

ISSUE BRIEF

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Welfare for the Wealthy? Congress Should Immediately Stop Pushing Universal Free School Meals

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The Community Eligibility Provision (CEP)—part of the Healthy, Hunger-Free Kids Act of 2010—makes it possible for students, regardless of family income, to receive free school meals.¹ This provision thus turns welfare on its head by expanding free school meals to students who are not low-income² and who could very well come from wealthy families.³ It began as a pilot program in a handful of states but expanded nationwide during the 2014–2015 school year.⁴ Essentially, the Community Eligibility Provision is a backdoor approach to a universal school meal program.

Congress should eliminate the Community Eligibility Provision in the next child nutrition reauthorization bill; however, it should not wait until a reauthorization bill is passed to block implementation of the provision. Instead, it could use the appropriations process to withhold funds from the U.S. Department of Agriculture (USDA) for implementation of the Community Eligibility Provision. Under the Congressional Review Act (CRA), Congress might also be able to effectively eliminate the Community Eligibility Provision by passing a resolution of disapproval that would repeal the July 29, 2016, USDA rule that implements the provision.

Expanding Welfare to the Middle-Class and Wealthy

The school meals programs (national school lunch and school breakfast programs) are designed to provide free and reduced-price meals to students from low-income households. However, under the Community Eligibility Provision, a student no longer needs to be low-income to receive free meals. If 40 percent of students in a school, school district, or group of schools within a district are identified as eligible for free meals (because they receive benefits from another means-tested welfare program like food stamps or are in another disadvantaged category, such as being in the foster care system),⁵ then all students in that school, school district, or group of schools are eligible for free meals. Moreover, because schools can be grouped together for purposes of determining eligibility for the Community Eligibility Provision, it is possible that a school could provide free meals to all students without having a single low-income student enrolled.⁶

While proponents argue that the Community Eligibility Provision is designed to help high-poverty schools, the reality is that it extends free meals to middle-class and wealthy schools. This focus on high-poverty schools is misleading. School meals are supposed to serve needy *students* (not schools), and getting rid of the Community Eligibility Provision would not change the eligibility of low-income students to receive free and reduced-price meals.⁷

Proponents of the Community Eligibility Provision also claim that it is needed to reduce administrative burden by, among other actions, eliminating the school meals application process. However, the application process is necessary to ensure that ben-

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efits are going to those who are truly in need. After all, to operate a means-tested welfare program, the means of recipients have to be ascertained. Congress and the USDA should examine ways to reduce the administrative burden, but not by ignoring the very purpose of a welfare program: to help those in need.

How to Address the Community Eligibility Provision Immediately

In 2016, both the House and the Senate introduced child nutrition reauthorization bills, but the reauthorization process stalled. Both bills would have left the Community Eligibility Provision intact. The House bill tweaked the provision slightly to help increase the likelihood that only children who are truly in need would receive free meals.⁸ However, it still legitimized the notion of universal free school meals.

Congress should stop tinkering with bad policy and instead eliminate the Community Eligibility Provision in its next child nutrition reauthoriza-

tion bill. Before that takes place, however, Congress should take immediate action to stop the implementation of this provision. Two ways that this could be accomplished include:

- **The Appropriations Process.** Congress can stop implementation of the Community Eligibility Provision through the appropriations process by adding a policy rider that would withhold any funds for its implementation from the USDA. This would be a temporary solution since any rider would apply only for the fiscal year.
- **The Congressional Review Act (CRA).** The CRA provides Congress with an easier process to repeal recent final rules when compared to the usual legislative process. For example, under the CRA, Congress does not have to worry about the threat of a filibuster if certain conditions are met.⁹ The CRA also prohibits an agency from

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1. U.S. Department of Agriculture, Food and Nutrition Service, "School Meals: Community Eligibility Provision," September 6, 2016, <http://www.fns.usda.gov/school-meals/community-eligibility-provision> (accessed October 27, 2016).
 2. Prior to the CEP, there were policies (which still exist) to help schools with administrative burdens that also require schools to provide benefits to those who are not in need. Some legislators indicated that the provisions were unsatisfactory. See Senate Report No. 111-178, *The Healthy, Hunger-Free Kids Act of 2010*, Committee on Agriculture and Forestry, U.S. Senate, 111th Cong., 2nd Sess., May 5, 2010, p. 6, <https://www.congress.gov/111/crpt/srpt178/CRPT-111srpt178.pdf> (accessed May 24, 2016). Further, although such provisions do exist, this does not mean they are sound policy. See U.S. Department of Agriculture, Food and Nutrition Service, "School Meals: Provisions 1, 2 and 3," last published August 8, 2014, <http://www.fns.usda.gov/school-meals/provisions-1-2-and-3> (accessed May 16, 2016).
 3. For schools not participating in the CEP, there is a very small subsidy that does go toward paid meals for students who are not eligible for free and reduced-price lunches.
 4. U.S. Department of Agriculture, "Fact Sheet: Schools Serving, Kids Eating Healthier School Meals Thanks to Healthy, Hunger-Free Kids Act," September 1, 2015, <http://www.usda.gov/wps/portal/usda/usdahome?contentidonly=true&contentid=2015/09/0242.xml> (accessed January 18, 2017).
 5. U.S. Department of Agriculture, "The Community Eligibility Provision (CEP): What Does It Mean for Your School or Local Educational Agency?" April 2015, <http://www.fns.usda.gov/sites/default/files/cn/CEPfactsheet.pdf> (accessed October 26, 2016). Other students eligible for free and reduced-price meals include students who are homeless, in foster care, etc.
 6. Rachel Sheffield and Daren Bakst, "Child Nutrition Reauthorization: Time for Serious Reform, Not Tinkering," Heritage Foundation *Issue Brief* No. 4570, May 26, 2016, <http://www.heritage.org/research/reports/2016/05/child-nutrition-reauthorization-time-for-serious-reform-not-tinkering>.
 7. It is true that students who should not be receiving welfare in the first place (i.e., middle-class and wealthy students) would no longer be eligible for free meals. This is not a flaw, however: it is the whole reason for getting rid of the provision. If the Community Eligibility Provision were eliminated, students eligible for reduced-price meals would no longer receive free meals but would still receive reduced-price meals. This is how the program has worked for many years, distinguishing between income levels. The Community Eligibility Provision inappropriately expands free meals to those who otherwise would not be eligible for them.
 8. "Bill Summary: The Improving Child Nutrition and Education Act," Committee on Education and the Workforce, U.S. House of Representatives, undated, http://edworkforce.house.gov/uploadedfiles/bill_summary_-_improving_child_nutrition_and_education_act.pdf (accessed January 18, 2017).
 9. Daren Bakst and James L. Gattuso, "Stars Align for the Congressional Review Act," Heritage Foundation *Issue Brief* No. 4640, December 16, 2016, http://www.heritage.org/research/reports/2016/12/stars-align-for-the-congressional-review-act#_ftn11.
 10. Maeve P. Carey, Alissa M. Dolan, and Christopher M. Davis, "The Congressional Review Act: Frequently Asked Questions," Congressional Research Service *Report for Members and Committees of Congress*, November 17, 2016, <https://fas.org/sgp/crs/misc/R43992.pdf> (accessed February 23, 2017).
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issuing a rule that is “substantially the same” as the rule that was disapproved.¹⁰

Congress can use the Congressional Review Act to pass a disapproval resolution on the final rule implementing the Community Eligibility Provision to stop this provision in its tracks. While there are timing requirements regarding which rules are recent enough to be CRA-eligible, the latest Congressional Research Service analysis states that final rules reported to Congress as of June 13, 2016, are eligible for review under the CRA.¹¹ The Community Eligibility Provision final rule would meet this time requirement; it was not even issued until July 2016.¹²

If Congress passed a disapproval resolution on the rule, it would prohibit the USDA from issuing another rule that is “substantially the same.” Whether the USDA could issue a rule to implement the Community Eligibility Provision that would not be considered “substantially the same” remains in question. However, it is difficult to imagine a future rule that would implement the Community Eligibility Provision that would not be “substantially the same” as the existing final rule. If there is some question as to the scope of the disapproval resolution, Congress could consider using preamble language to help clarify its intent.¹³

Conclusion

The Community Eligibility Provision undermines the original purpose of the school meal programs and seeks to turn a means-tested welfare program into a universal free school meals program. Congress should not wait to pass a new child nutrition reauthorization bill to address the Community Eligibility Provision when it could stop its implementation immediately through the appropriations process or the Congressional Review Act. Legislators should take a step back and develop sound child nutrition policy that is not merely an excuse to create more government and greater dependence.

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11. Christopher M. Davis and Richard S. Beth, “Agency Final Rules Submitted After June 2, 2016, May Be Subject to Disapproval,” Congressional Research Service *Insight* No. 10437, December 15, 2016, <https://fas.org/sgp/crs/misc/IN10437.pdf> (accessed January 18, 2017).
 12. U.S. Department of Agriculture, Food and Nutrition Service, Final Rule: National School Lunch Program and School Breakfast Program: Eliminating Applications Through Community Eligibility as Required by the Healthy, Hunger-Free Kids Act of 2010, July 29, 2016, <https://www.fns.usda.gov/school-meals/fr-072916a> (accessed January 17, 2017).
 13. “A preamble is the language usually at the start of bills that include the ‘whereas’ clauses which explain the intent and general findings of Congress. A preamble does not have the weight of the bill’s other text, but it can help when a law has ambiguities.... Some question, however, remains whether such statements can be included in a CRA resolution. The CRS, for instance, states that it is unclear whether such statements can enjoy the fast-track treatment given to the resolution itself. It is not expressly prohibited and the CRS indicates that use of a preamble would be a question for the parliamentarians of the House and Senate.” Bakst and Gattuso, “Stars Align for the Congressional Review Act,” pp. 3–4.
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