



*Office of the General Counsel*

3211 FOURTH STREET NE  
WASHINGTON DC 20017-1194  
202-541-3300 • FAX 202-541-3337



**National Catholic Educational Association**

Leadership. Direction. Service.

January 3, 2014

**Submitted Electronically**

William Wagoner  
Policy and Program Development Branch  
Child Nutrition Division, Food and Nutrition Service  
Department of Agriculture  
3101 Park Center Drive, Room 1212  
Alexandria, Virginia 22302-1594

**Re: Notice of Proposed Rulemaking on the National School Lunch  
Program and School Breakfast Program  
File Code No. FNS-2011-0027**

Dear Mr. Wagoner:

On behalf of the United States Conference of Catholic Bishops (“USCCB”) and the National Catholic Educational Association (“NCEA”), we respectfully submit the following comments on the Notice of Proposed Rulemaking (“NPRM”) on the National School Lunch Program (“NSLP”) and School Breakfast Program (“SBP”). 78 Fed. Reg. 213 (Nov. 4, 2013).

The intention of the proposed rule is, among other things, to codify the statutory provision that establishes the Community Eligibility Option provision (“CEO”), a reimbursement option for eligible local educational agencies and schools that wish to offer free school meals to all children in high poverty schools without collecting household applications. We understand that the goals of the CEO are to reduce the administrative burden and to increase student participation in the NSLP and SBP. These are worthy goals, and all schools will benefit by an equitable application of this provision. We direct these comments to the equitable application of the CEO.

## **I. Students Attending Catholic Schools Greatly Benefit from the National School Lunch Program and School Breakfast Program**

Nutrition is essential to the health and well-being of our neediest students. It is an important part of the safety net for our children who come from impoverished families and is critical for their educational development. Numerous scientific studies have suggested a strong link between child nutrition and learning in school. Such evidence supports the importance of the availability of school lunch programs and school breakfast programs in improving the educational performance of our students. It also supports the request that funding be made at the highest level possible in order for all needy children to have access to healthy meals while they are at school so that they can focus on learning rather than wondering where their next meal is coming from.

Catholic schools in the United States have consistently participated in NSLP and SBP for decades. Every school day, the NSLP serves almost 173,000 nutritious lunches and more than 93,000 nutritious breakfasts to Catholic school students nationwide.<sup>1</sup> It is for these reasons that we wholly support the NSLP and the SBP and the Department of Agriculture's efforts to enroll more students in the programs, while also trying to ease the administrative burden associated with determining eligibility. It is for these same reasons that we ask for the equitable application of the CEO to all public and private schools.

## **II. The CEO Negatively Impacts Public and Private Schools That Are Not Eligible or Do Not Have Access to Data For Eligibility.**

The good news is that the implementation of the CEO as a pilot has succeeded in counting more students for free lunches. Pursuant to a summary of the Department of Agriculture's November 2013 report to Congress on the progress of direct certification (USDA Report), states and local educational associations (LEAs) directly certified 12.3 million children at the start of school year 2012-2013, which is an increase of 740,000—or 6 percent—from the previous school year.<sup>2</sup>

---

<sup>1</sup> National Catholic Educational Association, The Annual Statistical Report on Schools, Enrollment and Staffing, United States Catholic Elementary and Secondary Schools, 2012-2013 (“NCEA 2012-2013 Statistics”).

<sup>2</sup> United States Department of Agriculture, Report to Congress-Summary, Direct Certification in the National School Lunch Program State Implementation Progress, School Year 2012-2013, November 2013 (“USDA Report to Congress”).

A problem of equitability occurs, however, when the CEO count is used in the Title I program under the Elementary and Secondary Education Act.<sup>3</sup> When the CEO count is applied to Title I funding, more students are sharing the same total amount of funding for the Title I program. This reduces the per-pupil allocation for Title I programs and puts schools that are not eligible to use the CEO (whether public or private) at a disadvantage when their proportionate share of Title I funding is determined because their student count has remained the same while the per-pupil allocation has decreased.

An additional issue of equitability exists when implementing the CEO. Private schools and public schools in small school districts with limited budgets are at a disadvantage in accessing the data needed for determining eligibility for the CEO. Although direct certification systems vary by state and LEA, all such systems, whether done manually or automated, are performed by matching student enrollment lists against government agency records of children receiving benefits under federal programs such as the Supplemental Nutrition Assistance Program (“SNAP”), Temporary Assistance for Needy Families (“TANF”), or the Food Distribution Program on Indian Reservations (“FDPIR”). In the case of manual comparison, the school would need access to a printout from the appropriate federal agency (SNAP, TANF or FDPIR) through its state board of education. Once obtained, someone would need to go page by page to compare, verify, and match the printout with the school’s student list. In order to preserve the confidentiality of records, the school could not use a parent or other volunteer to perform this comparison. The school would have to hire someone to do this job, which is cost-prohibitive and extremely difficult in this economic environment. Private schools remain at this disadvantage even when public schools can rely on the resources of their local school district.

An automated match also presents insurmountable obstacles. There are more than 115,000 students in over 3,500 Catholic schools nationwide that receive Title I services.<sup>4</sup> Local budgets at the diocesan or archdiocesan level cannot justify the expense of investing in the computer software necessary to perform this automated match. We note that even with the size of public school budgets, four

---

<sup>3</sup> The NPRM anticipates this issue when it states that, consistent with its discussions with the Department of Education (“DoE”), “DoE is developing guidance on how to use data collected without applications through community eligibility to determine the distribution of Title I funds to schools . . . .” 78 Fed. Reg. 213 at 65892-3.

<sup>4</sup> NCEA 2012-2013 Statistics.

of the six states interviewed for purposes of the USDA Report used USDA grant money to help finance their system improvements to perform these data matches.<sup>5</sup>

The tables that follow in the appendix best illustrate how a school with no access to data for direct certification is negatively impacted when the CEO is implemented in its school district. Assume the total Title I instructional funding for District X is \$480,000, and the count of low-income children from the free and reduced price lunch count of 900 is broken down for the 3 schools in District X as shown on Table 1. Now apply the CEO and see the results in Table 2. Table 3 shows the before-and-after comparison of the use of the CEO. Because St. John's school did not have access to the necessary data to do the direct certification, its Title I Funding suffered a significant decrease of almost \$8,000.00. That is just one school.

To use the CEO, the proposed rule also requires that LEAs and schools serve free lunches and breakfasts to all students and cover with non-federal funds any costs of providing these meals that exceed the federal reimbursement. In order to receive 100% federal reimbursement for the meals, a school would need to directly certify as least 60% of its students. Again, we support the goal of feeding more students. However, if we were able to meet the basic 40% threshold necessary to use the CEO, it is unrealistic to expect, given the limited resources of our Catholic schools, that we could afford to pay the cost of feeding the remaining 60% of the students.

### **III. There is a Way to Ensure the Equitable Application of the CEO for All Public and Private Schools.**

The right of private school students to equitable participation in educational services and other benefits, after timely and meaningful consultation, is required by federal law. Section 1120 of the Elementary and Secondary Education Act provides the following:

#### **“SEC. 1120. PARTICIPATION OF CHILDREN ENROLLED IN PRIVATE SCHOOLS.**

##### **(a) GENERAL REQUIREMENT-**

(1) IN GENERAL- To the extent consistent with the number of eligible children identified under section 1115(b) in the school district served by a local educational agency who are enrolled in private elementary schools and secondary schools, a local educational agency shall, *after timely and meaningful consultation with appropriate private school officials*, provide such children, *on an equitable*

---

<sup>5</sup> USDA Report to Congress.

*basis*, special educational services or other benefits under this part (such as dual enrollment, educational radio and television, computer equipment and materials, other technology, and mobile educational services and equipment) that address their needs, and *shall ensure that teachers and families of the children participate, on an equitable basis, in services and activities* developed pursuant to sections 1118 and 1119.

(3) EQUITY- Educational services and other benefits for such private school children *shall be equitable* in comparison to services and other benefits for public school children participating under this part, and shall be provided in a timely manner.

(4) EXPENDITURES- Expenditures for educational services and other benefits to eligible private school children *shall be equal* to the proportion of funds allocated to participating school attendance areas based on the number of children from low-income families who attend private schools, which the local educational agency may determine each year or every 2 years.”

(Emphasis added.)

We propose the following remedy to fix the unintended negative effect that the use of CEO can have on students attending private schools that are not eligible to use the CEO, or do not have access to the relevant data to determine eligibility.

**For schools that do not participate in the free and reduced price lunch program:** When the LEA receives the school’s “Sample Poverty Data Form to Be Completed by Private School Families”, (Tool 2.2A of the United States Department of Education’s Title I Resource Tool Kit), it extrapolates the free and reduced price lunch information from part B of the form (which is the current process). We propose that under the CEO system, the participating LEA multiplies the TANF number from Part C of the form by the CEO multiplier of 1.6, taking the higher of the two numbers to use as the count for determining the Title I proportionate share for eligible students attending that school.

**For schools that do participate in the free and reduced price lunch program:** Conduct a survey of the TANF number and multiply it by 1.6. That number becomes the count for determining the Title I proportionate share for eligible students attending that school.

In this way, the Department of Education and the Department of Agriculture will have afforded private schools every opportunity to retain equitability of educational services and other benefits, as required by federal law. We know that funds are limited for these programs, so we desire the allocation that best matches the actual needs of students—using a student-by-student approach—rather than working in a broad-brush manner granting a windfall to some students and

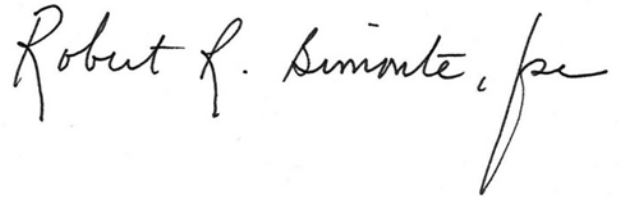
diminished services for other students that fall just short of a numerical or poverty threshold.

Thank you for considering our views.

Respectfully submitted,



Anthony R. Picarello, Jr.  
Associate General Secretary &  
General Counsel  
UNITED STATES CONFERENCE OF  
CATHOLIC BISHOPS  
3211 Fourth Street, NE  
Washington, DC 20017  
(202) 541-3300



Br. Robert R. Bimonte, fsc  
President  
NATIONAL CATHOLIC EDUCATIONAL  
ASSOCIATION  
1005 North Glebe Road, Suite 525  
Arlington, VA 22201  
(800) 711-6232

## Appendix: Community Eligibility Options for Free and Reduced School Lunch Program

**Table 1**

<u>School</u>	<u>Count from FARLP</u>		<u>480000 ÷ 900</u>	<u>Title I Funding</u>	<u>Proportionate Share of Title I Funding</u>
Quincy	350	X	\$500	\$175,000	35.4%
Adams St.	490	X	\$500	\$246,000	51.1%
John's	120	X	\$500	\$60,000	12.5%
	960				

**Table 2**

Application of Community Eligibility Option

<u>School</u>	<u># Students</u>				<u>Count for Title I</u>	<u>480000 ÷ 1105</u>	<u>Title I Funding</u>	<u>Proportionate Share of Title I Funding</u>	
	<u>Total Students</u>	<u>Directly Certified</u>	<u>Apply CEO Multiplier</u>	<u>Count for Title I</u>					
Quincy	425	400	X	1.6	425	X	\$434	\$184,450	38.4%
Adams St.	600	350	X	1.6	560	X	\$434	\$243,040	50.6%
John's	350	- No access -			120	X	\$434	\$52,080	10.8%
					1,105				

**Table 3**

Before and After Comparison

<u>School</u>	<u>Student Count</u>		<u>Title I Funding</u>		<u>Proportionate Share of Title I Funding After</u>	
	<u>Before CEO</u>	<u>After CEO</u>	<u>Before CEO</u>	<u>After CEO</u>	<u>Before CEO</u>	<u>CEO</u>
Quincy	350	425	\$175,000	\$184,000	35.4%	38.4%
Adams St.	490	560	\$246,000	\$243,040	51.1%	50.6%
John's	120	120	\$60,000	\$52,080	12.5%	10.8%