



Food and  
Nutrition  
Service

September 29, 2023

Braddock  
Metro Center

Amanda Marshall  
Office of Nutrition Programs and Services  
New Hampshire Department of Education  
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Dear Amanda Marshall:

This letter is in response to the New Hampshire Department of Education's (NHED) September 27, 2023, request to waive the requirement to meet the annual Community Eligibility Provision (CEP) election deadline for school year (SY) 2023-2024. USDA published a final rule, *Child Nutrition Programs: Community Eligibility Provision – Increasing Options for Schools*, September 26, 2023, that lowers the minimum identified student percentage (ISP) needed to elect CEP to 25 percent. The new minimum ISP is in effect as of October 26, 2023. Because the election deadline for school year (SY) 2023-2024 has passed, NHED requested a waiver to allow newly eligible LEAs and schools to elect CEP mid-year and participate in CEP during SY 2023-2024.

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

Specifically, NHED requested a statewide waiver of the following CEP deadline:

### **June 30 Election Deadline**

Under Section 11(a)(1)(F)(x)(I) of the NSLA, 42 U.S.C. 1759a, LEAs that intend to elect CEP in the following school year must notify the State agency and submit ISP documentation not later than June 30 of the current school year. This requirement is codified in FNS regulations at 7 CFR 245.9(f)(4)(i).

Pursuant to the waiver authority granted at Section 12(l) of the NSLA, FNS waives for NHED the statutory requirement that LEAs intending to elect CEP for SY 2023-2024 must submit ISP documentation by "Not later than June 30 of the current school year," and the corresponding regulatory requirement that such documentation must be submitted "no later than June 30." Instead, LEAs that intend to elect CEP for SY 2023-2024 must submit ISP documentation to the State agency by March 30, 2024.

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The State agency should inform LEAs of the flexibilities provided by this waiver as quickly as possible.

### **Reporting Requirements**

The waiver authority at Section 12(l) of the NSLA requires FNS to periodically review the performance of any State or eligible service provider that was granted a waiver. Therefore, NHED must provide to the FNS Northeastern Regional Office (NERO) a written report by June 30, 2024, quantifying the impact of the waiver, as described below.

The report must include the following:

- A description of how the waiver impacted NSLP and SBP operations in CEP participating schools;
- A description of whether the waiver resulted in improved services to children; and
- The number of LEAs that used the waiver.

If you have questions, please contact the FNS NERO.

Sincerely,

Tina Namian  
Director  
School Meals Policy Division