kimberly Vumbaco:

This letter is in response to the New York State Education Department's (NY SED) May 17, 2022, request to provide operational flexibilities in the National School Lunch Program (NSLP), and School Breakfast Program (SBP), for school year (SY) 2022-2023. Program operators continue to respond to and recover from the COVID-19 pandemic, including managing challenges related to increased administrative burden and staffing issues, which are demanding significant Program operator resources. In order to support access to nutritious meals while State agencies continue to mitigate the administrative, fiscal, and operational challenges exacerbated by COVID-19, FNS recognizes that continued operating flexibilities may be necessary.

FNS did not receive legislative authorization to issue new nationwide waivers beyond SY 2021-2022, as previously provided under the Families First Coronavirus Response Act (FFCRA) (P.L. 116-127), as extended by the Continuing Appropriations Act, 2021 and Other Extensions Act (P.L. 116-159). Therefore, State agencies must request a statewide waiver under Section 12(l) of the Richard B. Russell National School Lunch Act (NSLA), 42 U.S.C. 1760(l), to obtain approval for certain flexibilities previously provided under the nationwide waiver authority.

To grant a Section 12(l) waiver, the NSLA requires that the waiver must facilitate the purpose of the program, the public must receive notice and information regarding the proposed waiver, and the waiver will not increase the overall cost of the Program to the Federal Government. FNS finds that NY SED's waiver request satisfies these statutory requirements.

Specifically, NY SED requested a statewide waiver of the requirements explained below.

**Additional Flexibilities (NSLP/SBP):**

The following waivers provide needed flexibility and allow State and local Program operators to overcome challenges resulting from COVID-19. FNS expects Program operators will only use these flexibilities for the duration and extent that they are needed.

*Waiver 25: Paid Lunch Equity (NSLP)*

Under Program requirements, SFAs must meet Paid Lunch Equity (PLE) requirements as outlined in Section 12(p) of the NSLA, 42 U.S.C. 1760(p) and implemented in NSLP regulations at 7 CFR 210.14(e). Currently through Section 752, Division A of the Consolidated Appropriations Act of 2022 (P.L. 117-103) enacted on March 15, 2022, Congress provided that only SFAs that had a negative balance in the nonprofit school food service account as of December 31, 2021, shall be required to establish prices for paid lunches according to the PLE provision.

In meeting PLE requirements, SFAs may need to increase paid lunch prices or offset any difference with non-Federal funds. However, FNS recognizes that during this transition year requiring SFAs to increase their paid meal prices could place a burden upon families who have not paid for meals over the last two school years.

Pursuant to the waiver authority granted at Section 12(l) of the NSLA, FNS waives paid lunch equity requirements found at Section 12(p) of the NSLA, 42 U.S.C. 1760(p) and implemented at 7 CFR 210.14(e). This waiver pertains to school lunch prices for SY 2022-2023.

*Waiver 26: Carryover Eligibility (NSLP and SBP):* At 42 U.S.C. 1758(b)(9)(C) and 7 CFR 245.6(c)(1), the statute and regulations indicate that eligibility for free or reduced price meals remains in effect for the entire school year and for a certain number of days into the subsequent school year. Under Program regulations at 7 CFR 245.6(c)(2), eligibility from the preceding year must be used to determine eligibility for the first 30 operating days of the school year, or until a new eligibility determination is made in the current school year, whichever comes first.

Pursuant to the waiver authority granted at Section 12(l) of the NSLA, FNS waives the aforementioned statutory and regulatory requirements and allows schools that operated under the SSO in SY 2021-2022 and do not have eligibility determinations from SY 2021-2022 to use the most recent free and reduced price determinations since SY 2019-2020 during the 30-day carryover period of SY 2022-2023. This waiver is effective for the carryover period during SY 2022-2023.

Pursuant to the waiver authority granted at Section 12(l) of the NSLA, FNS approves NY SED's waiver request for the provisions mentioned above. Effective dates of each waiver are listed in the associated sections above. The State agency should inform Program operators of the flexibilities provided by this waiver as quickly as possible. Should NY SED determine any of these waivers are no longer necessary prior to the expiration date of any waivers above, please notify the Northeast Regional Office (NERO).

The waiver authority at Section 12(l) of the NSLA requires FNS to review the performance of any State or eligible service provider that was granted a waiver. Therefore, by October 30, 2023, NY SED must provide to the FNS NERO a report quantifying the impact of the waivers included in this approval as described below.

State agencies may submit one report for all waivers included in this approval. The report must include the following:

- A description of how the waivers impacted meal service operations at participating sites;
- A description of whether the waivers resulted in improved services to children;
- A description of how the waivers reduced the quantity of paperwork necessary to administer the Program; and
- The number of program operators that used the waivers.

FNS appreciates NY SED's exceptional effort to meet the nutritional needs of children during this challenging time. If you have questions, please contact the FNS NERO.

Sincerely,

**Original Signed**

Sarah Smith-Holmes  
Director  
Program Monitoring and Operational Support Division

Electronic Copy: Martine Cherry, NSLP