

## CHILDHOOD NUTRITION REAUTHORIZATION: KEY PROVISIONS & STATUS OF IMPLEMENTATION

### **BACKGROUND:**

The most recent reauthorization of the Child Nutrition Act – the Healthy, Hunger-Free Kids Act (HHFK) - was signed by President Obama in December, 2010 and became Public Law 111-296. It reauthorizes six major nutrition programs—including school breakfast and lunch—for five years. The law is due for reauthorization in 2015.

NSBA urged the Administration to assure that implementation of PL 111-296 is cost neutral to school districts, involves school boards and school governance representatives in the design and policy for implementation, and phases-in provisions of the bill in a manner that reflects the academic, operational and financial circumstances of school districts. Below are key provisions of the bill and the status of implementation.

### **KEY PROVISIONS OF PL 111-296 IN EFFECT FOR THE 2014–2015 SCHOOL YEAR**

Implementation of the reauthorization is well underway by the U. S. Department of Agriculture (USDA). Four provisions of the bill already in effect include: 1) national standards for school meals, 2) Indirect Cost Guidance to schools and school food authorities (SFA), 3) paid meal pricing requirements, and 4) competitive foods standards.

**National Standards for subsidized school meals** – New national standards for school meals were issued by the USDA in January 2012. The Secretary is authorized to increase reimbursement by six cents per school lunch that complies with updated standards. There is no reimbursement increase for school breakfasts that comply with the new standards. For many school districts the increase will not be sufficient to cover the actual cost of meeting the higher standards. Using the USDA’s conservative estimate, the reimbursement increase per free and reduced lunch provides less than half the cost of implementing the standards over the next five years.

Many school districts have struggled to comply with the standards, and have experienced: 1) decreased participation in subsidized school meals, 2) increased plate waste, and 3) complaints from students and parents regarding the adequacy of portion sizes for active students. Some school districts have dropped out of the federal school meal programs altogether.

The USDA has made minor adjustments to a few problematic requirements, by: 1) delaying new school breakfast standards for one year (now expired), 2) alleviating portion size maximums for meat, meat alternatives and grains, and 3) postponing whole grain content requirements for pasta. While welcome,

the USDA's actions are not sufficient to fully address the difficulties inherent in current and emerging policy to implement PL 111-296. Consequently, the responsibility for compensating for the federal funding shortfalls and operational burdens fall squarely on the shoulders of school districts, students and their families.

**Indirect costs**—The bill gives the USDA authority to regulate the indirect costs that school districts may attribute to school meal operations. Indirect costs are those costs necessary for the general operation of the program such as operating and maintaining buildings, equipment, and administrative support. School districts must already follow federal policy on indirect costs from the Office of Management and Budget (Circular A-87). PL 111-296 requires the Secretary to issue additional Guidance, and in July 2011 issued detailed procedures, definitions, and examples of the types of costs that are reasonable and necessary to provide school meals. Depending on current school district practices, some districts may have to change the way costs are allocated and possibly recover less reimbursement from the SFA. The State Agency responsible for school meal programs is required to conduct oversight and provide technical assistance for this provision.

**Paid meal pricing**—PL 111-296 regulates the price schools charge for unsubsidized (paid) meals. Effective July 2011, schools are required to charge students a price that is on average equal to the difference between free meal reimbursement and paid meal reimbursement. For example, reimbursement for a free lunch for the 2014-2015 school year is \$2.98 and reimbursement for a paid lunch is 28¢, making the difference in reimbursement \$2.70. If the average price of a paid lunch is less than \$2.70 the district must either, 1) increase the price of paid meals, or 2) cover the difference with non-Federal funds.

The USDA issued an Interim Rule in summer 2011, and Guidance in April 2013 to govern how districts calculate the cost and price of meals. Some districts have had to increase the price of unsubsidized meals more than once – typically between ten and twenty-five cents per meal. The State Agency responsible for school meal programs also is responsible for assuring that all SFAs have made a good faith effort to comply with this provision.

The USDA acknowledges that increasing the price of paid meals will decrease participation. The interim rule estimated that 1.6 million children come from families just over the income limit to qualify for subsidized meals (185 percent–200 percent of poverty level) and are therefore most vulnerable to an increase in the price of paid meals. The Department anticipates that impacted children who do not pay the increased price will 1) bring food from home; 2) acquire food from other sources; or 3) “choose” not to eat during the school day (emphasis added).

**Standards for food sold outside the subsidized school meal programs (competitive foods)** —PL 111-296 requires the Secretary to issue mandatory national standards for all foods sold, 1) outside the school meal program; 2) on the school campus; and 3) at any time during the school day. Many school districts rely on revenue from vending machines, school stores, a la carte lines, bake sales, etc., and may need to alter their offerings or fundraising strategy to meet the new standards.

An Interim Final Rule for competitive foods went into effect July 1, 2014, and requires competitive foods to meet standards similar to those for subsidized school meals.

In addition to meeting new nutrition standards, school districts must comply with requirements for maintaining records and documenting compliance for food sold in areas that are outside the control of the school food service operation, and for ensuring that any organization designated as responsible for food service does the same. States have the authority to waive the standards for “infrequent” fundraisers, the definition of which is also left to states. At the time this was written, fewer than half of states have granted exemptions for even one fundraiser per year.

## **EMERGING POLICY**

**Training and certification requirements**—School districts will have to comply with a new program of required education, training, and certification for all school food service directors. School districts will also have to meet new requirements established by the Secretary for training and certification for all school food service personnel. The USDA issued draft standards for public comment in 2014, but final standards have not yet been released. NSBA pointed out that the new requirements represent direct federal intrusion into workforce policy, are likely to become an unfunded mandate, and indirectly disrupt market forces that impact availability and recruitment of qualified staff, and compensation practices for already cash-strapped districts.

### **Local school wellness policy (LSWP) implementation and expansion.**

School districts already are required to have LSWP’s that establish goals for nutrition education, physical activity, and other school-based activities that promote student wellness, as well as nutrition guidelines to promote student health and reduce childhood obesity for all foods available on each school campus. PL 111-296 expands requirements for implementing LSWPs, and the USDA issued proposed regulations in 2014. The proposed rule would establish extensive new requirements for developing, implementing, reporting and assessing local school wellness policies – all without additional federal funds. The rule also threatens school revenue from non-federal funds by prohibiting marketing of food sold outside the federal school meal programs that don’t meet school meal standards. The proposed rule also would require all food *available* in school – including items provided by children, families or teachers for celebrations and other observances – to meet guidelines consistent with federal nutrition standards. LEAs must designate one or more district official(s) or school official(s), as appropriate, to ensure that each school complies with the local school wellness policy. State agencies are largely responsible for technical assistance and oversight of this provision.

**USDA Schools Strike Force** – The Department of Agriculture proposed a Schools Strike Force in August 2014 to help identify schools that are having challenges implementing PL 111–296 and to deliver tailored, school-specific technical assistance. While NSBA appreciates this effort, it is insufficient to fully address the difficulties in complying with the law. NSBA has called on the Department to engage in broad and meaningful reform of the implementation process, including offering temporary waivers and other relief to school districts. At the time this was written, the USDA has not finalized the Schools Strike Force initiative.

## **LEGISLATIVE ACTION**

NSBA supports three legislative initiatives to provide healthy child nutrition: HR 3663, HR 4800, and S. 2366.

**HR 3663 - Reducing Federal mandates on School Lunch Act (Noem (R-SD))** – NSBA worked closely with Representative Kristi Noem to introduce HR 3663 in December 2013. The bill would restore local flexibility and authority to school districts struggling to comply with some provisions of PL 111-296. The bill makes permanent the USDA’s easing of meat and grain maximums, and gives school districts flexibility on some of the rules that increase costs, such as competitive food standards, school breakfast and paid meal prices. HR 3663 is currently assigned to the Education & Workforce Committee in the House.

**HR 4800 - FY 2015 Appropriations for the Department of Agriculture (Aderholt (R-AL))** – NSBA successfully supported a provision providing temporary relief for struggling school districts in the FY 2015 Agriculture spending bill approved by the House Appropriations Committee in May 2014. The bill includes a statutory directive to the USDA to establish a waiver process for local school districts if they have operated in the red for at least six months. HR 4800 awaits passage by the full House, although a Continuing Resolution to fund federal government operations is more likely to pass than individual appropriations bills such as HR 4800.

**S. 2366 - Stop Child Summer Hunger Act (Murray (D-WA))** - NSBA supports a bill introduced by Senator Patty Murray to reduce food insecurity for low-income children during the summer months when school is out of session. S. 2366 would provide an electronic benefit card at the end of the school year to families whose children qualify for free and reduced price meals. The card would then help families afford groceries during the summer months to replace meals children would otherwise have gotten at school. S. 2366 has been referred to the Senate Committee on Finance.

## **NSBA POSITION**

The National School Boards Association (NSBA) is deeply committed to fostering a healthy and positive learning environment for children to achieve their full potential. At a time when education is acknowledged as a priority for America’s success and competitiveness, it is imperative that federal policy—including implementation of the child nutrition reauthorization—assures that educational systems are supported, not undermined by unfunded mandates or under-resourced requirements. Unfortunately, PL 111-296 imposes numerous new responsibilities on school districts without sufficient federal funding and resources. Some provisions of the bill are designed to redirect financial resources from elsewhere in the district to the school food authority and/or shift additional costs to students and their families. For school districts already forced to make budget cuts due to sequestration and the economy, this is a draconian dilemma. New responsibilities that result in unfunded or underfunded mandates from costly requirements of the new law will inevitably result in the loss of programs, jobs, or both at the local level.

Congress should support school districts, local communities, and states through administrative and regulatory flexibility, adequately funded incentives, and grants that enable them to further expand their local commitment.

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