



Food and  
Nutrition  
Service

October 3, 2023

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Metro Center

Angelice Lowe  
Director, Child Nutrition Programs  
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Dear Angelice Lowe:

This letter is in response to the Alabama State Department of Education's (ALSDE) September 29, 2023, request to waive the requirement to meet the annual Community Eligibility Provision (CEP) election deadline for school year (SY) 2023-2024. USDA published a final rule, *Child Nutrition Programs: Community Eligibility Provision – Increasing Options for Schools*, September 26, 2023, that lowers the minimum identified student percentage (ISP) needed to elect CEP to 25 percent. The new minimum ISP is in effect as of October 26, 2023. Because the election deadline for school year (SY) 2023-2024 has passed, ALSDE requested a waiver to allow newly eligible LEAs and schools to elect CEP mid-year and participate in CEP during SY 2023-2024.

In addition to the CEP election deadline, ALSDE requested to waive the requirement for LEAs to calculate the ISP using data as of April 1 of the prior school year. ALSDE requested a waiver of this requirement to allow LEAs that do not have ISP data available from April 1 to use data from the current school year to determine their ISP and establish a new CEP cycle in SY 2023-2024.

To grant a Section 12(l) waiver, the NSLA requires that the waiver must facilitate the purpose of the Program, the State or eligible service provider must provide notice and information to the public regarding the proposed waiver, and the waiver will not increase the overall cost of the program to the Federal Government. FNS finds that ALSDE waiver request satisfies these statutory requirements.

Specifically, ALSDE requested a statewide waiver of the following CEP deadlines:

### **June 30 Election Deadline**

Under Section 11(a)(1)(F)(x)(I) of the NSLA, 42 U.S.C. 1759a, LEAs that intend to elect CEP in the following school year must notify the State agency and submit ISP documentation not later than June 30 of the current school year. This requirement is codified in FNS regulations at 7 CFR 245.9(f)(4)(i).

Pursuant to the waiver authority granted at Section 12(l) of the NSLA, FNS waives for ALSDE the statutory requirement that LEAs intending to elect CEP for SY 2023-2024 must submit ISP documentation by “Not later than June 30 of the current school year,” and the corresponding regulatory requirement that such documentation must be submitted “no later than June 30.” Instead, LEAs that intend to elect CEP for SY 2023-2024 must submit ISP documentation to the State agency by February 1, 2024.

### **Calculating Identified Student Percentages Using Data as of April 1**

Under Sections 11(a)(1)(F)(iii)(I)(bb) and (a)(1)(F)(iv)(I)(bb), of the Richard B. Russell National School Lunch Act (NSLA), 42 U.S.C. 1759a, and FNS regulations at 7 CFR 245.9(f)(3)(i), (f)(4)(i), (f)(4)(v)(A), and (f)(4)(viii), LEAs must calculate the CEP ISP using data as of April 1 of the prior school year.

Pursuant to the waiver authority granted at Section 12(l) of the NSLA, FNS waives for ALSDE the requirement that LEAs base the ISP on data as of “April 1 of” the prior school year in the above referenced statutory and regulatory citations. Instead, LEAs electing CEP during SY 2023-2024 that do not have data as of April 1, 2023, may calculate the ISP using data drawn during SY 2023-2024 and prior to election of CEP.

The State agency should inform LEAs of the flexibilities provided by this waiver as quickly as possible.

### **Reporting Requirements**

The waiver authority at Section 12(l) of the NSLA requires FNS to periodically review the performance of any State or eligible service provider that was granted a waiver. Therefore, ALSDE must provide to the FNS Southeast Regional Office (SERO) a written report by June 30, 2024, quantifying the impact of the waiver, as described below.

The report must include the following:

- A description of how the waiver impacted NSLP and SBP operations in CEP participating schools;
- A description of whether the waiver resulted in improved services to children; and
- The number of LEAs that used the waiver.

If you have questions, please contact the FNS SERO.

Sincerely,

TINA  
NAMIAN

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Tina Namian  
Director  
School Meals Policy Division