Congressional Research Service
Informing the legislative debate since 1914

Overview of ESEA Title I-A and the School Meals' Community Eligibility Provision

Updated July 20, 2016

Congressional Research Service
https://crsreports.congress.gov
R44568

CRS REPORT
Prepared for Members and
Committees of Congress

Summary

The primary source of federal funding for elementary and secondary schools is the Title I-A program. Under Title I-A, the allocation of funds to schools, eligibility to operate certain programs, and accountability requirements are based in part in identifying students from low-income families. Historically, this has been achieved by using National School Lunch Program (NSLP) eligibility data. However, a new school meals eligibility option—the Community Eligibility Provision (CEP)—has been implemented that changes the eligibility determinations for NSLP as well as the School Breakfast Program (SBP).

The Title I-A program is authorized under the Elementary and Secondary Education Act (ESEA) and was last reauthorized by the Every Student Succeeds Act (ESSA; P.L. 114-95) in 2015. Title I-A grants provide supplementary educational and related services to low-achieving and other students attending pre-kindergarten through grade 12 schools with relatively high concentrations of students from low-income families. There are also a number of accountability requirements that states, local educational agencies (LEAs), and schools must meet to receive Title I-A funds.

The number and percentage of a school's enrolled students from low-income families are used when LEAs allocate Title I-A grants to schools and to determine whether a school is eligible to use its Title I-A funds to operate specific programs. Additionally, schools need to identify which of their students are from low-income families to comply with certain accountability policies. Eligibility for free or reduced-price school lunch is commonly used as an indicator of low-income status for all of these purposes.

The child nutrition programs, including NSLP and SBP, were last reauthorized by the Healthy Hunger-Free Kids Act (HHFKA; P.L. 111-296) in 2010. HHFKA also authorized the school meals eligibility option or CEP. CEP allows eligible schools and LEAs in high-poverty areas to offer free meals to *all* enrolled students without collecting household income information via applications. By no longer collecting household income information for free and reduced-price lunch, CEP can affect Title I-A grant allocations to schools, school eligibility to operate specific programs, and accountability policies. Thus, the U.S. Department of Education (ED) has published policy guidance that provides LEAs and schools implementing CEP with alternatives for identifying students from low-income families for Title I-A purposes.

This report begins with a description of the school meals programs and CEP. It then describes Title I-A grant allocations and eligibility for specific Title I-A school programs and discusses the low-income data that can be used for these purposes and the data alternatives for CEP schools. Last, the report describes Title I-A accountability provisions and discusses the low-income data that can be used for these purposes and data alternatives for CEP schools.

NOTE: The 114th Congress has been working on the next reauthorization of the school meals and other child nutrition programs. This report does not discuss any proposed changes to CEP or other school meals policies. For information on the ongoing reauthorization of the child nutrition programs, including proposals to change CEP, see CRS Report R44373, *Tracking the Next Child Nutrition Reauthorization: An Overview*, by Randy Alison Aussenberg.

Contents

Introduction 1
School Meals Programs and the Community Eligibility Provision (CEP) 2
Income and Categorical Eligibility Rules 2
Community Eligibility Provision 3
Allocation of Title I-A Funds to Schools and Eligibility for Schoolwide Programs 4
Overview of the Allocation Process to Schools 5
Schoolwide Programs 6
Low-Income Data Options 6
Data Options for LEAs Not Participating in CEP 6
Data Options for LEAs Participating in CEP 7
Title I-A Accountability Requirements 9
NCLB and Accountability 10
ESEA Flexibility Provided by the Administration 11
ESSA and Accountability 12
Low-Income Family Data Options 12
Data Options for LEAs Not Participating in CEP 13
Data Options for LEAs Participating in CEP 13

Contacts

Author Information 14
Acknowledgments 14

Introduction

The primary source of federal aid to K-12 education is the Elementary and Secondary Education Act (ESEA). The ESEA was last reauthorized by the Every Student Succeeds Act (ESSA; P.L. 114-95) in 2015. Title I-A is the largest grant program in the ESEA, funded at $14.9 billion in FY2016. It is designed to provide supplementary educational and related services to low-achieving and other students attending schools with relatively high concentrations of children from low-income families. There are also a number of accountability requirements that states, local educational agencies (LEAs), and schools must meet to receive Title I-A funds. Several changes to the Title I-A program as authorized under the ESSA will take effect beginning in FY2017 (which corresponds to school year (SY) 2017-2018).[1]

Under Title I-A, the allocation of funds to schools, eligibility to operate certain programs, and accountability requirements are based in part on identifying students from low-income families. More specifically, the number and percentage of a school's enrolled students from low-income families are used when LEAs allocate Title I-A grants to schools and to determine whether a school is eligible to use its Title I-A funds to operate specific programs. Additionally, schools need to identify which of their students are from low-income families to comply with certain accountability policies. Eligibility for free or reduced-price school lunch under the National School Lunch Program (NSLP) is commonly used as an indicator of low-income status for all of these purposes.

The child nutrition programs, including NSLP, were last reauthorized by the Healthy Hunger-Free Kids Act (HHFKA; P.L. 111-296) in 2010. HHFKA also authorized a new school meals eligibility option: the Community Eligibility Provision (CEP).[2] Prior to CEP implementation, students were eligible to receive free or reduced-price lunch based on family income or because they fell into a specified category (e.g., eligibility for another need-tested program, foster children). CEP now allows eligible schools and LEAs in high-poverty areas to offer free lunch to *all* enrolled students without collecting household income information via applications.[3] By no longer collecting household income information for free and reduced-price lunch, CEP can affect Title I-A grant allocations to schools, school eligibility to operate specific programs, and accountability policies. Thus, the U.S. Department of Education (ED) has published policy guidance that provides LEAs and schools implementing CEP with alternatives for identifying students from low-income families for Title I-A purposes.[4]

The 114th Congress has been working on the next reauthorization of the school meals and other child nutrition programs. This report does not discuss any proposed changes to CEP or other school meals policies. For information on the ongoing reauthorization of the child nutrition programs, including proposals to change CEP, see CRS Report R44373, *Tracking the Next Child Nutrition Reauthorization: An Overview*, by Randy Alison Aussenberg.

---

[1] As specified in the ESSA, changes to Title I-A accountability policies will take effect beginning in SY2017-2018. While the ESSA included provisions for other changes to the Title I-A program to take effect on July 1, 2016, the Consolidated Appropriations Act of 2016 (P.L. 114-113) changed the effective date of these provisions to July 1, 2017.

[2] For more information on the school meals programs and CEP, see CRS Report R43783, *School Meals Programs and Other USDA Child Nutrition Programs: A Primer*, by Randy Alison Aussenberg (hereinafter referred to as *School Meals Programs and Other USDA Child Nutrition Programs: A Primer*).

[3] It should be noted that CEP applies to the School Breakfast Program (SBP) as well as NSLP.

[4] U.S. Department of Education, The Community Eligibility Provision and Selected Requirements Under Title I, Part A of the Elementary and Secondary Education Act of 1965, as Amended, March 2015, http://www2.ed.gov/programs/titleiparta/15-0011.doc. ED previously released guidance related to CEP and Title I-A in 2014. For more information, see http://www2.ed.gov/programs/titleiparta/13-0381guidance.doc.

This report begins with a description of the school meals programs and CEP. It then describes Title I-A grant allocations and eligibility for specific Title I-A school programs and discusses the low-income data that can be used for these purposes and the data alternatives for CEP schools. Last, the report describes Title I-A accountability provisions and discusses the low-income data that can be used for these purposes and data alternatives for CEP schools. It should be noted that this report discusses the impact of CEP on Title I-A both before and after ESSA enactment.

School Meals Programs and the Community Eligibility Provision (CEP)

Income and Categorical Eligibility Rules[5]

Through the National School Lunch Program (NSLP) and School Breakfast Program (SBP), children in schools can receive free, reduced-price, and "paid" (full-price) meals. The U.S. Department of Agriculture's Food and Nutrition Service (USDA-FNS) administers federal reimbursements to schools for meals served through these programs. Schools receive the largest reimbursements for free meals and the smallest reimbursements for paid meals.

There are generally two sets of rules for households' eligibility for free or reduced-price meals: (1) household income or (2) categorical eligibility.[6] More specifically, children living in households where income is up to 130% of the federal poverty level (FPL) are eligible for free meals. Children living in households where income is over 130% but up to 185% of the FPL are eligible for reduced-price meals. To be eligible because of household income, the household generally completes an application with information about household size and income.

Children who are categorically eligible for free meals either live in households that receive one of several specified need-tested benefits or are part of a specified vulnerable population. Categorically eligible children are

- in households receiving Supplemental Nutrition Assistance Program (SNAP) benefits;
- in households receiving Temporary Assistance for Needy Families (TANF) cash assistance;
- in households receiving Food Distribution Program on Indian Reservation (FDPIR) benefits;
- in foster care;
- migrant, homeless, or runaway; or
- attending a Head Start program.[7]

[5] See *School Meals Programs and Other USDA Child Nutrition Programs: A Primer* for further background on these programs and their operations.

[6] For more information on eligibility, see *School Meals Programs and Other USDA Child Nutrition Programs: A Primer*.

[7] In addition to these nationwide eligibility rules, a limited number of states participate in Medicaid demonstration projects where data from the household's Medicaid application can be used to certify the school-age children for free or reduced price meals. For more information, see USDA-FNS, Request for Applications to Participate in Demonstration Projects to Evaluate Direct Certification with Medicaid, January 27, 2016, http://www.fns.usda.gov/sites/default/files/

Eligibility for free and reduced-price school meals via household income data is determined through paper (or online) applications. Categorical eligibility is largely determined through a process called direct certification—a proactive process where government agencies typically cross-check their program rolls and certify a household's children for free school meals without the household having to complete a school meals application.[8] In SY2013-2014 (most recent year for which data are available), approximately 64% of students eligible to receive free meals were directly certified.[9]

Community Eligibility Provision

Enacted in December 2010, the HHFKA created CEP, an option that allows eligible schools and LEAs to offer free school meals to all enrolled students based on the percentage of their students who are "identified students."[10] Identified students are those automatically eligible for free meals based on categorical eligibility and non-household-application sources, primarily direct certification. Students who are eligible for free and reduced-price meals based on the school meals application are not identified students.

School eligibility is based around a 40% Identified Student Percentage (ISP) threshold; and the decision to opt in is made at the LEA level.[11] Eligible LEAs may choose to operate CEP in (1) individual schools with 40% or more identified students; (2) groups of schools whose combined share of identified students is at least 40%; or (3) all schools within the LEA if the LEA's identified student share is at least 40%.[12]

Though CEP schools serve free meals to all students, CEP schools are not reimbursed at the free-meal rate for every meal. Instead, the law provides a funding formula: the percentage of identified students is multiplied by 1.6.[13] The result is the number of meals that will be reimbursed at the

cn/SP23-2016a.pdf.

[8] Prior to 2004, it was a state option to conduct direct certification of SNAP (then, the Food Stamp Program), TANF, and FDPIR participants. With the enactment of the 2004 child nutrition reauthorization (P.L. 108-265), states were required under federal law to conduct direct certification for SNAP participants, with nationwide implementation taking effect in SY2008-2009. Conducting direct certification for TANF and FDPIR remains at the state's discretion.

[9] Total certified from USDA-FNS administrative data for October 2013; direct certification total from Quinn Moore, Kevin Conway, and Brandon Kyler, et al., *Direct Certification in the National School Lunch Program Report to Congress: State Implementation Progress, School Year 2013-2014*, Mathematica Policy Research for USDA-FNS, CN-13-DC, May 2015, p. 19, http://www.fns.usda.gov/direct-certification-national-school-lunch-program-report-congress-state-implementation-progress.

[10] CEP is not the only way for schools to provide universal free meal service, but it is the only option that is not based on household applications, creating the conflicts with Title I-A discussed in this report. For more on those options, see USDA-FNS website, http://www.fns.usda.gov/school-meals/provisions-1-2-and-3.

[11] See, for example, United States Department of Agriculture Food and Nutrition Service, *Extension of the Deadline for Local Educational Agencies to Elect the Community Eligibility Provision for School Year 2015-16*, SP 25-2015, March 4, 2015, http://www.fns.usda.gov/sites/default/files/cn/SP25-2015os.pdf.

[12] Schools participating in CEP because they are in an LEA or group of schools eligible for CEP may have an identified student rate below 40% as long as the overall identified student rate in the LEA or group of schools is at least 40%. Additionally, a school that is initially eligible for CEP may continue to participate in CEP for four years and one grace year. Thus, the school's identified student percentage may drop below 40% after it begins participating in CEP. U.S. Department of Agriculture, *Community Eligibility Provision: Guidance and Updated Q&As*, SP19 - 2016, December 14, 2015, http://www.fns.usda.gov/sites/default/files/cn/SP19-2016os.pdf.

[13] For each school year beginning on or after July 1, 2014, USDA has the authority to change the multiplier factor to a number between 1.3 and 1.6, and to apply a different multiplier factor for different schools or LEAs. However, CEP schools would maintain the same multiplier factor for an entire four-year cycle. As of June 2016, USDA has not announced any changes to the multiplier. For more information, see U.S. Department of Agriculture, "National School

free-meal rate, with the remainder reimbursed at the far lower paid-meal rate.[14] For example, if a CEP school identifies that 40% of students are eligible for free meals, then 64% of the meals served will be reimbursed at the free-meal rate (40% * 1.6) and 36% at the paid-meal rate. Schools that identify 62.5% or more students as eligible for free meals receive the free-meal reimbursement for all meals served (62.5% * 1.6 = 100%).

Based on the statutory parameters of the HHFKA, USDA-FNS began phasing in CEP with some states in SY2011-2012, and it has been available nationwide since SY2014-2015. According to USDA-FNS, 13,819 schools in 2,218 LEAs in 48 states, the District of Columbia, and Guam opted in to CEP for SY2014-2015.[15]

Some considerations that impact an LEA's decision to participate in CEP may include whether the new funding formula would ultimately be beneficial for its school meal budget; an interest in reducing paperwork for families and schools associated with traditional participation in the school meals program; and an interest in providing more free meals, including meals to students who have not previously participated in the program. Furthermore, some states and LEAs have been hesitant to participate in CEP because of the Title I-A concerns discussed in this report.[16]

Allocation of Title I-A Funds to Schools and Eligibility for Schoolwide Programs

Unlike other federal elementary and secondary education program funds, most Title I-A funds are allocated to individual schools, often based on the number of students eligible for free or reduced-price lunch. Generally, these same data are used to determine whether a school is eligible to run a schoolwide program with its Title I-A funds. As these data are no longer available in schools participating in CEP, ED has published guidance providing schools with a series of options on how to identify students from low-income families for purposes of allocating Title I-A funds to schools.[17] This section of the report provides an overview of how Title I-A funds are allocated to schools, how schools determine whether they are eligible to run a schoolwide program, and the data that can be used to make these determinations in LEAs that do not have CEP schools and in those that do. The use of free and reduced-price lunch data to make accountability determinations is discussed in a subsequent section of the report.

As previously noted, the ESEA was comprehensively reauthorized by the Every Student Succeeds Act (ESSA; P.L. 114-95). The ESSA makes very few changes to the allocation of Title I-A funds

Lunch Program and School Breakfast Program: Eliminating Applications Through Community Eligibility as Required by the Healthy Hunger-Free Kids Act of 2010," 78 *Federal Register* 65893, November 4, 2013, http://www.fns.usda.gov/sites/default/files/2013-25922.pdf.

[14] For more information on reimbursement rates for school meals, see *School Meals Programs and Other USDA Child Nutrition Programs: A Primer*.

[15] CEP-participating institutions from USDA-FNS data at http://www.fns.usda.gov/sites/default/files/cn/state-cep-election-data.pdf. Note that according to USDA-FNS data, approximately 96,000 schools participated in the National School Lunch Program in FY2015.

[16] See, for example, a joint letter of outreach to superintendents from the Secretaries of Agriculture and Education, August 5, 2015, http://www2.ed.gov/policy/elsec/guid/secletter/150805.html.

[17] ED's policy guidance does not specify what proxies may be used to determine low-income status for schoolwide programs.

to schools and eligibility for schoolwide programs. Changes under the ESSA will go into effect beginning in SY2017-2018.[18]

Overview of the Allocation Process to Schools

Under current law, ED determines Title I-A grants to LEAs based on four separate funding formulas.[19] After calculating grants, ED provides each state with information on the grants calculated for the LEAs in the state. The state then makes specific adjustments to the grant amounts, including reserving funds for administration and school improvement and determining grants for charter schools that are their own LEAs. After making these adjustments, the state then provides funds to the LEAs. The LEAs, in turn, distribute funds to individual schools. LEAs retain substantial discretion over the determination of the actual grant amounts provided to individual schools.[20]

While there are several rules related to school selection, LEAs must generally rank their public schools by their percentages of students from low-income families, and serve them in rank order.[21] LEAs must first serve schools in which the percentage of children from low-income families exceeds 75%. Below this point, an LEA can choose to serve schools in rank order at specific grade levels (e.g., only serve elementary schools in order of their percentages of children from low-income families). Beginning in FY2017, LEAs will have the option to serve elementary and middle schools with more than 75% of their children from low-income families and high schools with more than 50% of their children from low-income families before choosing to serve schools in rank order by specific grade levels. All Title I-A participating schools must generally have a percentage of children from low-income families that is higher than the LEA's average, or 35% (whichever of these two figures is lower). LEAs also have the option of setting school eligibility thresholds higher than this minimum in order to concentrate available funds on a smaller number of schools.[22]

LEAs allocate funds among schools in proportion to their number of students from low-income families, although grants to eligible schools per student from a low-income family need not be equal for all schools. LEAs may choose to provide higher grants per child to schools with higher

[18] For an overview of the changes to the ESEA, including changes to the accountability provisions, see CRS Report R44297, *Reauthorization of the Elementary and Secondary Education Act: Highlights of the Every Student Succeeds Act*, by Rebecca R. Skinner and Jeffrey J. Kuenzi. For a discussion of the changes to the Title I-A grant allocation process to schools, see CRS Report R44164, *ESEA Title I-A Formulas: In Brief*, by Rebecca R. Skinner.

[19] The four funding formulas are Basic Grants, Concentration Grants, Targeted Grants, and Education Finance Incentive Grants (EFIG). For more information about how grants are determined under Title I-A, see CRS Report R44461, *Allocation of Funds Under Title I-A of the Elementary and Secondary Education Act*, by Rebecca R. Skinner and Leah Rosenstiel.

[20] Detailed guidance regarding the selection of schools to receive Title I-A grants and the allocation of funds among them may be found in the ED policy guidance document *Local Educational Agency Identification and Selection of School Attendance Areas and Schools and Allocation of Title I Funds to Those Areas and Schools*, 2003.

[21] Schools are eligible to receive Title I-A funds if they are within an eligible school attendance area. A "school attendance area" means, in relation to a particular school, the geographic area in which the children who are normally served by that school reside. An "eligible school attendance area" means a school attendance area in which the percentage of children from low-income families is at least as high as the percentage of low-income families served by the LEA as a whole.

[22] Title I-A funds are also used to serve educationally disadvantaged students attending private schools. In general, the share of funds to be used by each recipient LEA to serve these students is determined on the basis of the number of children from low-income families living in participating public school attendance areas. For more information, see U.S. Department of Education, *Title I Services to Eligible Private School Children*, October 17, 2003, http://www2.ed.gov/programs/titleiparta/psguidance.doc.

percentages of students from low-income families (e.g., higher grants per child to a school where 70% of students are from low-income families than to a school where 40% of students are from low-income families). If an LEA provides Title I-A funds to a school where less than 35% of its children are from low-income families, the LEA is required to meet specific minimum grant requirements for all Title I-A schools. More specifically, the LEA must provide grants per low-income child equal to at least 125% of the LEA's amount of Title I-A funds received per low-income child.

Schoolwide Programs

At the school level, there are two basic types of Title I-A programs: schoolwide programs and targeted assistance programs (TAP). A school receiving Title I-A funds is permitted to operate a schoolwide program if the percentage of students from low-income families served by the school is 40% or higher.[23] In schoolwide programs, Title I-A funds may be used to improve the performance of all students in a school. For example, funds might be used to provide professional development services to all of a school's teachers, upgrade instructional technology, or implement new curricula. Under TAP, Title I-A funds generally serve only the lowest-achieving students in the school. For example, funds may be used to provide instruction for the lowest-achieving students in an after-school program or to hire a teacher's aide who provides additional assistance to low-achieving students in their regular classroom.

Low-Income Data Options

In the large majority of cases, no school-level data are available on the number of students living in families where income is below the federal poverty level. Thus, to determine school grant amounts and schoolwide program eligibility, LEAs must use available proxies for low-income status. Available proxies vary depending on whether there are any schools within an LEA that are participating in CEP.

Data Options for LEAs Not Participating in CEP

The Title I-A statute allows LEAs to use the following low-income measures: (1) Census data; (2) eligibility for free and reduced-price lunch; (3) eligibility for TANF; or (4) eligibility for Medicaid.[24] At the level of individual schools, the most commonly used criterion for determining whether students are from low-income families is eligibility for free or reduced-price lunch.[25]

---

[23] A school with less than 40% low-income students may request a waiver from the Secretary of Education to operate a schoolwide program. Additionally, a school with less than 40% low-income students in a state participating in the Ed-Flex program may request a waiver from the state educational agency (SEA) to operate a schoolwide program. As specified in the ESSA, beginning in FY2017 any state (regardless of whether it participates in ED-Flex) may waive the 40% requirement for schoolwide programs. For more information on the Ed-Flex program, see U.S. Department of Education, *Ed-Flex Program*, July 1, 2011, http://www2.ed.gov/programs/edflex/index.html.

[24] LEAs may also develop and use a composite of two or more of these measures—for example, school-age children in families receiving TANF benefits and in families receiving Medicaid benefits.

[25] U.S. Department of Education, *Study of Education Resources and Federal Funding: Final Report*, 2000, p. 33.

LEAs have had the option to use the other data sources for many years and few have chosen to rely on them. However, it has been argued that many states' recent Medicaid expansions under the health care reform law may encourage LEAs to reconsider Medicaid data. Zoe Neuberger and Wayne Riddle, *How to Identify Low-Income Students in "Community Eligibility" Schools for Title I Purposes*, Center on Budget and Policy Priorities, Washington, DC, July 1, 2015, p. 4, http://www.cbpp.org/sites/default/files/atoms/files/6-2-14fa.pdf. For more information on the changes to Medicaid under ACA. see CRS Report R41210, *Medicaid and the State Children's Health Insurance Program (CHIP)*

LEAs receiving Title I-A funds often use free and reduced-price school meal data—sometimes alone, sometimes in combination with other authorized criteria—to select Title I-A schools and allocate funds among them.[26] The same proxy used to determine low-income status for school grant determinations can be used to determine eligibility for schoolwide programs.[27]

Of note, the income eligibility thresholds for free or reduced-price lunch (130% of poverty for free meals, 185% for reduced-price meals[28]) are higher than the poverty levels used in the Title I-A allocation formulas to states and LEAs (100% of poverty).[29]

Data Options for LEAs Participating in CEP

CEP schools no longer collect data on individual student eligibility for free and reduced-price lunch. ED's policy guidance lists several alternative data sources that states and LEAs participating in CEP may use in lieu of free and reduced-price lunch data to determine school-level Title I-A grants: (1) the count of identified students (i.e., students eligible for free meals based on categorical eligibility and non-household-application sources), (2) the count of students from low-income families based on state or local income surveys, and (3) free or reduced-price lunch data from the last school year before the school adopted CEP.[30] Each of these options and ways in which they may affect allocations is discussed in more detail below.

It should be noted that regulations permit an LEA to use a measure (or measures) of poverty that are different than the measures used to determine Title I-A grants to schools when identifying schools as being eligible to operate a schoolwide program.[31] As discussed above, an LEA can choose to use the same data to determine schoolwide program eligibility in CEP schools that it used to allocate Title I-A grants to CEP schools. Additionally, it has been argued that a CEP school is inherently eligible to operate a schoolwide program.[32] This is because an individual

---

Provisions in ACA: Summary and Timeline, by Evelyne P. Baumrucker et al.

[26] U.S. Department of Education, *Study of Education Resources and Federal Funding: Final Report*, 2000, p. 33.

[27] Schools may, however, use a different low-income measure to determine schoolwide program eligibility than the low-income measure used by the LEA to allocate Title I-A grants to schools. Department of Education, "Title I—Improving the Academic Achievement of the Disadvantage; Final Rule," 67 *Federal Register* 71718, December 2, 2002, http://www.ed.gov/legislation/FedRegister/finrule/2002-4/120202a.html and 34 C.F.R. §200.25(a)(2).

[28] For more information, see Department of Agriculture, "Child Nutrition Programs—Income Eligibility Guidelines," 80 *Federal Register* 17026-17027, March 31, 2015, http://www.gpo.gov/fdsys/pkg/FR-2015-03-31/pdf/2015-07358.pdf.

[29] The population used to determine state and LEA Title I-A grants consists of children ages 5 to 17 (1) in poor families, according to estimates for a recent income year for LEAs from the Census Bureau's Small Area Income and Poverty Estimates (SAIPE) program; (2) in institutions for neglected or delinquent children or in foster homes; and (3) in families receiving TANF payments above the poverty income level for a family of four. These children are commonly referred to as formula children. In FY2015, children in poor families accounted for about 97% of the total formula child count.

[30] Private schools can qualify for CEP if their share of identified students is at least 40%. To determine Title I-A grants to serve private school students, LEAs can calculate counts of children from low-income families using essentially the same methods that are available for public schools. Additionally, states may also rely on free and reduced-price lunch data to make the previously discussed adjustments to LEA-level Title I-A grants calculated by ED. In these cases, states can calculate counts of children from low-income families using essentially the same methods that are available for LEAs to determine counts of students from low-income families in public schools. U.S. Department of Education, *The Community Eligibility Provision and Selected Requirements Under Title I, Part A of the Elementary and Secondary Education Act of 1965, as Amended*, 15-0011, March 2015, http://www2.ed.gov/programs/titleiparta/15-0011.doc.

[31] 34 C.F.R. §200.25(a)(2).

[32] Wayne Riddle, *Implications of Community Eligibility for the Education of Disadvantaged Students Under Title I*, Center on Budget and Policy Priorities, June 26, 2014, available online at http://www.cbpp.org/files/6-26-14fa.pdf.

school, LEA, or group of schools must have an identified student rate of at least 40% to be eligible for CEP; thus, it is likely that a CEP school has an identified student rate of at least 40%.[33]

Counts of Identified Students

LEAs may use a school's CEP identified student percentage to determine its share of students from low-income families for Title I-A purposes. More specifically, ED's guidance specifies that an LEA may use (1) the identified student percentage multiplied by 1.6 for CEP schools and the free and reduced-price lunch data for non-CEP schools, (2) the identified student percentage multiplied by 1.6 for both CEP and non-CEP schools, or (3) the identified student percentage with no multiplier for both CEP and non-CEP schools. As discussed previously, identified students are a subset of students eligible for free or reduced-price lunch. Multiplying the share of identified students by 1.6 allows a school to estimate the share of students who would have been eligible for free or reduced-price lunch if the school were not participating in CEP.[34] In addition, the 1.6 multiplier is used to determine the reimbursement rate for free meals.[35]

Under the first of the aforementioned options, LEAs need only use the identified student data multiplied by 1.6 for CEP schools and can continue using the same data they were previously using for non-CEP schools. One possible criticism of this option is that the share of students from low-income families in a CEP school may not be comparable to the share in a non-CEP school. The second and third options, however, ensure comparable treatment of all schools within an LEA. It should be noted that none of these options would require schools and LEAs to collect new data, as schools are currently required to directly certify SNAP participants for free lunch and thus already have identified student counts.

Under all three options, the change from free and reduced-price lunch data to identified student data may alter the estimated share of students in a school that are from low-income families.[36] This may, in turn, affect the school rankings based on percentages of students from low-income families and affect which schools fall above and below the aforementioned thresholds used to determine Title I-A school grant amounts (e.g., to receive Title I-A funds, schools must generally have a percentage of children from low-income families that is higher than the lesser of 35% or

---

[33] Schools participating in CEP because they are in an LEA or group of schools eligible for CEP may have an identified student rate below 40% as long as the overall identified student rate in the LEA or group of schools is at least 40%. Additionally, a school that is initially eligible for CEP may continue to participate in CEP for four years and one grace year. Thus, the school's identified student percentage may drop below 40% after it begins participating in CEP. U.S. Department of Agriculture, *Community Eligibility Provision: Guidance and Updated Q&As*, SP19 - 2016, December 14, 2015, http://www.fns.usda.gov/sites/default/files/cn/SP19-2016os.pdf.

[34] U.S. Department of Education, The Community Eligibility Provision and Selected Requirements Under Title I, Part A of the Elementary and Secondary Education Act of 1965, as Amended, 15-0011, March 2015, http://www2.ed.gov/programs/titleiparta/15-0011.doc.

[35] For schools that participate in CEP, the percentage of students from low-income families used for Title I-A grant determinations would be equal to the percentage of meals for which they can claim reimbursement at the "free rate." As discussed previously, schools can receive reimbursement at the free rate for the percentage of meals equaling 1.6 times their percentage of identified students. The HHFKA provides USDA the authority to adjust the reimbursement multiplier. If USDA were to adjust the reimbursement multiplier, the multiplier for determining the percentage of students from low-income students for Title I-A would also be adjusted accordingly.

[36] Under the first and second options—where the 1.6 multiplier is used—some schools may see an increase in their shares of students from low-income families, while other schools may see a decrease as the 1.6 multiplier will estimate (rather than replicate) the share of students that would have been eligible for free or reduced-price lunch. Under the third option—where no multiplier is used—schools may see a decrease in their shares of students from low-income families as identified students are a subset of all students eligible for free or reduced-price lunch.

the LEA's average percentage of children from low-income families). Thus, using identified student data may affect a school's eligibility to receive Title I-A funding and its grant amount.

Counts of Students Based on Surveys

States and LEAs may design and administer income surveys to identify students from low-income families.[37] The data from these surveys can be used for Title I-A purposes and other programs (e.g., state funding for schools, the Universal Service Program for Schools and Libraries, also known as E-Rate).[38] It should be noted, however, that annual income surveys would reintroduce some of the paperwork that CEP is intended to eliminate. It is also difficult to gauge how locally administered surveys might affect the quality of data available for the identification of low-income students. Additionally, as discussed previously, a change in the data used to determine low-income status may alter the calculated share of students that are from low-income families in a school. This may, in turn, affect Title I-A grant amounts for schools.

Free and Reduced-Price Lunch Data from a Pre-CEP Year

LEAs generally use data from a prior year to determine Title I-A grant allocations to schools. Thus, LEAs may use free and reduced-price lunch data from the last school year before a school adopted CEP in order to allocate Title I-A funds.[39]

Title I-A Accountability Requirements

To receive Title I-A funds, states, LEAs, and schools must comply with a number of accountability requirements relating to standards and assessments. For SY2015-2016, states, LEAs, and schools operated under either the accountability requirements included in the ESEA as amended by the No Child Left Behind Act of 2001 (NCLB; P.L. 107-110) or the NLCB requirements as modified by the ESEA flexibility package provided by ED in 2011. The ESSA makes substantial changes to accountability, which will go into effect beginning in SY2017-2018. The ESSA also stipulates that all of the flexibility package waivers will expire August 1, 2016. Thus, for SY2016-2017 all states will be held to a modified version of the accountability requirements included in the NCLB.[40]

---

[37] ED policy guidance specifies that an LEA must be "confident that the survey data are accurate" and that the threshold used to determine low-income status must be consistent with the Census poverty definition or the threshold used for free and reduced-price lunch, TANF assistance, or Medicaid. Additionally, the LEA must ensure that it does not indicate that the survey is required by ED or USDA and does not indicate that a student's receipt of free meals is contingent upon a response to the survey. For information on eligibility thresholds for various programs serving people with low-income, see CRS Report R43863, *Federal Benefits and Services for People with Low Income: Programs and Spending, FY2008-FY2013*, by Karen Spar and Gene Falk.

[38] The E-rate program provides discounted telecommunications, internet access, and internal connections to eligible schools and libraries. Higher poverty and more rural schools and libraries receive higher discounts on services. For more information on the E-rate program, see Federal Communications Commission, *Universal Service Program for Schools and Libraries (E-Rate) Guide*, December 18, 2014, https://www.fcc.gov/guides/universal-service-program-schools-and-libraries.

[39] U.S. Department of Education, The Community Eligibility Provision and Selected Requirements Under Title I, Part A of the Elementary and Secondary Education Act of 1965, as Amended, 15-0011, March 2015, http://www2.ed.gov/programs/titleiparta/15-0011.doc.

[40] For example, during the transition year (SY2016-2017) a school or LEA that was identified during SY2015-2016 as a focus or priority school under the ESEA flexibility package or as a school or LEA in need of improvement, corrective action, or restructuring, as applicable, must continue to implement the applicable interventions during SY2016-2017. In

Requirements related to standards and assessments were first included in Title I-A through amendments made by the Improving America's Schools Act of 1994 (IASA; P.L. 103-382). NCLB expanded on these provisions, including, for example, requiring accountability for subgroup performance and adding specific performance targets and consequences when targets are not met (e.g., supplemental educational services (SES) and public school choice). However, the ESEA flexibility package provided by ED has resulted in changes to many state accountability systems.[41] The package provided waivers that exempt states from various NCLB requirements, including requirements related to academic accountability in exchange for states meeting certain principles such as having college- and career-ready standards and teacher evaluation systems based in part on student achievement. The ESSA will further change state accountability systems. Of note, states will have greater latitude in establishing systems for performance goals, measures of progress, and consequences that are applied to schools for low performance.

LEAs and schools generally use free and reduced-price lunch data to comply with accountability requirements relating to subgroup performance, public school choice, and SES. As these data are no longer available in schools participating in CEP, ED has published guidance providing schools with a series of options on how to identify students from low-income families. This section of the report provides an overview of the Title I-A accountability policies under the NCLB, the ESEA flexibility package, and the ESSA that require schools and LEAs to identify students from low-income families. This is followed by a discussion of the data that can be used to comply with these policies in LEAs that have CEP schools and those that do not.[42]

NCLB and Accountability

The NCLB requires states participating in Title I-A to develop and adopt standards and assessments in mathematics, reading, and science. Performance on these assessments is one indicator used to determine whether schools and LEAs are making "adequate yearly progress" (AYP) toward meeting performance standards. The AYP requirements identify schools and LEAs where performance is inadequate so that these deficiencies may be addressed. AYP standards must be determined for all public schools and LEAs in states that receive Title I-A grants.[43] However, consequences for failing to meet AYP for two consecutive years or more need only be applied to schools and LEAs receiving Title I-A funding.

Additionally, the NCLB established a set of student subgroups for accountability purposes and a set of student subgroups for reporting purposes. Data must be disaggregated for these subgroups

---

addition, school accountability provisions that were not retained by the ESSA (e.g., annual yearly progress (AYP) determinations) will not be in effect during SY2016-2017. For more information, see U.S. Department of Education, *Transitioning to the Every Student Succeeds Act (ESSA): Frequently Asked Questions*, May 4, 2016, http://www2.ed.gov/policy/elsec/leg/essa/faq/essatransitionfaqs050316.pdf.

[41] The Common Core State Standards, the Race to the Top (RTT) State Grant competition, and the RTT Assessment Grant competition have also played a role in many state accountability systems. For more information on standards-based accountability, see CRS In Focus IF10157, *Educational Accountability and Reauthorization of the ESEA*, by Rebecca R. Skinner.

[42] For a general discussion of accountability provisions in Title I-A, see CRS In Focus IF10157, *Educational Accountability and Reauthorization of the ESEA*, by Rebecca R. Skinner; and CRS Report R44297, *Reauthorization of the Elementary and Secondary Education Act: Highlights of the Every Student Succeeds Act*, by Rebecca R. Skinner and Jeffrey J. Kuenzi.

[43] Currently, all states receive Title I-A funding. For estimated FY2015 Title I-A grants to states, see CRS Report R44097, *FY2015 State Grants Under Title I-A of the Elementary and Secondary Education Act (ESEA)*, by Rebecca R. Skinner.

if minimum group size requirements are met.[44] For both accountability and reporting purposes, these subgroups include economically disadvantaged students (students from low-income families), limited English proficient students, students with disabilities, and students in major racial and ethnic groups as determined by the state.[45] To disaggregate data for the economically disadvantaged subgroup, schools and LEAs must identify students from low-income families.

Schools or LEAs meet AYP only if they meet the required threshold levels of performance on all indicators for the "all students" group and any subgroup for which data are disaggregated. When Title I-A schools do not make AYP for two or more consecutive years, they become subject to a range of increasingly substantial outcome accountability requirements. These requirements include offering public school choice, with priority given to students from low-income families, and offering supplemental educational services (SES) to students from low-income families.[46] Schools must comply with all of the accountability requirements, regardless of the extent to which they failed to make AYP. To comply with these requirements, schools need to identify which of their students are from low-income families.

ESEA Flexibility Provided by the Administration

On September 23, 2011, President Obama and the Secretary of Education announced the availability of an ESEA flexibility package for states and described the principles that states must meet to obtain the included waivers.[47] The waivers exempt states from, among other things, various academic accountability requirements.[48]

Taken collectively, the waivers and principles included in the ESEA flexibility package amount to a fundamental redesign by the Administration of many of the accountability requirements included in the ESEA as amended by the NCLB. As of June 2016, ED had approved ESEA flexibility package applications for 42 states, the District of Columbia, and Puerto Rico and was reviewing applications from other states.[49] As previously discussed, all flexibility package waivers will expire on August 1, 2016, unless states request and receive extensions.

---

[44] Student groups need not be considered in cases where their number is so relatively small that achievement results would not be statistically significant or the identity of individual students might be divulged. The selection of the minimum number ("n") of students in a group for the group to be considered in accountability determinations has been left largely to state discretion. Since the same minimum group size policies are applied to schools and to LEAs overall, groups that are too small to be separately considered for individual schools often meet the minimum group size threshold at the LEA level.

[45] For reporting purposes, data must be additionally disaggregated by gender and migrant status.

[46] SES refers to free academic help, such as tutoring. SES is provided to students in subjects such as reading, language arts, and math. These services can be provided before or after school, on weekends, or in the summer. More information on SES is available from the U.S. Department of Education at http://www2.ed.gov/nclb/choice/help/ses/description.html.

[47] In order to receive the waivers, SEAs must agree to meet four principles established by ED for "improving student academic achievement and increasing the quality of instruction." The four principles, as stated by ED, are (1) college- and career-ready expectations for all students; (2) state-developed differentiated recognition, accountability, and support; (3) supporting effective instruction and leadership; and (4) reducing duplication and unnecessary burden.

[48] Since the announcement of the ESEA flexibility package, ED has made additional waivers available to states. For example, a state may request a waiver for schools to retain their accountability designation for an additional year, during which they would continue to implement the same interventions. For more information, see the policy letter sent to the Chief State School Officers by Secretary Duncan on June 18, 2013, available at http://www2.ed.gov/policy/elsec/guid/secletter/130618.html.

[49] ED is currently reviewing applications for Iowa and Wyoming. Washington had an approved ESEA flexibility package but lost its approval in 2014 for failure to meet the second of the four principles established by ED. (See http://www2.ed.gov/policy/eseaflex/secretary-letters/wad6.html for more information.) Approved state applications and

States with approved ESEA flexibility applications are no longer required to offer public school choice and SES, but may choose to do so. Additionally, schools still need to identify students from low-income families to disaggregate achievement data for the low-income subgroup.

ESSA and Accountability

Similar to the NCLB, under ESSA provisions states participating in Title I-A will be required to develop and adopt standards and assessments in mathematics, reading, and science. The ESSA did not retain requirements related to AYP. States will instead be required to establish long-term and interim goals, including goals related to performance on assessments. States will then be required to annually measure the performance of all students and each subgroup of students in schools relative to these goals. As with the NCLB, subgroups for accountability and reporting purposes include economically disadvantaged students, students from major racial and ethnic groups, students with disabilities, and students with limited English proficiency.[50]

Based on the performance of all students and each subgroup of students, states will be required to meaningfully differentiate school performance using all of the required indicators.[51] States will be required to identify (1) at least the lowest-performing 5% of all schools receiving Title I-A funds, (2) all public high schools failing to graduate one-third or more of their students, (3) schools required to implement additional targeted support (see below) that have not improved in a state-determined number of years, and (4) additional statewide categories of schools, at the state's discretion. States will also be required to identify, for targeted support and improvement, any school in which a subgroup of students is consistently underperforming. Schools in which one or more subgroups was performing at the same level as schools identified for comprehensive support and improvement will be identified for additional targeted support and improvement activities. Thus, for outcome accountability and reporting purposes, schools will still need to be able to identify students in the economically disadvantaged subgroup.

Additionally, the ESSA will permit a state to reserve up to 3% of the total amount of Title I-A funds it receives to make competitive grants to LEAs for direct student services such as transportation to support public school choice and high-quality academic tutoring. Priority will be given to LEAs with high percentages of schools identified for comprehensive support and improvement or LEAs implementing targeted support and improvement plans. However, unlike the NCLB, under the ESSA LEAs will not be required to give priority for these services to students from low-income families.[52] Thus, LEAs will no longer need to identify students from low-income families to offer public school choice and tutoring.

Low-Income Family Data Options

States and LEAs need to be able to identify students from low-income families to determine which students should be included in the economically disadvantaged student subgroup and, prior to ESSA implementation in states without an approved ESEA flexibility package application,

---

pending applications are available at http://www2.ed.gov/policy/elsec/guid/esea-flexibility/index.html.

[50] For reporting purposes, data must be additionally disaggregated by gender and migrant status. Also, data for specific indicators must be disaggregated by homeless status, status as a child in foster care, and status as a student with a parent who is a member of the Armed Forces.

[51] For more information about ESSA accountability requirements, see CRS In Focus IF10333, *The Every Student Succeeds Act (ESSA) and ESEA Reauthorization: Summary of Selected Key Issues*, by Rebecca R. Skinner.

[52] LEAs are required to prioritize services to those who are the lowest-achieving students.

which students are eligible for SES and which should be a priority for public school choice.[53] However, the low-income data available to make these determinations are influenced by whether there are any schools in an LEA or state that are participating in CEP.

Data Options for LEAs Not Participating in CEP

The ESEA does not specify how to determine which students should be included in the economically disadvantaged subgroup. In practice, this subgroup is determined based on free and reduced-price lunch data. With respect to determining eligibility for SES and priority for public school choice, the ESEA specifies that students from low-income families be identified with the same measures used to determine Title I-A school grant allocations. As with Title I-A school grant determinations and accountability subgroup determinations, states and LEAs have generally used eligibility for free or reduced-price lunch as the basis for determining SES eligibility and public school choice priority. In schools participating in the NSLP but not CEP, these data are still available.

Data Options for LEAs Participating in CEP

As free and reduced-price lunch data are no longer available for schools participating in CEP, ED has provided policy guidance that gives states and LEAs three options for determining low-income status for accountability and reporting purposes:[54] (1) to consider all students in CEP schools to be from low-income families; (2) to consider only identified students to be from low-income families; and (3) to use income surveys to identify students from low-income families.[55] Each of these options and its alignment with ESEA accountability and reporting requirements is discussed in more detail below.

Assume All Students Are from Low-Income Families

LEAs may consider all students in CEP schools to be from low-income families. In this situation, the "all students" group is the same as the economically disadvantaged subgroup and all students may receive services for which eligibility is based on low-income status (e.g., SES and priority for public school choice).

ED has pointed out that the rate of students from low-income families is relatively high in CEP schools; thus, it is not unreasonable to consider all of the students in these schools as being from low-income families.[56] However, the rate of identified students in a CEP school can generally be as low as 40%.[57] Thus, one could argue that although the school has a relatively high rate of identified students, the rate is not high enough to assume that 100% of students are from low-

[53] If a state with an approved flexibility package application has decided to continue to implement SES or public school choice and give priority to students from low-income families, data on students from low-income families would also be needed.

[54] These data options also apply for identifying students for public school choice and SES prior to the implementation of the ESSA provisions.

[55] U.S. Department of Education, The Community Eligibility Provision and Selected Requirements Under Title I, Part A of the Elementary and Secondary Education Act of 1965, as Amended, 15-0011, March 2015, http://www2.ed.gov/programs/titleiparta/15-0011.doc.

[56] U.S. Department of Education, The Community Eligibility Provision and Selected Requirements Under Title I, Part A of the Elementary and Secondary Education Act of 1965, as Amended, 15-0011, March 2015, http://www2.ed.gov/programs/titleiparta/15-0011.doc.

[57] Schools participating in CEP because they are in an LEA or group of schools eligible for CEP may have an identified student rate below 40%. Additionally, schools not in the first year of their four-year CEP cycle may have an identified student rate of below 40%.

income families. Additionally, this approach obscures any achievement gaps for students from low-income families as it does not allow schools and LEAs to differentiate between all students and those from low-income families.

Consider Only Identified Students to Be from Low-Income Families

LEAs may consider identified students in CEP schools to be from low-income families. Unlike the previous option, this would most likely reduce the size of the economically disadvantaged subgroup, as identified students are a subset of the free and reduced-price lunch student counts. Similarly, this approach would likely reduce SES eligibility and the number of students that are considered a priority for public school choice.

One argument in favor of this approach is that, unlike the previous option, it allows schools and LEAs to differentiate between all students and those from low-income families. However, this approach may exclude students who were previously considered to be from low-income families because they were eligible for free or reduced-price lunch. That is, students who previously qualified for free or reduced-price lunch based solely on family income might no longer be considered students from low-income families for accountability or reporting purposes.

Identify Students Based on Surveys

LEAs can use a household income survey to identify students from low-income families. As previously discussed, the data from a survey could be used for Title I-A purposes and for other programs. As with the previous option, income surveys allow schools and LEAs to differentiate between students from low-income families and the general student body. However, income surveys essentially reintroduce some the paperwork that CEP is intended to eliminate.

Author Information

Rebecca R. Skinner
Specialist in Education Policy

Randy Alison Aussenberg
Specialist in Nutrition Assistance Policy

Acknowledgments

Leah Rosenstiel, former Research Assistant at CRS, was a co-author of this report.

Disclaimer

This document was prepared by the Congressional Research Service (CRS). CRS serves as nonpartisan shared staff to congressional committees and Members of Congress. It operates solely at the behest of and under the direction of Congress. Information in a CRS Report should not be relied upon for purposes other than public understanding of information that has been provided by CRS to Members of Congress in connection with CRS's institutional role. CRS Reports, as a work of the United States Government, are not subject to copyright protection in the United States. Any CRS Report may be reproduced and distributed in its entirety without permission from CRS. However, as a CRS Report may include copyrighted images or material from a third party, you may need to obtain the permission of the copyright holder if you wish to copy or otherwise use copyrighted material.