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UNITED STATES DEPARTMENT OF EDUCATION

OFFICE OF ELEMENTARY AND SECONDARY EDUCATION

FACT SHEET
January 4, 2021

STATE-ADMINISTERED PROGRAMS UNDER THE ELEMENTARY AND SECONDARY EDUCATION ACT OF 1965 AND THE NATIONWIDE WAIVER FROM THE U.S. DEPARTMENT OF AGRICULTURE TO ALLOW MEAL PATTERN FLEXIBILITY IN THE SUMMER FOOD SERVICE PROGRAM AND THE NATIONAL SCHOOL LUNCH PROGRAM SEAMLESS SUMMER OPTION THROUGH JUNE 2021

Due to the novel Coronavirus disease 2019 (COVID-19), the U.S. Department of Agriculture's (USDA's) Food and Nutrition Service (FNS) granted nationwide waivers (USDA waivers) through June 30, 2021, to support access to nutritious meals while minimizing potential exposure to COVID-19. (See additional information on the FNS Response to COVID-19). The USDA waivers relate to the National School Lunch Program (NSLP), the School Breakfast Program (SBP), the Seamless Summer Option (SSO), and the Summer Food Service Program (SFSP). Relatedly, the USDA administers the at-risk afterschool component of the Child and Adult Care Food Program (CACFP).

Although the USDA, not the U.S. Department of Education (ED), administers the Federal meal programs listed above, there is a connection between some of these programs and some state-administered formula programs under the Elementary and Secondary Education Act of 1965 (ESEA). This connection occurs in two primary ways, as described in this fact sheet.

With respect to the first connection between an ESEA program and the USDA waivers, there is coordination at the local level between the Title IV, Part B – Nita M. Lowey 21st Century Community Learning Centers (21st CCLC) program, administered by ED, and USDA's CACFP program. Specifically, CACFP provides afterschool meals to children who participate in the 21st CCLC program. This has raised a question as to whether the at-risk afterschool meals component of the CACFP, which operates during the regular school year, may operate simultaneously with the SFSP and the SSO during the implementation of the USDA waivers.

The USDA has stated that the CACFP may operate simultaneously with the SFSP and the SSO during implementation of the USDA waivers. See USDA's full response to this question,[1] which is also available here.

[1] According to USDA, "The at-risk afterschool meals component of the CACFP, which operates during the regular school year, may operate simultaneously with the SFSP/SSO during implementation of Waiver #56. As noted in SP

The second connection between the USDA waivers and the ESEA is that state educational agencies (SEAs) and local educational agencies (LEAs) often choose to use NSLP data to carry out certain activities under the following ESEA programs:

- Title I, Part A – Improving Basic Programs Operated by [LEAs] (Title I);
- Title II, Part A – Supporting Effective Instruction (Title II); and
- Title V, Part B – Rural and Low-Income School Program (RLIS).

Table: How ESEA Programs Use NSLP Data (as applicable)

ESEA program	**Activity**	**Description of activity**	**Statutory or regulatory provision**
Title I	Eligibility determinations and allocations under each Title I formula for a "special LEA" (i.e., an LEA for which Census poverty estimates are not available)	Option for an SEA to use NSLP data to derive the equivalent of Census poverty data for a special LEA	ESEA sections 1124(c)(1)-(2), 1124A(a)(1), 1125(a)(1), and 1125A(c); 34 C.F.R § 200.72
Title I	Within-state allocations for LEAs with a total population below 20,000 (small LEAs) in ten states	10 SEAs have approval from ED to use NSLP data to re-determine small LEAs' eligibility under each Title I formula and redistribute ED-determined Title I allocations to small LEAs	ESEA sections 1124(a)(2)(B), 1124A(a)(4), 1125(d); 34 C.F.R. § 200.74
Title I	Within-LEA allocations for an LEA with an enrollment of at least 1,000	Option for an LEA to use NSLP data to rank schools according to their percentage of public school students from low-income families	ESEA section 1113(a)(5)(a); 34 C.F.R. § 200.78

13, CACFP 07, SFSP 06-2020, Child Nutrition Program Nationwide Waivers: Questions and Answers, 2020, April 11, 2020, https://www.fns.usda.gov/cn/covid-19/nationwide-waivers-qas, program operators may participate in multiple programs. However, under no circumstance may children receive more than the number of reimbursable meals allowed in each program for which they are eligible. For more information on the operation of the at-risk afterschool meals component of the CACFP, see Question 15 in SP 14, CACFP 08, SFSP 07-2020: Child Nutrition Program Meal Service during Novel Coronavirus Outbreaks: Questions and Answers #3, issued April 11, 2020, https://www.fns.usda.gov/cn/covid-19/meal-service-during-novel-coronavirus-outbreaks-qas."

ESEA program	Activity	Description of activity	Statutory or regulatory provision
Title I	Equitable services for private school students	Option for an LEA, in consultation with appropriate private school officials, to use NSLP data to determine the number of private school children from low-income families	ESEA section 1117(c)(1); 34 C.F.R. § 200.64(a)(3)(i)
Title I	Reporting and accountability to improve student academic achievement and school success	Option for an SEA to use NSLP data to identify economically disadvantaged students for purposes of disaggregating by subgroup for reporting, including on student achievement, and for its Statewide accountability system	ESEA section 1111(b)(2)(B)(xi), (c), and (h)
Title II	Allocations for a special LEA	Option for an SEA to use NSLP data to derive the equivalent of Census poverty data for a special LEA	ESEA section 2102(a)(2)(B)
RLIS	Eligibility determinations for a special LEA	Option for an SEA to use alternative poverty data to derive the equivalent of Census poverty data for a special LEA	ESEA section 5221(b)(1)

For LEAs that choose to participate under the USDA waivers, complete NSLP data collected through household applications may not be available from school year (SY) 2020-2021. To the extent that SEAs and LEAs use NSLP data to help carry out the ESEA programs listed above, they ordinarily would use NSLP data from SY 2020-2021 to implement these programs in SY 2021-2022 because the SY 2020-2021 data would be the best data available. This fact sheet outlines options for SEAs and LEAs to successfully implement their ESEA programs without complete NSLP data.

The descriptions of affected requirements are summarized for conciseness. Users of this Fact Sheet may wish to review the ESEA, applicable regulations, and ED's program-specific nonregulatory guidance for more details about these requirements.

Special LEAs: Title I Eligibility and Allocations, Title II Allocations, and RLIS Eligibility Determinations

The ESEA requires that an LEA's eligibility and allocations under each Title I formula and its allocations for Title II be determined, in part, based on Census LEA poverty estimates. It also

that an LEA's eligibility for RLIS be determined based on Census LEA poverty estimates. Census LEA poverty estimates, however, are not available for special LEAs, such as charter school LEAs, that do not serve a specific geographical area. Thus, an SEA must derive a Census poverty count for each special LEA. To derive a special LEA's Census poverty estimate, an SEA needs alternative poverty data that are available for the special LEA and for LEAs in the State for which Census data are available. In many cases, NSLP data may be the most commonly available alternate poverty data for this purpose.

To the extent that NSLP data from SY 2020-2021 are not available, to derive a Census poverty count for a special LEA, options available to an SEA include using:

- Poverty data other than NSLP data (e.g., Medicaid counts or other poverty data available to an SEA for State purposes);
- The best available NSLP data, which may be from SY 2019-2020;
- NSLP data from SY 2020-2021 that may be accessible (e.g., counts of children identified through direct certification); or
- Data from a poverty survey conducted by the SEA or LEA that replicate NSLP or other poverty data.

Title I Allocations for Small LEAs

An SEA may combine the Title I allocations from the four Title I formulas for small LEAs and use alternative poverty data approved by ED to: (1) redetermine each small LEA's eligibility; and (2) redistribute funds among the eligible small LEAs based on the alternative data. Of the SEAs that have ED's approval to use alternative data for small LEAs, most use NSLP data as one of their alternative poverty data sources.

To the extent that NSLP data from SY 2020-2021 are not available, options available to an SEA with ED's approval to use NSLP data for allocations to small LEAs include using:

- The best available NSLP data, which may be from SY 2019-2020;
- NSLP data from SY 2020-2021 that may be accessible (e.g., counts of children identified through direct certification); or
- Data from a poverty survey conducted by the SEA or LEA that replicate NSLP or other poverty data.

Within-LEA Title I Allocations

The ESEA requires an LEA to rank all of its schools according to their percentage of public school students from low-income families in order to:

- Identify eligible school attendance areas and schools;
- Rank areas and schools; and
- Determine the allocation for each area and school.

To determine the number of public school students from low-income families, the ESEA provides an LEA with the option of using the number of children:

- Eligible for free or reduced-price lunch (FRPL) under the NSLP;

- In families receiving assistance under the State program funded under Title IV, Part A of the *Social Security Act* (Temporary Assistance for Needy Families (TANF));
- Eligible to receive medical assistance under the Medicaid program; or
- Counted by the LEA using a composite of any of the above measures.

To the extent that NSLP data from SY 2020-2021 are not available, options available to an LEA for its within-LEA allocations in SY 2021-2022 include using:

- Medicaid or TANF data or a composite of data of these two sources from SY 2020-2021;
- The best available NSLP data, which may be from SY 2019-2020;
- NSLP data from SY 2020-2021 that may be accessible (e.g., counts of children identified through direct certification);
- A composite of NSLP, Medicaid, and TANF data, which might include Medicaid or TANF counts from SY 2020-2021 and the best available FRPL data, which may be from SY 2019-2020; or
- Data from a poverty survey conducted by the SEA or LEA that replicate NSLP, Medicaid, or TANF data.

Title I Equitable Services for Private School Students

In order for an LEA to determine the amount of its Title I allocation that it must use to provide equitable services to eligible children in participating private schools (proportional share), the LEA must determine the number of children from low-income families who attend a private school and reside in a participating Title I public school attendance area. Under ESEA section 1117(c)(1) and 34 C.F.R. § 200.64(a)(3)(i), an LEA, in consultation with appropriate private school officials, may choose from the following measures to make this determination:

- The same measure of poverty used to count public school children;
- Comparable poverty data from a survey and allowing such survey results to be extrapolated if complete actual data are unavailable;
- Comparable poverty data from a different source;
- The application of the low-income percentage of each participating public school attendance area to the number of private school children who reside in that school attendance area; or
- An equated measure.

It is possible that under any of the above measures an LEA will determine private school low-income counts by reference to NSLP data from public school students and, in some cases, using such data from private school students themselves. For example, if an LEA uses FRPL data to determine the number of public school children from low-income families and FRPL data are also available for private school students, after consultation with appropriate private school officials, the LEA may decide to use NSLP data from private school students under the first measure listed above (same measure used to count public school students).

In addition, the ESEA permits an LEA to decide, in consultation with appropriate private school officials, whether to determine the number of children from low-income families who attend private schools each year or every two years. (See ESEA section 1117(a)(4)(D).) Thus, for an

LEA that used NSLP data from SY 2019-2020 to make this determination for SY 2020-2021 and SY 2021-2022, the potential lack of NSLP data from SY 2020-2021 will not affect the proportional share determination for SY 2021-2022 because the LEA had not planned to use data from SY 2020-2021.

For an LEA that under ordinary circumstances plans to use NSLP data from SY 2020-2021 to determine the proportional share for SY 2021-2022, to the extent that NSLP data from SY 2020-2021 are not available, in consultation with appropriate private school officials, the LEA may decide instead to use data from SY 2019-2020 (including NSLP data) to determine the proportional share for SY 2021-2022.

Reporting and Accountability

The ESEA requires an SEA to identify students who are in certain subgroups, including economically disadvantaged students, for purposes of reporting disaggregated data by subgroup and holding schools accountable based on subgroup performance in its statewide accountability system. To the extent that NSLP data from SY 2020-2021 are not available, and in order to identify students who are economically disadvantaged for the purpose of reporting and accountability based on data from SY 2020-2021, an SEA may use any of the following to identify economically disadvantaged students:

- Poverty data other than NSLP data;
- The best available NSLP data, which may be from SY 2019-2020;
- NSLP data from SY 2020-2021 that may be accessible (e.g., counts of children identified through direct certification); or
- Data from a poverty survey conducted by the SEA or LEA that replicate NSLP or other poverty data.