



Transitioning to Standard Child Nutrition Operations and the Keep Kids Fed Act of 2022 Follow-Up Questions and Answers from Webinars for School Year 2022-2023

General Questions Regarding Waivers

- 1. How do local Program operators find out if their State agency has opted into the Richard B. Russell National School Lunch Act (NSLA) Section 12(l) waivers for School Year (SY) 2022-2023?**

Please contact your State agency to learn which Richard B. Russell National School Lunch Act (NSLA) Section 12(l) waivers have been opted into for SY 2022-2023. Information on available Child Nutrition COVID-19 waivers may be found here: [Child Nutrition COVID-19 Waivers](#).

- 2. How does FNS define "limited by COVID-19" for the meal service waivers approved through authority under Section 12(l) of the NSLA?**

FNS is using authority under Section 12(l) of the NSLA to approve meal service waivers, including non-congregate meal service, meal service times, and parent/guardian meal pickup for Program operators to use when congregate meal service is limited by COVID-19 during SY 2022-2023. Local Program operators, in collaboration with the State agency, are best positioned to determine to what extent these waivers are needed to address limitations caused by COVID-19. When meal service is not impacted by COVID-19, FNS expects Program operators will serve meals in a congregate setting and will not need to use the flexibilities offered.

- 3. What documentation is required from local Program operators to show the 12(l) waivers listed in the checklist were implemented based on COVID-19 conditions?**

FNS is not requiring State agencies to collect documentation to justify the Section 12(l) waivers were implemented based on COVID-19 conditions. However, State agencies may require documentation from Program operators. Therefore, Program operators should contact their State agency for information specific to their State.

National School Lunch Program and School Breakfast Program

- 4. Will schools have the option of offering free meals to all students through the National School Lunch Program Seamless Summer Option or the Summer Food Service Program throughout SY 2022-2023?**

Unlike SY 2021-2022, FNS does not have the authority during SY 2022-2023 to allow school food authorities (SFAs) to participate in the National School Lunch Program (NSLP) Seamless Summer Option (SSO) or the Summer Food Service Program (SFSP) during the regular school year. Therefore, schools must return to standard NSLP and School Breakfast



Program (SBP) operations. For schools not operating under a Special Provision (such as the Community Eligibility Provision (CEP) or Provision 2), schools will be required to determine student eligibility through household applications and direct certification, and to return to counting and claiming meals by type (free, reduced price, or paid). Schools operating under a Special Provision will return to following the requirements of that provision.

However, FNS understands schools may face unanticipated closures during SY 2022-2023 that prevent children from receiving educational instruction and the nutritious meals they would normally receive. During an unanticipated school closure, meals can be served and claimed through SFSP or through SSO (see Questions 18 and 19).

5. Can schools that begin their regular school year prior to September 30, 2022, continue to operate under the SSO and claim meals at the higher SFSP reimbursement rate?

No. Once school is in session for the regular school year, schools must return to standard NSLP and SBP operations and therefore will receive the NSLP and SBP reimbursement rates for free, reduced price, and paid meals.

6. Do the SY 2022-2023 NSLP and SBP reimbursement rates include the additional per-meal reimbursement provided through the Keep Kids Fed Act of 2022?

Yes. The published rates for SY 2022-2023 include the temporary additional per-meal reimbursement (40 cents for NSLP and 15 cents for SBP) authorized from July 1, 2022, through June 30, 2023, through the Keep Kids Fed Act. Please refer to [National School Lunch, Special Milk, and School Breakfast Programs, National Average Payments/Maximum Reimbursement Rates](#) for additional details.

7. Where can State agencies and SFAs find information about returning to standard program operations in SY 2022-2023?

FNS developed a fact sheet available at <https://www.fns.usda.gov/cn/2022-23-parent-faqs> that contains information about Federal requirements for school nutrition professionals and households regarding Program operations during the new school year. At their discretion, State agencies may opt to implement additional requirements; school nutrition professionals should contact their State agency for information specific to their State.

In addition, FNS developed a comparison table to assist State agencies and SFAs as they transition from SY 2021-2022 operations under COVID-19 nationwide waivers and flexibilities to operations designed around their own unique circumstances for SY 2022-2023. This at-a-glance comparison chart, [School Meals Programs Comparison Table of Flexibilities for School Year 2021-22 and School Year 2022-23](#), provides an overview of how specific Program flexibilities have changed since SY 2021-2022 and the flexibilities available for the upcoming school year to support Program operations.



8. If brick-and-mortar schools operate a hybrid education model, with some students attending in person and others attending virtually due to COVID, can the virtual students receive non-congregate meals through NSLP and SBP?

States with an approved NSLA Section 12(l) non-congregate waiver for NSLP and SBP may permit schools to provide non-congregate meals to enrolled students who attend virtually due to COVID-19. School nutrition professionals should contact their State agency for information specific to their State.

9. If an SFA is serving meals in a non-congregate setting due to COVID during SY 2022-2023, do meals have to be claimed by free, reduced price, and paid status?

Yes. Schools must claim meals according to children's eligibility status unless the school is operating under a Special Provision, such as Provision 2 or CEP. Therefore, SFAs must have a method for accurately recording and claiming meals served to students in both congregate and non-congregate settings.

10. Can students who attend schools that have always been virtual receive meals under the NSLP and/or SBP?

No. Schools that have always been virtual are not eligible to participate in the NSLP and SBP, and children who attend these schools would therefore not be eligible to receive meals through these programs.

11. Is it possible to extend the 30-day carryover time period? (For example, to a 60-day carryover for the purposes of giving local educational agencies [LEAs] additional time to accept and process applications.)

USDA does not have authority under NSLA Section 12(l) to issue a waiver to extend the 30-day timeframe for eligibility carryover in SY 2022-2023.

12. Can an LEA use a combination of SY 2019-2020 data and SY 2021-2022 data for carryover in SY 2022-2023?

Yes, in States with an approved carryover waiver, LEAs must use the most recent available eligibility determinations for individual students for the SY 2022-2023 30-day carryover period. This means that for some individual students, the most recent eligibility data may be SY 2019-2020, while for other individual students, it may be SY 2021-2022.

LEAs in States that do not have an approved carryover waiver may only use eligibility determinations from SY 2021-2022 for carryover eligibility in SY 2022-2023.

School nutrition professionals should contact their State agency for information specific to their State.

13. If a student submitted a school meals application in SY 2021-2022 and was determined to not meet the eligibility requirements for free or reduced price school meals, can the LEA use the SY 2020-2021 status for carryover in SY 2022-2023?



No. If the most recent eligibility determination was from SY 2021-2022, then the school must use this eligibility determination (free, reduced price or paid) as the carryover status for SY 2022-2023. This applies both to schools with and without the 12(1) waiver for carryover eligibility.

14. How do schools determine eligibility for severe need breakfast and the two-cent differential during SY 2022-2023 if the school opted into a nationwide waiver allowing them to operate SSO or SFSP in SY 2020-2021?

On June 15, 2022, FNS issued SP 11-2022, “[Determining Eligibility for Severe Need Reimbursement for the School Breakfast Program and the Two Cent Differential Reimbursement for the National School Lunch Program in School Years 2022-2023 and 2023-2024.](#)” To clarify the guidance, any school that opted into [Nationwide Waiver to Allow Summer Food Service Program and Seamless Summer Option Operations through December 2020](#) or, [Nationwide Waiver to Allow Summer Food Service Program and Seamless Summer Option Operations through School Year 2020-2021 – Extension](#) must use either data from SY 2019-2020, as described in SP 11-2022, or from the first three months of SY 2022-2023, to establish eligibility for severe need reimbursement.

With respect to the two-cent differential, SFAs with one or more sites operating SFSP or SSO under the waivers listed above may use either data from SY 2019-2020, as described in SP 11-2022, or from the first three months of SY 2022-2023, to establish eligibility for the two-cent differential.

FNS understands that some systems may not be able to determine if and/or when a school switched from operating the NSLP to operating SSO or SFSP under the waivers listed above. To simplify this determination, if a school claimed meals under the NSLP (not SSO) for each month from October 2020 through April 2021, the State agency may conclude that the school operated NSLP for all of SY 2020 -2021 and may use the guidance in SP 11-2022 for schools that operated NSLP during SY 2020-2021.

15. Does the *Transitional Standards for Milk, Whole Grains, and Sodium* final rule still apply in SY 2022-2023? Will any meal pattern flexibilities be offered in SY 2022-2023 due to supply chain disruptions?

The final rule titled “Transitional Standards for Milk, Whole Grains, and Sodium,” is in effect as of July 1, 2022. This final rule establishes transitional standards to support the continued provision of nutritious school meals as schools respond to and recover from the pandemic and while USDA works to develop longer-term nutrition standards for school meals that are both practical and achievable. FNS recognizes that SFAs continue to face challenges due to supply chain and other disruptions. While a nationwide meal pattern waiver is not being offered in SY 2022-2023, State agencies can opt into the [Nationwide Waiver to Allow Fiscal Action Flexibility for Meal Pattern Violations Related to COVID-19 Supply Chain Disruptions.](#) This waiver will ensure that SFAs are not financially penalized if they are



not able to meet school meal pattern requirements due to COVID-19-related supply chain disruptions during SY 2022-2023.

16. In the School Meal Programs, what fiscal action flexibilities due to supply chain challenges are available in SY 2022-2023?

The [*Nationwide Waiver to Allow Fiscal Action Flexibility for Meal Pattern Violations Related to COVID-19 Supply Chain Disruptions*](#) has been issued and is an extension of last year’s nationwide waiver.

FNS understands that supply chain disruptions have created significant challenges for schools. This waiver provides States with the flexibility to ensure that schools are not financially penalized for COVID-19 supply chain circumstances that are out of schools’ control. FNS encourages schools to continue to strive to offer the most nutritious meals possible for children. When supply chain challenges hinder that effort, States opting into the waiver have fiscal action flexibilities concerning missing meal components and production records, and for repeat violations related to milk type and vegetable subgroups. This is in addition to the existing regulatory flexibility for repeat violations of food quantities and whole grain-rich foods, as well as for dietary specifications. SFAs need to document supply chain disruptions that lead to meal pattern violations and have these records available for a State agency during an administrative review.

17. If a State agency opts into the [*Nationwide Waiver to Allow Fiscal Action Flexibility for Meal Pattern Violations Related to COVID-19 Supply Chain Disruptions*](#), are production records required?

Yes, production records are required and FNS has not waived this requirement. 7 CFR 210.10(a)(3) outlines that SFAs are required to maintain production records.

The [*Nationwide Waiver to Allow Fiscal Action Flexibility for Meal Pattern Violations Related to COVID-19 Supply Chain Disruptions*](#) waives the requirements under 7 CFR 210.18(1)(2)(i) that State agencies take fiscal action for missing production records. State agencies that opt into this waiver have the flexibility to not apply fiscal action for missing production records if there is a supply chain disruption that is a result of COVID-19. Supporting documentation to show the supply chain disruption is required and must be maintained.

Unanticipated School Closures

18. What is the definition of an Unanticipated School Closure?

Unanticipated school closures prevent children from receiving educational instruction during times when school is scheduled to be in session. Schools may face unanticipated closures due to natural disasters, unscheduled major building repairs, court orders relating to school safety, or other issues, such as labor-management disputes. Policy Memorandum [SP04](#)



[CACFP03 SFSP03-2020 Meal Service During Unanticipated School Closures, November 5, 2019](#) provides general guidance related to unanticipated closures.

If a school is offering virtual learning or a hybrid educational model with in-person classes and virtual learning, the school is considered open, and the unanticipated school closure waivers provided in response to COVID-19 do not apply. Please note that the unanticipated school closure waivers discussed during the webinar only apply to instances where the school has closed due to COVID-19 and is not offering instruction (either in-person or virtual).

19. Under which Program will meals be claimed during an unanticipated school closure?

SFAs that are approved by their State agency to serve meals during unanticipated school closures may serve and claim such meals through the SFSP or through the SSO.

Child and Adult Care Food Program (CACFP)

20. Will CACFP institutions be able to implement non-congregate options, like grab-and-go, in SY 2022-2023 and receive the additional 10 cent reimbursement for those meals?

All CACFP institutions, regardless of the waiver flexibilities they are implementing with approval from their State agency, will receive the additional 10-cent reimbursement for all meals and snacks served, per the reimbursement rates in effect from July 1, 2022 to June 30, 2023. For SY 2022-2023, State agencies may apply for individual 12(l) waivers for meal service flexibilities, including non-congregate meals, meal service times, and parent or guardian pick-up. These flexibilities are for Program operators to use when congregation is limited by COVID-19 during SY 2022-2023. When meal service is not impacted by COVID-19, FNS expects Program operators will serve meals in a congregate setting and will not need to use the flexibilities offered.

21. How does a day care home that typically receives reimbursement at the tier II rate receive the tier I rate under the Keep Kids Fed Act?

Day care homes that typically receive reimbursement at the tier II rate will *automatically* receive the tier I rate of reimbursement under the Keep Kids Fed Act of 2022. This is a mandatory provision of law and **States must provide tier I rates of reimbursement to all day care homes effective July 1, 2022 - June 30, 2023**. However, beginning July 1, 2023, the standard tiering levels of reimbursement will resume. State agencies should determine what internal processes they need to have in place to ensure that happens. States should report all day care homes as tier I for the FNS-44 Report that is submitted in the Food Program Reporting System (FPRS) for July 2022 through June 2023.

22. Do day care home providers who serve their own children in the CACFP need to complete a household application for those meals to be reimbursed, as they did through the COVID-19: Child Nutrition Response #93 nationwide waiver?



Yes. As with the [*Nationwide Waiver of Area Eligibility in the Afterschool Programs and for Family Day Care Home Providers in School Year 2021-2022*](#), providers receiving the tier I reimbursement rate as a result of the Keep Kids Fed Act must continue to meet the criteria listed under 7 CFR 226.18(e) when claiming reimbursement for their own children. Payment may be made for meals served to the provider's own children when (1) such children are enrolled and participating in the child care program during the time of the meal service, (2) enrolled nonresident children are present and participating in the child care program, and (3) providers' children are eligible to receive free or reduced-price meals. Meals may not be claimed for the provider's own children if those three criteria are not met.

23. Will there be a waiver for fiscal action in CACFP?

FNS would like to remind State agencies that they already have discretion per regulations to provide technical assistance in lieu of fiscal action. If CACFP operators are making a good faith effort to comply with meal pattern requirements but cannot, due to COVID-19-related supply chain disruptions, State agencies and sponsoring organizations should prioritize training and technical assistance to identify solutions that are specific to CACFP operators' local circumstances.

Regulations under 7 CFR 226.14(b) state that in the event a State agency finds that an institution which prepares its own meals is failing to meet the meal pattern requirements, disallowing payments or collecting an overpayment is at the discretion of the State agency, provided the institution takes appropriate corrective action to address the noncompliance. CACFP operators may also utilize emergency procurement flexibilities at 2 CFR 200.320, which allow a noncompetitive procurement method when a "public exigency or emergency" prevents competitive procurement. In addition, under emergency conditions, regulations at 7 CFR 226.20(e) allow State agencies to approve meal service without milk during a temporary emergency period and to approve meal service without milk if operators are unable to obtain milk on a continuing basis, provided an equivalent amount of canned, whole dry or fat-free dry milk is used in the preparation of the components of the meal.

To the extent practicable, State agencies and sponsoring organizations should use discretion to provide technical assistance in lieu of fiscal action when they observe noncompliance related to meal pattern requirements due to COVID-19-related supply chain disruptions during Federal fiscal year 2023.

Area Eligibility

24. Will Area Eligibility Waivers for CACFP be available during SY 2022-2023?

No. The Keep Kids Fed Act does not grant USDA the ability to issue nationwide waivers that increase costs to the Federal Government during SY 2022-2023. Therefore, in SY 2022-2023, at-risk afterschool centers may only participate in CACFP if they are located in areas where at least 50% of the children are eligible for free and reduced-price meals, based on



school data. Sponsoring organizations of at-risk afterschool centers may use the available options detailed in [Area Eligibility for Summer 2022 and School Year 2022-23](#).

As a reminder, the Keep Kids Fed Act designates all family day care homes as tier I for SY 2022-2023; thus, family day care homes do not have to demonstrate area eligibility during that period.

25. Which area eligibility options are available for non-school operators of CACFP At-Risk?

The area eligibility options described in [Area Eligibility for Summer 2022 and School Year 2022-23](#) can be used to determine area eligibility for site locations for CACFP at-risk afterschool meals, SFSP, SSO, and NSLP afterschool snacks.

26. Should CACFP At-Risk use the SY 2019-2020 data option or CEP option to determine area eligibility after June 30, 2022?

Either option may be used to establish eligibility for CACFP at-risk afterschool meals, and waivers are not required. Program operators have the discretion to select the data option that works best for them based on their individual circumstances. Guidance on how State agencies can move forward with area eligibility this year is available at [Area Eligibility for Summer 2022 and School Year 2022-23](#).

Monitoring and Reporting

27. Are the FNS-640 and FNS-874 being waived by USDA?

Yes, but only for State agencies operating under the applicable Section 12(l) waiver flexibilities. State agencies must request waivers #10 and #11 in order to be exempted from the requirements to submit FNS-640 and FNS-874 reports during SY 2022-2023. State agencies that do not request this waiver flexibility are required to submit all reports by their established deadlines.

28. What are the offsite monitoring options for reviews in SY 2022-23?

State agencies and Program operators may continue to conduct offsite reviews in the NSLP, SBP, and CACFP, either through the nationwide waivers currently in effect, or through approved individual Section 12(l) waivers for reviews taking place after the current waivers expire.

The current nationwide offsite monitoring waivers expire 30 days after the end of the Public Health Emergency (PHE). Note that the PHE was extended by the U.S. Department of Health and Human Services until October 13, 2022, so these waivers are currently in effect until November 12. Individual State waivers provided through Section 12(l) will be in effect from the end of the PHE until June 30, 2023.



State agencies may request individual state waivers in advance. State agencies may request to waive reviewing any of the regulatory requirements onsite in NSLP, SBP, and CACFP. This does not waive conducting reviews. Please note that while waiving the onsite review requirements allows review visits to be conducted offsite, this would not prohibit onsite reviews from occurring. State agencies may also request monitoring waivers on behalf of their local Program operators.

29. How should State agencies complete the FNS-10 SSO and FNS-10 reports during Summer 2022 and School Year 2022-2023?

Following the guidance provided in question and answer #5 of this memo, State agencies who opted into the [Nationwide Waiver to Allow Summer Food Service Program Reimbursement Rates for the Seamless Summer Option in Summer 2022](#), may continue to submit claims on the FNS-10 SSO form, through September 30, 2022. After the expiration of the Nationwide waiver, SFAs cannot claim SSO meals at the higher SFSP rate. State agencies should resume reporting all NSLP, SBP, and SMP meals and snacks on the traditional FNS-10 form once SFAs end Summer 2022 operations and begin SY 2022-2023. If you have questions about reporting or which report to use, please reach out to your Regional Office.