United States Department of Agriculture

Food and Nutrition Service

Braddock Metro Center

1320 Braddock Place
Alexandria VA 22314

DATE: September 26, 2023

MEMO CODE: SP 22-2023

SUBJECT: Community Eligibility Provision: Implementing the New Minimum Identified Student Percentage

TO: Regional Directors
Child Nutrition Programs
All Regions

State Directors
Child Nutrition Programs
All States

Issuing Agency/Office:	Food and Nutrition Service/Child Nutrition Programs
Title of Document:	Community Eligibility Provision: Implementing the New Minimum Identified Student Percentage
Document ID:	
Z-RIN:	
Date of Issuance:	September 26, 2023
Replaces:	Not Applicable
Summary:	(1) This guidance applies to State agencies and local educational agencies administering the National School Lunch Program and the School Breakfast Program. (2) This guidance provides information on the final rule, *Child Nutrition Programs: Community Eligibility Provision – Increasing Options for School*

Purpose

The purpose of this memo is to inform State agencies and local educational agencies (LEAs) about changes made to the Community Eligibility Provision (CEP) in the Food and Nutrition Service's (FNS) Final Rule, *Child Nutrition Programs: Community Eligibility Provision – Increasing Options for Schools*, published on September 26, 2023. This final rule amends CEP regulations by lowering the minimum identified student percentage (ISP) from 40 percent to 25 percent. Lowering the minimum ISP will give States and LEAs greater flexibility to offer no-cost meals to all enrolled students if financially viable. This memo provides a general overview of the rule and information on when the new minimum ISP becomes effective.

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Overview of CEP Changes via the Final Rule, *Child Nutrition Programs: Community Eligibility Provision – Increasing Options for Schools*

The changes made by the final rule are effective on October 26, 2023. In accordance with the final rule, changes are made to the minimum ISP needed by an LEA to elect CEP, to elect a CEP grace year, and to be considered eligible or near-eligible for CEP for purposes of the identification, notification, and publication requirements. The final rule only changes the numbers (i.e., 40 percent to 25 percent, 30 percent to 15 percent) consistent with the lower minimum ISP; no additional substantive changes are made by the rulemaking. The changes are described in the table below.

Changes to CEP as a Result of the Final Rule		
Provision (current regulatory citation)	**Previous Minimum ISP**	**New Minimum ISP (effective 10/26/2023)**
Minimum ISP (7 CFR 245.9(f)(3)(i))	LEAs, schools, and groups of schools were required to have ISPs of **40 percent or higher** to elect CEP.	LEAs, schools, and groups of schools are required to have ISPs of **25 percent or higher** to elect CEP.
Grace Year Eligibility (7 CFR 245.9(f)(4)(ix))	LEAs, schools, and groups of schools participating in CEP were required to have ISPs of **less than 40 percent but equal to or greater than 30 percent** in year 4 of the CEP cycle to elect CEP for a fifth year, or grace year. ($30 \leq ISP < 40$)	LEAs, schools, and groups of schools participating in CEP are required to have ISPs of **less than 25 percent but equal to or greater than 15 percent** in year 4 of the CEP cycle to elect CEP for a fifth year, or grace year. ($15 \leq ISP < 25$)
Identification, Notification, and Publication of *Eligible* LEAs and Schools (7 CFR 245.9(f)(5), (6), (7))	Eligible LEAs or schools had ISPs of **40 percent or higher.**	Eligible LEAs or schools have ISPs of **25 percent or higher.**
Identification, Notification and Publication of *Nearly Eligible* LEAs and Schools (7 CFR 245.9(f)(5), (6), (7))	Nearly eligible LEAs and schools had ISPs of **less than 40 percent but equal to or greater than 30 percent.** ($30 \leq ISP < 40$)	Nearly eligible LEAs and schools have ISPs of **less than 25 percent but equal to or greater than 15 percent.** ($15 \leq ISP < 25$)

Electing CEP Mid-year in SY 2023-2024

Because the final rule is effective after the June 30 CEP election deadline for SY 2023-2024, FNS will permit State agencies to request waivers to allow LEAs to take advantage of the new minimum ISP during the current school year. Permitting mid-year CEP

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elections allows newly eligible schools to participate in CEP during SY 2023-2024. Requesting a waiver is always at the discretion of the State agency. However, FNS strongly encourages State agencies to allow mid-year CEP elections if there are LEAs in their State interested in electing CEP for this school year. FNS is prepared to provide technical assistance to support State agencies with mid-year implementation. State agencies should contact their FNS Regional Office for more information on requesting a waiver.

Considerations for Electing CEP

Electing CEP is a voluntary decision made by LEAs based on their unique student populations. Prior to participating in CEP, LEA decisionmakers should consider student nutrition, educational, administrative, and financial factors. FNS understands that lowering the minimum ISP to 25 percent will result in more schools being eligible for CEP. However, it is essential to ensure financial viability for newly eligible schools electing CEP at lower ISPs.

LEAs are encouraged to consider their ability to provide meals at no cost to students and cover LEA operating costs with Federal assistance and any other available funds, including State and/or local funds. If the total amount of Federal assistance available does not fully cover the cost of offering all students meals at no charge, LEAs must contribute non-Federal funds (7 CFR 245.9(f)(4)(vii)).

FNS has an updated estimator tool to help LEAs determine if CEP is financially viable, and to help assess LEA groupings to optimize Federal reimbursements. The estimator tool is available at the CEP Resource Center (Community Eligibility Provision | Food and Nutrition Service (usda.gov)).

CEP Notification and Publication Requirements

By April 15 of each school year, LEAs are required to submit lists of schools that are eligible, or nearly eligible, for CEP participation to their respective State agencies (7 CFR 245.9(f)(5)). Similarly, by April 15 of each school year, State agencies are required to notify LEAs of district-wide eligibility and, by May 1, publish lists of LEAs and schools that are eligible and nearly eligible for CEP participation on their websites (7 CFR 245.9(f)(6) and 7 CFR 245.9(f)(7), respectively).

As explained above, the final rule 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 nearly eligible for CEP. Eligible LEAs and schools are those with ISPs that are 25 percent or higher. Nearly eligible LEAs and schools are those with ISPs less than 25 percent but greater than or equal to 15 percent.

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State agencies and LEAs must use the new minimum ISP to determine which LEAs and schools, respectively, are eligible and nearly eligible for the identification, notification, and publication requirements due in April and May 2024. USDA will publish a memo in Spring 2024 reminding State agencies of these requirements.

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

Sincerely,

Tina Namian
Director
School Meals Policy Division

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