

April 4, 2011

The Honorable Tom Vilsack  
Secretary  
U. S. Department of Agriculture  
12th Street, SW and Jefferson Drive  
Washington, DC 20250

**Re: FNS-2007-0038, RIN 0584-AD59**

**Nutrition Standards in the National School Lunch and School Breakfast Programs, 7 CFR parts 210 and 220**

Dear Secretary Vilsack:

The National School Boards Association (NSBA), representing over 90,000 local school board members across the nation, is pleased to submit comments on Nutrition Standards in the National School Lunch and School Breakfast Programs to partially implement the Healthy, Hunger-Free Kids Act, or Public Law 111-296.

NSBA supports the overall goals of PL 111-296 to end childhood hunger and address the epidemic of childhood obesity. School boards are deeply committed to fostering a healthy and positive learning environment for children to achieve their full potential. Our commitment to healthy child nutrition is embedded in the organization through our School Health programs. Further, NSBA is a partnering organization for the Let's Move program for child obesity prevention.

At a time when education is acknowledged as a priority for winning the future and providing a college and career-ready education for our children, federal implementation must assure that educational systems are supported, not undermined by the provisions of the Act, in order to serve over 31 million students each year.

Overall, NSBA's comments address new requirements and mandates that are unsupported by additional or adequate federal investment. NSBA is gravely concerned about the financial impact the law could have on school districts at a time when many are in dire economic straits. One need not look far to see the evidence of the economic crisis for our schools.

As states like Wisconsin and Ohio erupt over draconian policy and budget proposals that impact education, the fact is that most states have cut K-12 education funding since 2008 and forty-four states project budget shortfalls for fiscal year 2012 that will not be restored in the foreseeable future. Local property tax revenue for education is stagnant or declining, and many school districts do not have the capacity to ask struggling communities for yet another tax increase. The Federal Reserve Bank of Atlanta predicts that local and state governments are facing years of declining property tax revenue, and the worst shortfalls are still to come. Exacerbated by the expiration of ARRA and Education Jobs Fund money, and a significant cut likely in federal education funds for FY 2011 and FY 2012, school district resources are eroding in every direction.



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Any new responsibilities that result in unfunded or underfunded mandates will inevitably result in the loss of programs, jobs, or both at the local level. Every dollar in unfunded mandates must come from somewhere else in the educational system, and could result in layoffs, larger class sizes, narrowing of the curriculum, elimination of after-school programs, and cuts to other program areas including areas of school food service itself. Therefore, NSBA recommends the following:

**Recommendation: Voluntary compliance.** Revise the proposed rule to make it clear that the proposed meal patterns and standards are voluntary. Nowhere in the proposed rule does it state that compliance is voluntary for school districts. Inserting the word “voluntary” before “national standards” in the Title and throughout the rule when referring to the new meal patterns and standards is an important clarification.

**Recommendation: Cost-benefit analysis.** The Office of Budget and Management should conduct a new cost-benefit analysis of the proposed rule that incorporates the financial and operational impact on school districts, *including the impact on resources available for instructional programs, services and the workforce.* We further recommend that all future guidance, implementation memos, Dear Colleague letters, proposed rules and other policy issued by the Department to implement PL 111-296 also incorporate the impact on resources for the academic mission of school districts, including the impact on facilities, operations and workforce capacity.

The regulatory/cost-benefit analysis in the proposed rule (p. 2507) is inadequate because it disregards the enormous impact of the \$6.8 billion price tag on school districts. NSBA agrees that the benefits of better nutrition are substantial and include improved child health and a reduction of child obesity and other nutrition-related health risks. However, to ignore the cost to educational systems is not an accurate reflection of the true cost of the measure.

**Recommendation: Review Cycle.** NSBA recommends that the Department reimburse school districts for the increased costs associated with an expanded federal review cycle.

The proposed rule would shorten the review cycle from five to three years, while expanding the review period from one week to two. Reviews would also be expanded to include the school breakfast program. This substantial increase in monitoring activity will put additional strain on school and district level staff and potentially discourage school districts from adopting the voluntary meal patterns and standards. Compliance and program quality should not create an unfunded mandate for school districts.

**Recommendation: Alignment with federal reimbursement.** The Department should revise and align meal patterns and standards in the proposed rule to cost no more than the six-cent federal reimbursement increase available. If they are not revised in the final rule, the Department should clarify that schools are eligible for the performance-based reimbursement increase if they improve meal patterns and standards to the extent possible within the parameters of the six-cent increase.

The proposed rule should not exacerbate the funding gap for school districts participating in the school meal programs. Current funding for school meals already is inadequate for most districts to cover the full cost of providing them. U.S. Department of Agriculture reports document that school districts’ cost of providing free lunches exceeds the federal reimbursement by over thirty cents per meal. Public Law 111-296 authorizes a six-cent increase per school lunch for districts that voluntarily adopt updated federal standards for school breakfast and lunch. The Department’s own estimates

include a 14 cent increase in the cost of each lunch and a 50 cent increase in the cost of each breakfast. However, NSBA estimates the actual increased cost of compliance ranges from 11–25 cents for lunches, thus increasing the reimbursement gap that already exists. A district serving subsidized lunches to 5,000 students has a potential annual shortfall of \$270,000 under the current reimbursement rate. PL 111-296 could add \$54,000 to that shortfall. In many school districts such an additional shortfall could necessitate the elimination of teaching and other instructional positions.

**Recommendation: Revenue streams and operational changes.** NSBA recommends eliminating the description of revenue streams and operational changes on pp. 2537-2538 and replacing it with an affirmative statement that school districts are/will not be required to further subsidize school meal programs at the expense of academic programs and school operations, and that school eligibility for the performance-based reimbursement increase will not be jeopardized as a result.

The revenue streams and operational changes illustrate the implementation dilemma for school districts by making state and local governments and the students they serve primarily responsible for the increased cost of the new standards. Of the four options identified in the proposed rule, three fall squarely on the shoulders of students and schools: increased student payments, increased state and local funding, and operational changes. One of them – operational changes – is not a true revenue stream, but rather a strategy for reducing costs to the system. It is not a realistic option, however, as the proposed rule makes clear that additional staff and equipment will likely be required for schools to meet the standards. The fourth option is federal reimbursement, which is already demonstrated to be woefully inadequate. For the Department to impose the financial burden for its regulations onto local communities in such a cavalier manner is unrealistic and disregards the educational needs and economic circumstances of the very citizens they are trying to help.

**Recommendation: Layering.** NSBA recommends that all guidance, implementation memos, Dear Colleague letters, proposed rules and other policy issued by the Department to implement PL 111-296 include a *cumulative* analysis of the financial and operational impact of the bill on school districts.

The proposed rule is just the first of many provisions of the bill to be implemented. Many other provisions will impose additional costs on, and create facility and workforce capacity issues for, school districts. They include indirect costs, paid meal pricing, local wellness policies and the school nutrition environment, mandatory standards for food outside the subsidized school meal programs, fines and program disqualifications, and training and certification requirements for school food service personnel. The layering effect of these multiple requirements should be recognized, calculated and made available in a transparent manner to Congress and the general public. Further, the cumulative impact should be a primary consideration in subsequent policy making by the Department.

**Summary:** NSBA is concerned that the Department severely underestimates how difficult it will be for many school districts to comply with the proposed rule, perhaps because of an over-reliance on the experience of schools recognized by the Healthier U.S. School Challenge (HUSC). Less than 1% of schools have been recognized by the program, and even HUSC schools will have difficulty meeting some of the requirements in the proposed rule.

Implementation of PL 111-296 is an opportunity to assure that we are all successful in achieving our shared goal of giving America's students the best possible start and the best possible education. Therefore, it is imperative that implementation of PL 111-296:

- Be cost neutral to local school districts.
- Address school district concerns in a meaningful and sustained way, at every stage of policy development and implementation.
- Phase in provisions of the law in a manner that is sensitive to the fiscal condition of school districts.

Thank you for the opportunity to comment. School nutrition programs simply cannot be successful unless the school districts providing them have sufficient resources and local authority to administer them effectively. Questions concerning our comments may be directed to Lucy Gettman, director, federal programs, at 703-838-6763 or by e-mail at [lgettman@nsba.org](mailto:lgettman@nsba.org).

Sincerely,

A handwritten signature in black ink that reads "Michael A. Resnick". The signature is written in a cursive, flowing style.

Michael A. Resnick  
Associate Executive Director

MAR:lg/G:Adv/HillLetters/Executive/4.6.11/Child Nutrition Standards/LettertoSecVilsack/final