United States Department of Agriculture

Food and Nutrition Service

Braddock Place

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DATE: February 6, 2024

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SUBJECT: Community Eligibility Provision: Statutory Annual Notification and Publication Requirements and School Year 2024-2025 Election Deadline

TO: Regional Directors
Special Nutrition Programs
All Regions

State Directors
Child Nutrition Programs
All States

This memorandum provides a reminder of the annual Community Eligibility Provision (CEP) notification and publication requirements, including the changes made by the Final Rule, *Child Nutrition Programs: Community Eligibility Provision – Increasing Options for Schools*. This memorandum also reminds State agencies that the statutory election deadline for local educational agencies (LEAs) to elect CEP for school year (SY) 2024-2025 is June 30, 2024.

Regulations at 7 CFR 245.9(f)(6) require State agencies to annually notify LEAs of district-wide eligibility for CEP. Similarly, regulations at 7 CFR 245.9(f)(5) require LEAs to annually submit school-level eligibility data to the State agency. Per 7 CFR 245.9(f)(7), by May 1 of each school year, State agencies must publish lists of eligible and near-eligible LEAs and schools on their State agency website. State agencies also provide the Food and Nutrition Service (FNS) a single link to these lists for publication on FNS' CEP website.

In September 2023, FNS published the Final Rule, *Child Nutrition Programs: Community Eligibility Provision – Increasing Options for Schools* (88 FR 65778), amending CEP regulations by lowering the minimum identified student percentage (ISP) to elect CEP from 40 percent to 25 percent. The final rule also amends the regulations governing State agency and LEA identification, notification, and public notification requirements by changing the minimum ISP for a school to be considered eligible or near-eligible for CEP; and changes the minimum ISP to be eligible for a grace year in year 4 of the CEP cycle. The changes made by the final rule were effective on October 26, 2023. Therefore, State agencies and LEAs must use the new minimum ISP to determine which LEAs and schools are eligible or near-eligible for the identification, notification, and publication requirements due in April and May 2024.

Eligible LEAs and schools are those with ISPs that are 25 percent or higher. Near-eligible LEAs and schools are those with ISPs less than 25 percent but greater than or equal to 15

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percent. LEAs and schools eligible for a grace year are those with ISPs of less than 25 percent but greater than or equal to 15 percent as of April 1 in year 4 of their CEP cycle.

The remainder of this memorandum provides detailed information to help State agencies and LEAs fulfill the CEP notification and publication requirements.

April 15 Notification and Data Collection

Two levels of data are required to complete the annual CEP notification process:

1. State agencies must provide current year **district-wide eligibility data** to LEAs; and
2. LEAs must provide current year **school-level eligibility data** to State agencies.

Data used to prepare the notification lists must be from the current school year. State agencies and LEAs may use proxy data, as described below, to fulfill notification and publication requirements. Proxy data may be used only to notify LEAs and schools of possible eligibility; proxy data may not be used to calculate the ISP for eligibility or reimbursement purposes. If proxy data is used, the notification must include a note that the data provided is a proxy for actual eligibility. LEAs interested in electing CEP must provide actual school-level identified student and enrollment data as of April 1 to participate.

District-Wide Data

Per 7 CFR 245.9(f)(6), no later than April 15 of each school year, State agencies must notify each LEA of the LEA's district-wide eligibility for CEP in the following categories and provide guidance to LEAs that want to elect CEP or enter a grace year:

- LEAs with a district-wide ISP of at least 25 percent (eligible for CEP);
- LEAs with a district-wide ISP greater than or equal to 15 percent but less than 25 percent (near-eligible for CEP);
- LEAs currently participating in CEP; and
- LEAs in the fourth year of CEP participation with a district-wide ISP greater than or equal to 15 percent but less than 25 percent (eligible for grace year).

If district-wide identified student data is not readily available, State agencies may use proxy data to determine the district-wide CEP eligibility status by obtaining the number of identified students from the *SFA Verification Summary Report* (FNS-742). The sum of the data elements in Section 3 of the FNS-742 provides the number of identified students, and Section 1 of the FNS-742 provides enrollment information for State agencies to calculate the district-wide ISP. In LEAs operating CEP or another special provision in a non-base year, the number of identified students is available from the data used to complete the *State Agency (NSLP/SNAP) Direct Certification Rate Data Element Report* (FNS-834) Data Element #3.

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School-Level Data

Per 7 CFR 245.9(f)(5), no later than April 15 of each school year, LEAs must submit to their State agency lists of schools that:

- Have an ISP of at least 25 percent (eligible for CEP);
- Have an ISP greater than or equal to 15 percent but less than 25 percent (near eligible for CEP);
- Are currently participating in CEP; and
- Are currently in the fourth year of CEP participation with an ISP greater than or equal to 15 percent but less than 25 percent (eligible for grace year).

State agencies may exempt LEAs from this requirement if school-level data is available to the State. If school-level identified student data is not readily available, the percentage of enrolled students directly certified with the Supplemental Nutrition Assistance Program (SNAP) may be used as a proxy for the school-level ISP.

May 1 Publication on State Websites: District and School-level Data

Per 7 CFR 245.9(f)(7), by May 1 of each school year, State agencies must post to their public websites, lists of LEAs and schools in the categories described above. State agencies must also provide FNS with a single link to these lists. State agencies should email the link to their public notification lists to FNS at: SM.FN.CEPNotification@usda.gov.

When completing the notification lists, one tool State agencies can use is the optional USDA-developed reporting template. The template is intended to help State agencies streamline notification and publication activities but is not required. The optional State agency template and instructions have been revised to reflect the lower 25 percent minimum ISP.

June 30 Election Deadline

Per 7 CFR 245.9(f)(4)(i), an LEA that intends to elect CEP for the following school year must notify the State agency by June 30. Therefore, by June 30, 2024, LEAs that intend to elect CEP for SY 2024-2025 must:

1. Notify their State agency of their intent to elect CEP; and
2. Submit documentation showing the counts of identified and enrolled students (for schools electing CEP) as of April 1, 2024.

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LEAs are strongly encouraged to keep contact information up to date with the State agency to ensure receipt of critical Program information and reminders.

State agencies are reminded to distribute this memorandum and attachment to Program operators immediately. LEAs and other Program operators should direct any questions concerning this guidance to their State agency. State agencies with questions should contact the appropriate Regional Office.

Heather Hopwood

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