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## UNITED STATES DEPARTMENT OF EDUCATION

OFFICE OF ELEMENTARY AND SECONDARY EDUCATION

### UPDATED FACT SHEET

January 12, 2022

#### **SUCCESSFULLY IMPLEMENTING STATE-ADMINISTERED PROGRAMS IN THE ELEMENTARY AND SECONDARY EDUCATION ACT OF 1965 WITHOUT COMPLETE NATIONAL SCHOOL LUNCH PROGRAM DATA FROM SCHOOL YEARS 2020-2021 AND 2021-2022**

*(UNDER THE NATIONWIDE WAIVER FROM THE U.S. DEPARTMENT OF AGRICULTURE TO  
ALLOW SCHOOLS TO OPERATE THE NATIONAL SCHOOL LUNCH PROGRAM SEAMLESS  
SUMMER OPTION THROUGH JUNE 2022)*

Due to the novel Coronavirus disease 2019 (COVID-19), the U.S. Department of Agriculture's (USDA's) Food and Nutrition Service (FNS) issued a suite of nationwide waivers (USDA waivers) that are effective through June 30, 2022, to support access to nutritious meals while minimizing potential exposure to COVID-19 during school year 2021-2022 ([see additional information on the FNS Response to COVID-19](#)). The USDA waivers that are in effect until the end of June 2022 relate to the National School Lunch Program (NSLP), the School Breakfast Program (SBP), and the Seamless Summer Option (SSO). Relatedly, the USDA administers the At-Risk Afterschool Meals Component of the Child and Adult Care Food Program (CACFP), for which USDA also issued waivers. A description of the USDA waivers is available [here](#).

As a result of COVID-19 related complications, many local educational agencies (LEAs) that chose to participate in the USDA waivers will not have NSLP data, which ordinarily would have been collected through household applications during school years (SYs) 2020-2021 and 2021-2022. This updated fact sheet and the table below outline options for State educational agencies (SEAs) and LEAs to successfully implement their ESEA programs during SYs 2021-2022 and 2022-2023 when complete NSLP data from SYs 2020-2021 and 2021-2022 are not available due to participation in USDA waivers. The descriptions of affected requirements are summarized for conciseness. Users of this fact sheet may wish to review the Elementary and Secondary Education Act of 1965 (ESEA), applicable regulations, and the U.S. Department of Education's (ED) program-specific nonregulatory guidance for more details about these requirements.

Although the USDA, not 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 ESEA. This connection occurs in two primary ways, as described in this fact sheet.

The first connection between an ESEA program and the USDA waivers involves coordination at the local level between the Title IV, Part B – Nita M. Lowey 21st Century Community Learning Centers (21<sup>st</sup> CCLC) program, administered by ED, and the CACFP, administered by USDA.

Specifically, CACFP provides afterschool meals to children and youth who participate in the 21<sup>st</sup> CCLC program. This has raised a question as to whether the At-Risk Afterschool Meals Component of CACFP, which operates during the regular school year, may operate simultaneously with the SSO during the implementation of the USDA waivers.

Under waivers issued by USDA for school year 2021-2022, the At-Risk Afterschool Meals Component of CACFP may operate simultaneously with the SSO during the regular school year. See USDA’s full response to this question,<sup>1</sup> which is available [here](#).

The second connection between the USDA waivers and the ESEA is that SEAs and 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)

<b>ESEA program</b>	<b>Activity</b>	<b>Description of activity</b>	<b>Statutory or regulatory provision</b>
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	Ten 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

<sup>1</sup> According to USDA, “CACFP At-Risk, which operates during the regular school year, may operate simultaneously with the SSO during implementation of Child Nutrition. Response #85, Nationwide Waiver to Allow the Seamless Summer Option through School Year 2021-2022, <https://www.fns.usda.gov/cn/child-nutrition-response-85>. “However, under no circumstance may children receive more than the number of reimbursable meals allowed in each Program for which they are eligible.” See Question #24: SP 16-2021, CACFP 14-2021: Previously Issued Questions and Answers Relating to Operation of the Child Nutrition Programs: Updated for School Year 2021-2022, <https://www.fns.usda.gov/cn/operation-child-nutrition-programs-2021-2022>.

<b>ESEA program</b>	<b>Activity</b>	<b>Description of activity</b>	<b>Statutory or regulatory provision</b>
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
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 and improvement 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)

Similar to the previous version of this document, in the following pages ED outlines flexibilities for SEAs and LEAs to use the best available NSLP data for implementing the ESEA programs listed above in SYs 2021-2022 and 2022-2023. As the best available data may come from different school years (e.g., SY 2020-2021 or SY 2019-2020) depending on specific circumstances in a State or LEA, an SEA and LEA (as applicable) may determine which year of data or combination of years represent the best available data. This may result in using the same NSLP data several years in a row. Although using the same NSLP data from an LEA for multiple years to carry out ESEA programs may represent a change for some LEAs, this was already the practice for other LEAs prior to the USDA waivers due to how certain components of the NSLP operate. For example, NSLP data accessed through the direct certification process to carry out the NSLP’s Community Eligibility Provision (CEP) may be used by an LEA for up to four

consecutive school years. Similarly, other NSLP provisions such as Provision 2 and 3 also may result in the use of the same NSLP data over several school years because the LEA does not have to collect household applications every school year.

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

Under the ESEA, an LEA's eligibility and allocations under each Title I formula and its allocations for Title II can be determined, in part, based on Census LEA poverty estimates. The ESEA also requires 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 and regional LEAs providing career and technical education, 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 alternative poverty data for this purpose.

To the extent that NSLP data from SY 2020-2021 or SY 2021-2022 are not available, to derive a Census poverty count for a special LEA for RLIS eligibility determinations, 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 or SY 2021-2022 that may be accessible (e.g., counts of children identified through direct certification);
- A combination of the best available NSLP data from SYs 2019-2020, 2020-2021, and 2021-2022; 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 or SY 2021-2022 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 or SY 2021-2022 that may be accessible (e.g., counts of children identified through direct certification);

- A combination of the best available NSLP data from SYs 2019-2020, 2020-2021, and 2021-2022; or
- Data from a poverty survey conducted by the SEA or LEA that replicate NSLP or other poverty data.

There are two additional options for an SEA to use, with ED’s approval, NSLP data for allocations to small LEAs. First, the SEA may choose to not redetermine small LEAs’ eligibility under each Title I formula and redistribute ED-determined Title I allocations to small LEAs and instead use the ED-determined Title I allocations for all of its LEAs, which are based in large part on Census poverty data. A second option is for the SEA to request ED’s approval to use a poverty measure other than NSLP data for which the SEA has more recent data (e.g., data from a State poverty measure).

### Within-LEA Title I Allocations

The ESEA requires an LEA to rank all of its schools according to each school’s 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.

The ESEA also permits an LEA to use poverty data from schools that feed into secondary schools to determine the number of students from low-income families in those schools.

To the extent that NSLP data from SY 2020-2021 and SY 2021-2022 are not available, options available to an LEA for its within-LEA allocations in SY 2021-2022 and SY 2022-2023 include using:

- Medicaid or TANF data or a composite of data from these two sources from SY 2020-2021 for SY 2021-2022 within-LEA allocations or from SY 2021-2022 for SY 2022-2023 within-LEA allocations;
- The best available NSLP data, which may be from SY 2019-2020;
- NSLP data from SY 2020-2021 or SY 2021-2022 that may be accessible (e.g., counts of children identified through direct certification, which may be adjusted by 1.6 for within-LEA allocations to account for the lack of household applications<sup>2</sup>);
- A combination of the best available NSLP data from SYs 2019-2020, 2020-2021, and 2021-2022;

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<sup>2</sup> For more information on adjusting by 1.6, see the “Within-District Allocations” section in the following ED nonregulatory guidance on Title I and CEP: <https://www2.ed.gov/programs/titleiparta/15-0011.doc>.

- A composite of the NSLP, Medicaid, and TANF data listed in the previous bullets; 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 of low income correlated with the measure of low income used to count public school children.

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 (the 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 SY 2022-2023, such an LEA, in consultation with appropriate private school officials and consistent with the measures described above, must redetermine the number of children from low-income families who attend private schools, rather than using NSLP data from SY 2019-2020 for a third consecutive year because, as noted above, ESEA section 1117(a)(4)(D) requires an LEA to determine the number of children from low-income families who attend private schools every year or every two years.

An LEA may also have planned to use NSLP data from SY 2020-2021 to determine the proportional share for SY 2021-2022 or SY 2022-2023. To the extent that NSLP data from

SY 2020-2021 or SY 2021-2022 are not available, to determine the number of children from low-income families who attend private schools, the LEA, in consultation with appropriate private school officials, would need to use another source of data, consistent with the other measures described above. For the reason described in the previous paragraph, an LEA may not use the same data (e.g., NSLP data from SY 2019-2020) for more than two consecutive years.

### Reporting and Accountability

The ESEA requires an SEA and LEAs 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 for accountability purposes. To the extent that NSLP data from SY 2020-2021 and SY 2021-2022 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 and SY 2021-2022, 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 or SY 2021-2022 that may be accessible (e.g., counts of children identified through direct certification);
- A combination of the best available NSLP data from SYs 2019-2020, 2020-2021, and 2021-2022; or
- Data from a poverty survey conducted by the SEA or LEA that replicate NSLP or other poverty data.