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## **RICHARD B. RUSSELL NATIONAL SCHOOL LUNCH ACT**

[Chapter 281 of the 79th Congress, Approved June 4, 1946, 60 Stat. 230]

[As Amended Through P.L. 116–6, Enacted February 15, 2019]

【Currency: This publication is a compilation of the text of Chapter 281 of the 79th Congress. It was last amended by the public law listed in the As Amended Through note above and below at the bottom of each page of the pdf version and reflects current law through the date of the enactment of the public law listed at <https://www.govinfo.gov/app/collection/comps/>】

【Note: While this publication does not represent an official version of any Federal statute, substantial efforts have been made to ensure the accuracy of its contents. The official version of Federal law is found in the United States Statutes at Large and in the United States Code. The legal effect to be given to the Statutes at Large and the United States Code is established by statute (1 U.S.C. 112, 204).】

### TABLE OF CONTENTS<sup>1</sup>

- Sec. 1. 【1751 note】 Short title.
- Sec. 2. 【1751】 Declaration of policy.
- Sec. 3. 【1752】 Appropriations authorized.
- Sec. 4. 【1753】 Apportionments to States.
- Sec. 5. 【1754】 Nutrition promotion.
- Sec. 6. 【1755】 Direct Federal expenditures.
- Sec. 7. 【1756】 Payments to States.
- Sec. 8. 【1757】 State disbursement to schools.
- Sec. 9. 【1758】 Nutritional and other program requirements.
- Sec. 9A. 【1758b】 Local school wellness policy.
- Sec. 10. 【1759】 Disbursement to schools by the Secretary.
- Sec. 11. 【1759a】 Special assistance.
- Sec. 12. 【1760】 Miscellaneous provisions and definitions.
- Sec. 13. 【1761】 Summer food service program for children.
- Sec. 14. 【1762a】 Commodity distribution program.
- Sec. 16. 【1765】 Election to receive cash payments.
- Sec. 17. 【1766】 Child and adult care food program.
- Sec. 17A. 【1766a】 Meal supplements for children in afterschool care.
- Sec. 18. 【1769】 Pilot projects.
- Sec. 19. 【1769a】 Fresh fruit and vegetable program.
- Sec. 20. 【1769b】 Department of Defense overseas dependents' schools.
- Sec. 21. 【1769b–1】 Training, technical assistance, and food service management institute.
- Sec. 22. 【1769c】 Compliance and accountability.
- Sec. 23. 【1769d】 Childhood hunger research.
- Sec. 24. 【1769e】 State childhood hunger challenge grants.
- Sec. 25. 【1769f】 Duties of the Secretary relating to nonprocurement debarment.
- Sec. 26. 【1769g】 Information clearinghouse.
- Sec. 28. 【1769i】 Program evaluation.
- Sec. 29. 【1769j】 Ensuring safety of school meals.

<sup>1</sup>This table of contents is not part of the Act but is included for user convenience. The numbers in brackets refer to section numbers in title 42, United States Code.

**Sec. 2**                      **RICHARD B. RUSSELL NATIONAL SCHOOL LUNCH ACT**                      **2**

AN ACT To provide assistance to the States in the establishment, maintenance, operation, and expansion of school lunch programs, and for other purposes.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, [42 U.S.C. 1751 note] That this Act may be cited as the “Richard B. Russell National School Lunch Act”.<sup>2</sup>*

## DECLARATION OF POLICY

SEC. 2. [42 U.S.C. 1751] It is hereby declared to be the policy of Congress, as a measure of national security, to safeguard the health and well-being of the Nation’s children and to encourage the domestic consumption of nutritious agricultural commodities and other food, by assisting the States, through grants-in-aid and other means, in providing an adequate supply of foods and other facilities for the establishment, maintenance, operation, and expansion of nonprofit school lunch programs.

## APPROPRIATIONS AUTHORIZED

SEC. 3. [42 U.S.C. 1752] For each fiscal year there is hereby authorized to be appropriated, out of money in the Treasury not otherwise appropriated, such sums as may be necessary to enable the Secretary of Agriculture (hereinafter referred to as the “Secretary”) to carry out the provisions of this Act, other than sections 13 and 17. Appropriations to carry out the provisions of this Act and of the Child Nutrition Act of 1966 [(42 U.S.C. 1771 et seq.)] for any fiscal year are authorized to be made a year in advance of the beginning of the fiscal year in which the funds will become available for disbursement to the States. Notwithstanding any other provision of law, any funds appropriated to carry out the provisions of such Acts shall remain available for the purposes of the Act for which appropriated until expended.

## APPORTIONMENTS TO STATES

SEC. 4. [42 U.S.C. 1753] (a) The sums appropriated for any fiscal year pursuant to the authorizations contained in section 3 of this Act shall be available to the Secretary for supplying agricultural commodities and other food for the program in accordance with the provisions of this Act.

(b)(1) The Secretary shall make food assistance payments to each State educational agency each fiscal year, at such times as the Secretary may determine, from the sums appropriated for such purpose, in a total amount equal to the product obtained by multiplying—

(A) the number of lunches (consisting of a combination of foods which meet the minimum nutritional requirements prescribed by the Secretary under section 9(a) of this Act) served during such fiscal year in schools in such State which participate in the school lunch program under this Act under agreements with such State educational agency; by

<sup>2</sup>P.L. 79–396, 60 Stat. 230, June 4, 1946.

(B) the national average lunch payment prescribed in paragraph (2) of this subsection.

(2) The national average lunch payment for each lunch served shall be 10.5 cents (as adjusted pursuant to section 11(a) of this Act) except that for each lunch served in school food authorities in which 60 percent or more of the lunches served in the school lunch program during the second preceding school year were served free or at a reduced price, the national average lunch payment shall be 2 cents more.

(3) ADDITIONAL REIMBURSEMENT.—

(A) REGULATIONS.—

(i) PROPOSED REGULATIONS.—Notwithstanding section 9(f), not later than 18 months after the date of enactment of this paragraph, the Secretary shall promulgate proposed regulations to update the meal patterns and nutrition standards for the school lunch program authorized under this Act and the school breakfast program established by section 4 of the Child Nutrition Act of 1966 (42 U.S.C. 1773) based on recommendations made by the Food and Nutrition Board of the National Research Council of the National Academy of Sciences.

(ii) INTERIM OR FINAL REGULATIONS.—

(I) IN GENERAL.—Not later than 18 months after promulgation of the proposed regulations under clause (i), the Secretary shall promulgate interim or final regulations.

(II) DATE OF REQUIRED COMPLIANCE.—The Secretary shall establish in the interim or final regulations a date by which all school food authorities participating in the school lunch program authorized under this Act and the school breakfast program established by section 4 of the Child Nutrition Act of 1966 (42 U.S.C. 1773) are required to comply with the meal pattern and nutrition standards established in the interim or final regulations.

(iii) REPORT TO CONGRESS.—Not later than 90 days after the date of enactment of this paragraph, and each 90 days thereafter until the Secretary has promulgated interim or final regulations under clause (ii), the Secretary shall submit to the Committee on Education and Labor of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate a quarterly report on progress made toward promulgation of the regulations described in this subparagraph.

(B) PERFORMANCE-BASED REIMBURSEMENT RATE INCREASE.—Beginning on the later of the date of promulgation of the implementing regulations described in subparagraph (A)(ii), the date of enactment of this paragraph, or October 1, 2012, the Secretary shall provide additional reimbursement for each lunch served in school food authorities determined to be eligible under subparagraph (D).

(C) ADDITIONAL REIMBURSEMENT.—

(i) IN GENERAL.—Each lunch served in school food authorities determined to be eligible under subparagraph (D) shall receive an additional 6 cents, adjusted in accordance with section 11(a)(3), to the national lunch average payment for each lunch served.

(ii) DISBURSEMENT.—The State agency shall disburse funds made available under this paragraph to school food authorities eligible to receive additional reimbursement.

(D) ELIGIBLE SCHOOL FOOD AUTHORITY.—To be eligible to receive an additional reimbursement described in this paragraph, a school food authority shall be certified by the State to be in compliance with the interim or final regulations described in subparagraph (A)(ii).

(E) FAILURE TO COMPLY.—Beginning on the later of the date described in subparagraph (A)(ii)(II), the date of enactment of this paragraph, or October 1, 2012, school food authorities found to be out of compliance with the meal patterns or nutrition standards established by the implementing regulations shall not receive the additional reimbursement for each lunch served described in this paragraph.

(F) ADMINISTRATIVE COSTS.—

(i) IN GENERAL.—Subject to clauses (ii) and (iii), the Secretary shall make funds available to States for State activities related to training, technical assistance, certification, and oversight activities of this paragraph.

(ii) PROVISION OF FUNDS.—The Secretary shall provide funds described in clause (i) to States administering a school lunch program in a manner proportional to the administrative expense allocation of each State during the preceding fiscal year.

(iii) FUNDING.—

(I) IN GENERAL.—In the later of the fiscal year in which the implementing regulations described in subparagraph (A)(ii) are promulgated or the fiscal year in which this paragraph is enacted, and in the subsequent fiscal year, the Secretary shall use not more than \$50,000,000 of funds made available under section 3 to make payments to States described in clause (i).

(II) RESERVATION.—In providing funds to States under clause (i), the Secretary may reserve not more than \$3,000,000 per fiscal year to support Federal administrative activities to carry out this paragraph.

**SEC. 5. [42 U.S.C. 1754] NUTRITION PROMOTION.**

(a) IN GENERAL.—Subject to the availability of funds made available under subsection (g), the Secretary shall make payments to State agencies for each fiscal year, in accordance with this section, to promote nutrition in food service programs under this Act

and the school breakfast program established under the Child Nutrition Act of 1966 (42 U.S.C. 1771 et seq.).

(b) **TOTAL AMOUNT FOR EACH FISCAL YEAR.**—The total amount of funds available for a fiscal year for payments under this section shall equal not more than the product obtained by multiplying—

(1) ½ cent; by

(2) the number of lunches reimbursed through food service programs under this Act during the second preceding fiscal year in schools, institutions, and service institutions that participate in the food service programs.

(c) **PAYMENTS TO STATES.**—

(1) **ALLOCATION.**—Subject to paragraph (2), from the amount of funds available under subsection (g) for a fiscal year, the Secretary shall allocate to each State agency an amount equal to the greater of—

(A) a uniform base amount established by the Secretary; or

(B) an amount determined by the Secretary, based on the ratio that—

(i) the number of lunches reimbursed through food service programs under this Act in schools, institutions, and service institutions in the State that participate in the food service programs; bears to

(ii) the number of lunches reimbursed through the food service programs in schools, institutions, and service institutions in all States that participate in the food service programs.

(2) **REDUCTIONS.**—The Secretary shall reduce allocations to State agencies qualifying for an allocation under paragraph (1)(B), in a manner determined by the Secretary, to the extent necessary to ensure that the total amount of funds allocated under paragraph (1) is not greater than the amount appropriated under subsection (g).

(d) **USE OF PAYMENTS.**—

(1) **USE BY STATE AGENCIES.**—A State agency may reserve, to support dissemination and use of nutrition messages and material developed by the Secretary, up to—

(A) 5 percent of the payment received by the State for a fiscal year under subsection (c); or

(B) in the case of a small State (as determined by the Secretary), a higher percentage (as determined by the Secretary) of the payment.

(2) **DISBURSEMENT TO SCHOOLS AND INSTITUTIONS.**—Subject to paragraph (3), the State agency shall disburse any remaining amount of the payment to school food authorities and institutions participating in food service programs described in subsection (a) to disseminate and use nutrition messages and material developed by the Secretary.

(3) **SUMMER FOOD SERVICE PROGRAM FOR CHILDREN.**—In addition to any amounts reserved under paragraph (1), in the case of the summer food service program for children established under section 13, the State agency may—

(A) retain a portion of the funds made available under subsection (c) (as determined by the Secretary); and

(B) use the funds, in connection with the program, to disseminate and use nutrition messages and material developed by the Secretary.

(e) DOCUMENTATION.—A State agency, school food authority, and institution receiving funds under this section shall maintain documentation of nutrition promotion activities conducted under this section.

(f) REALLOCATION.—The Secretary may reallocate, to carry out this section, any amounts made available to carry out this section that are not obligated or expended, as determined by the Secretary.

(g) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated such sums as are necessary to carry out this section, to remain available until expended.

#### DIRECT FEDERAL EXPENDITURES

SEC. 6. [42 U.S.C. 1755] (a) The funds provided by appropriation or transfer from other accounts for any fiscal year for carrying out the provisions of this Act, and for carrying out the provisions of the Child Nutrition Act of 1966 [(42 U.S.C. 1771 et seq.)], other than section 3 thereof [(42 U.S.C. 1772)], less

(1) not to exceed 3½ per centum thereof which per centum is hereby made available to the Secretary for the Secretary's administrative expenses under this Act and under the Child Nutrition Act of 1966;

(2) the amount apportioned by the Secretary pursuant to section 4 of this Act and the amount appropriated pursuant to sections 11 and 13 of this Act and sections 4 and 7 of the Child Nutrition Act of 1966 [(42 U.S.C. 1773 and 1776)]; and

(3) not to exceed 1 per centum of the funds provided for carrying out the programs under this Act and the programs under the Child Nutrition Act of 1966, other than section 3, which per centum is hereby made available to the Secretary to supplement the nutritional benefits of these programs through grants to States and other means for nutritional training and education for workers, cooperators, and participants in these programs, for pilot projects and the cash-in-lieu of commodities study required to be carried out under section 18 of this Act, and for necessary surveys and studies of requirements for food service programs in furtherance of the purposes expressed in section 2 of this Act and section 2 of the Child Nutrition Act of 1966 [(42 U.S.C. 1773 and 1776)],

shall be available to the Secretary during such year for direct expenditure by the Secretary for agricultural commodities and other foods to be distributed among the States and schools and service institutions participating in the food service programs under this Act and under the Child Nutrition Act of 1966 in accordance with the needs as determined by the local school and service institution authorities. Except as provided in the next 2 sentences, any school participating in food service programs under this Act may refuse to accept delivery of not more than 20 percent of the total value of agricultural commodities and other foods tendered to it in any school year; and if a school so refuses, that school may receive, in lieu of the refused commodities, other commodities to the extent that other commodities are available to the State during that year.

Any school food authority may refuse some or all of the fresh fruits and vegetables offered to the school food authority in any school year and shall receive, in lieu of the offered fruits and vegetables, other more desirable fresh fruits and vegetables that are at least equal in value to the fresh fruits and vegetables refused by the school food authority. The value of any fresh fruits and vegetables refused by a school under the preceding sentence for a school year shall not be used to determine the 20 percent of the total value of agricultural commodities and other foods tendered to the school food authority in the school year under the second sentence. The provisions of law contained in the proviso of the Act of June 28, 1937 [; 15 U.S.C. 713c], facilitating operations with respect to the purchase and disposition of surplus agricultural commodities under section 32 of the Act approved August 24, 1935, [; 7 U.S.C. 612c] shall, to the extent not inconsistent with the provisions of this Act, also be applicable to expenditures of funds by the Secretary under this Act. In making purchases of such agricultural commodities and other foods, the Secretary shall not issue specifications which restrict participation of local producers unless such specifications will result in significant advantages to the food service programs authorized by this Act and the Child Nutrition Act of 1966.

(b) The Secretary shall deliver, to each State participating in the school lunch program under this Act, commodities valued at the total level of assistance authorized under subsection (c) for each school year for the school lunch program in the State, not later than September 30 of the following school year.

(c)(1)(A) The national average value of donated foods, or cash payments in lieu thereof, shall be 11 cents, adjusted on July 1, 1982, and each July 1 thereafter to reflect changes in the Price Index for Food Used in Schools and Institutions. The Index shall be computed using 5 major food components in the Bureau of Labor Statistics' Producer Price Index (cereal and bakery products, meats, poultry and fish, dairy products, processed fruits and vegetables, and fats and oils). Each component shall be weighed using the same relative weight as determined by the Bureau of Labor Statistics.

(B) The value of food assistance for each meal shall be adjusted each July 1 by the annual percentage change in a 3-month average value of the Price Index for Foods Used in Schools and Institutions for March, April, and May each year. Such adjustment shall be computed to the nearest  $\frac{1}{4}$  cent.

(C) For each school year, the total commodity assistance or cash in lieu thereof available to a State for the school lunch program shall be calculated by multiplying the number of lunches served in the preceding school year by the rate established by subparagraph (B). After the end of each school year, the Secretary shall reconcile the number of lunches served by schools in each State with the number of lunches served by schools in each State during the preceding school year and increase or reduce subsequent commodity assistance or cash in lieu thereof provided to each State based on such reconciliation.

(D) Among those commodities delivered under this section, the Secretary shall give special emphasis to high protein foods, meat,

and meat alternates (which may include domestic seafood commodities and their products).

(E) Notwithstanding any other provision of this section, not less than 75 percent of the assistance provided under this subsection shall be in the form of donated foods for the school lunch program.

(2) To the maximum extent feasible, each State agency shall offer to each school food authority under its jurisdiction that participates in the school lunch program and receives commodities, agricultural commodities and their products, the per meal value of which is not less than the national average value of donated foods established under paragraph (1). Each such offer shall include the full range of such commodities and products that are available from the Secretary to the extent that quantities requested are sufficient to allow efficient delivery to and within the State.

(d) Beginning with the school year ending June 30, 1981, the Secretary shall not offer commodity assistance based upon the number of breakfasts served to children under section 4 of the Child Nutrition Act of 1966 [(42 U.S.C. 1773)].

(e)(1) Subject to paragraph (2), in each school year the Secretary shall ensure that not less than 12 percent of the assistance provided under section 4, this section, and section 11 shall be in the form of—

(A) commodity assistance provided under this section, including cash in lieu of commodities and administrative costs for procurement of commodities under this section; or

(B) during the period beginning October 1, 2003, and ending September 30, 2018, commodities provided by the Secretary under any provision of law.

(2) If amounts available to carry out the requirements of the sections described in paragraph (1) are insufficient to meet the requirement contained in paragraph (1) for a school year, the Secretary shall, to the extent necessary, use the authority provided under section 14(a) to meet the requirement for the school year.

(f) PILOT PROJECT FOR PROCUREMENT OF UNPROCESSED FRUITS AND VEGETABLES.—

(1) IN GENERAL.—The Secretary shall conduct a pilot project under which the Secretary shall facilitate the procurement of unprocessed fruits and vegetables in not more than 8 States receiving funds under this Act.

(2) PURPOSE.—The purpose of the pilot project required by this subsection is to provide selected States flexibility for the procurement of unprocessed fruits and vegetables by permitting each State—

(A) to utilize multiple suppliers and products established and qualified by the Secretary; and

(B) to allow geographic preference, if desired, in the procurement of the products under the pilot project.

(3) SELECTION AND PARTICIPATION.—

(A) IN GENERAL.—The Secretary shall select States for participation in the pilot project in accordance with criteria established by the Secretary and terms and conditions established for participation.



- (B) REQUIREMENT.—The Secretary shall ensure that at least 1 project is located in a State in each of—
- (i) the Pacific Northwest Region;
  - (ii) the Northeast Region;
  - (iii) the Western Region;
  - (iv) the Midwest Region; and
  - (v) the Southern Region.
- (4) PRIORITY.—In selecting States for participation in the pilot project, the Secretary shall prioritize applications based on—
- (A) the quantity and variety of growers of local fruits and vegetables in the States on a per capita basis;
  - (B) the demonstrated commitment of the States to farm-to-school efforts, as evidenced by prior efforts to increase and promote farm-to-school programs in the States; and
  - (C) whether the States contain a sufficient quantity of local educational agencies, various population sizes, and geographical locations.
- (5) RECORDKEEPING AND REPORTING REQUIREMENTS.—
- (A) RECORDKEEPING REQUIREMENT.—States selected to participate in the pilot project, and participating school food authorities within those States, shall keep records of the fruits and vegetables received under the pilot project in such manner and form as requested by the Secretary.
  - (B) REPORTING REQUIREMENT.—Each participating State shall submit to the Secretary a report on the success of the pilot project in the State, including information on—
    - (i) the quantity and cost of each type of fruit and vegetable received by the State under the pilot project; and
    - (ii) the benefit provided by those procurements in conducting school food service in the State, including meeting school meal requirements.

## PAYMENTS TO STATES

SEC. 7. [42 U.S.C. 1756] (a)(1) Funds appropriated to carry out section 4 of this Act during any fiscal year shall be available for payment to the States for disbursement by State educational agencies in accordance with such agreements, not inconsistent with the provisions of this Act, as may be entered into by the Secretary and such State educational agencies for the purpose of assisting schools within the States in obtaining agricultural commodities and other foods for consumption by children in furtherance of the school lunch program authorized under this Act. For any school year, such payments shall be made to a State only if, during such school year, the amount of the State revenues (excluding State revenues derived from the operation of the program) appropriated or used specifically for program purposes (other than any State revenues expended for salaries and administrative expenses of the program at the State level) is not less than 30 percent of the funds made available to such State under section 4 of this Act for the school year beginning July 1, 1980.

(2) If, for any school year, the per capita income of a State is less than the average per capita income of all the States, the amount required to be expended by a State under paragraph (1) for such year shall be an amount bearing the same ratio to the amount equal to 30 percent of the funds made available to such State under section 4 of this Act for the school year beginning July 1, 1980, as the per capita income of such State bears to the average per capita income of all the States.

(b) The State revenues provided by any State to meet the requirement of subsection (a) shall, to the extent the State deems practicable, be disbursed to schools participating in the school lunch program under this Act. No State in which the State educational agency is prohibited by law from disbursing State appropriated funds to private schools shall be required to match Federal funds made available for meals served in such schools, or to disburse, to such schools, any of the State revenues required to meet the requirements of subsection (a).

(c) The Secretary shall certify to the Secretary of the Treasury, from time to time, the amounts to be paid to any State under this section and shall specify when such payments are to be made. The Secretary of the Treasury shall pay to the State, at the time or times fixed by the Secretary, the amounts so certified.

(d) Notwithstanding any other provision of law, the Secretary may enter into an agreement with a State agency, acting on the request of a school food service authority, under which funds payable to the State under section 4 or 11 may be used by the Secretary for the purpose of purchasing commodities for use by the school food service authority in meals served under the school lunch program under this Act.

#### STATE DISBURSEMENT TO SCHOOLS

SEC. 8. [42 U.S.C. 1757] (a) Funds paid to any State during any fiscal year pursuant to section 4 shall be disbursed by the State educational agency, in accordance with such agreements approved by the Secretary as may be entered into by such State agency and the schools in the State, to those schools in the State which the State educational agency, taking into account need and attendance, determines are eligible to participate in the school lunch program.

(b) The agreements described in subsection (a) shall be permanent agreements that may be amended as necessary.

(c) The State educational agency may suspend or terminate any such agreement in accordance with regulations prescribed by the Secretary.

(d) Use of funds paid to States may include, in addition to the purchase price of agricultural commodities and other foods, the cost of processing, distributing, transporting, storing, or handling thereof.

(e) In no event shall such disbursement for food to any school for any fiscal year exceed an amount determined by multiplying the number of lunches served in the school in the school lunch program under this Act during such year by the maximum per meal reimbursement rate for the State, for the type of lunch served, as prescribed by the Secretary.

(f) In any fiscal year in which the national average payment per lunch determined under section 4 is increased above the amount prescribed in the previous fiscal year, the maximum per meal reimbursement rate for the type of lunch served, shall be increased by a like amount.

(g) Lunch assistance disbursements to schools under this section and under section 11 of this Act may be made in advance or by way of reimbursement in accordance with procedures prescribed by the Secretary.

#### NUTRITIONAL AND OTHER PROGRAM REQUIREMENTS

SEC. 9. [42 U.S.C. 1758] (a)(1)(A) Lunches served by schools participating in the school lunch program under this Act shall meet minimum nutritional requirements prescribed by the Secretary on the basis of tested nutritional research, except that the minimum nutritional requirements—

(i) shall not be construed to prohibit the substitution of foods to accommodate the medical or other special dietary needs of individual students; and

(ii) shall, at a minimum, be based on the weekly average of the nutrient content of school lunches.

(B) The Secretary shall provide technical assistance and training, including technical assistance and training in the preparation of lower-fat versions of foods commonly used in the school lunch program under this Act, to schools participating in the school lunch program to assist the schools in complying with the nutritional requirements prescribed by the Secretary pursuant to subparagraph (A) and in providing appropriate meals to children with medically certified special dietary needs. The Secretary shall provide additional technical assistance to schools that are having difficulty maintaining compliance with the requirements.

#### (2) FLUID MILK.—

(A) IN GENERAL.—Lunches served by schools participating in the school lunch program under this Act—

(i) shall offer students a variety of fluid milk. Such milk shall be consistent with the most recent Dietary Guidelines for Americans published under section 301 of the National Nutrition Monitoring and Related Research Act of 1990 (7 U.S.C. 5341);

(ii) may offer students flavored and unflavored fluid milk and lactose-free fluid milk; and

(iii) shall provide a substitute for fluid milk for students whose disability restricts their diet, on receipt of a written statement from a licensed physician that identifies the disability that restricts the student's diet and that specifies the substitute for fluid milk.

#### (B) SUBSTITUTES.—

(i) STANDARDS FOR SUBSTITUTION.—A school may substitute for the fluid milk provided under subparagraph (A), a nondairy beverage that is nutritionally equivalent to fluid milk and meets nutritional standards established by the Secretary (which shall, among other requirements to be determined by the Secretary,

include fortification of calcium, protein, vitamin A, and vitamin D to levels found in cow's milk) for students who cannot consume fluid milk because of a medical or other special dietary need other than a disability described in subparagraph (A)(iii).

(ii) NOTICE.—The substitutions may be made if the school notifies the State agency that the school is implementing a variation allowed under this subparagraph, and if the substitution is requested by written statement of a medical authority or by a student's parent or legal guardian that identifies the medical or other special dietary need that restricts the student's diet, except that the school shall not be required to provide beverages other than beverages the school has identified as acceptable substitutes.

(iii) EXCESS EXPENSES BORNE BY SCHOOL FOOD AUTHORITY.—Expenses incurred in providing substitutions under this subparagraph that are in excess of expenses covered by reimbursements under this Act shall be paid by the school food authority.

(C) RESTRICTIONS ON SALE OF MILK PROHIBITED.—A school that participates in the school lunch program under this Act shall not directly or indirectly restrict the sale or marketing of fluid milk products by the school (or by a person approved by the school) at any time or any place—

- (i) on the school premises; or
- (ii) at any school-sponsored event.

(3) Students in senior high schools that participate in the school lunch program under this Act (and, when approved by the local school district or nonprofit private schools, students in any other grade level) shall not be required to accept offered foods they do not intend to consume, and any such failure to accept offered foods shall not affect the full charge to the student for a lunch meeting the requirements of this subsection or the amount of payments made under this Act to any such school for such lunch.

(4) PROVISION OF INFORMATION.—

(A) GUIDANCE.—Prior to the beginning of the school year beginning July 2004, the Secretary shall issue guidance to States and school food authorities to increase the consumption of foods and food ingredients that are recommended for increased serving consumption in the most recent Dietary Guidelines for Americans published under section 301 of the National Nutrition Monitoring and Related Research Act of 1990 (7 U.S.C. 5341).

(B) RULES.—Not later than 2 years after the date of enactment of this paragraph, the Secretary shall promulgate rules, based on the most recent Dietary Guidelines for Americans, that reflect specific recommendations, expressed in serving recommendations, for increased consumption of foods and food ingredients offered in school nutrition programs under this Act and the Child Nutrition Act of 1966 (42 U.S.C. 1771 et seq.).

(C) PROCUREMENT AND PROCESSING OF FOOD SERVICE PRODUCTS AND COMMODITIES.—The Secretary shall—

(i) identify, develop, and disseminate to State departments of agriculture and education, school food authorities, local educational agencies, and local processing entities, model product specifications and practices for foods offered in school nutrition programs under this Act and the Child Nutrition Act of 1966 (42 U.S.C. 1771 et seq.) to ensure that the foods reflect the most recent Dietary Guidelines for Americans published under section 301 of the National Nutrition Monitoring and Related Research Act of 1990 (7 U.S.C. 5341);

(ii) not later than 1 year after the date of enactment of this subparagraph—

(I) carry out a study to analyze the quantity and quality of nutritional information available to school food authorities about food service products and commodities; and

(II) submit to Congress a report on the results of the study that contains such legislative recommendations as the Secretary considers necessary to ensure that school food authorities have access to the nutritional information needed for menu planning and compliance assessments; and

(iii) to the maximum extent practicable, in purchasing and processing commodities for use in school nutrition programs under this Act and the Child Nutrition Act of 1966 (42 U.S.C. 1771 et seq.), purchase the widest variety of healthful foods that reflect the most recent Dietary Guidelines for Americans.

(5) WATER.—Schools participating in the school lunch program under this Act shall make available to children free of charge, as nutritionally appropriate, potable water for consumption in the place where meals are served during meal service.

(b)(1)(A) Not later than June 1 of each fiscal year, the Secretary shall prescribe income guidelines for determining eligibility for free and reduced price lunches during the 12-month period beginning July 1 of such fiscal year and ending June 30 of the following fiscal year. The income guidelines for determining eligibility for free lunches shall be 130 percent of the applicable family size income levels contained in the nonfarm income poverty guidelines prescribed by the Office of Management and Budget, as adjusted annually in accordance with subparagraph (B). The income guidelines for determining eligibility for reduced price lunches for any school year shall be 185 percent of the applicable family size income levels contained in the nonfarm income poverty guidelines prescribed by the Office of Management and Budget, as adjusted annually in accordance with subparagraph (B). The Office of Management and Budget guidelines shall be revised at annual intervals, or at any shorter interval deemed feasible and desirable.

(B) The revision required by subparagraph (A) of this paragraph shall be made by multiplying—

(i) the official poverty line (as defined by the Office of Management and Budget); by

(ii) the percentage change in the Consumer Price Index during the annual or other interval immediately preceding the time at which the adjustment is made.

Revisions under this subparagraph shall be made not more than 30 days after the date on which the consumer price index data required to compute the adjustment becomes available.

(2)(A) Following the determination by the Secretary under paragraph (1) of this subsection of the income eligibility guidelines for each school year, each State educational agency shall announce the income eligibility guidelines, by family size, to be used by schools in the State in making determinations of eligibility for free and reduced price lunches. Local school authorities shall, each year, publicly announce the income eligibility guidelines for free and reduced price lunches on or before the opening of school.

(B) APPLICATIONS AND DESCRIPTIVE MATERIAL.—

(i) IN GENERAL.—Applications for free and reduced price lunches, in such form as the Secretary may prescribe or approve, and any descriptive material, shall be distributed to the parents or guardians of children in attendance at the school, and shall contain only the family size income levels for reduced price meal eligibility with the explanation that households with incomes less than or equal to these values would be eligible for free or reduced price lunches.

(ii) INCOME ELIGIBILITY GUIDELINES.—Forms and descriptive material distributed in accordance with clause (i) may not contain the income eligibility guidelines for free lunches.

(iii) CONTENTS OF DESCRIPTIVE MATERIAL.—

(I) IN GENERAL.—Descriptive material distributed in accordance with clause (i) shall contain a notification that—

(aa) participants in the programs listed in subclause (II) may be eligible for free or reduced price meals; and

(bb) documentation may be requested for verification of eligibility for free or reduced price meals.

(II) PROGRAMS.—The programs referred to in subclause (I)(aa) are—

(aa) the special supplemental nutrition program for women, infants, and children established by section 17 of the Child Nutrition Act of 1966 (42 U.S.C. 1786);

(bb) the supplemental nutrition assistance program established under the Food and Nutrition Act of 2008 (7 U.S.C. 2011 et seq.);

(cc) the food distribution program on Indian reservations established under section 4(b) of the Food and Nutrition Act of 2008 (7 U.S.C. 2013(b)); and

(dd) a State program funded under the program of block grants to States for temporary assistance for needy families estab-

lished under part A of title IV of the Social Security Act (42 U.S.C. 601 et seq.).

(3) HOUSEHOLD APPLICATIONS.—

(A) DEFINITION OF HOUSEHOLD APPLICATION.—In this paragraph, the term “household application” means an application for a child of a household to receive free or reduced price school lunches under this Act, or free or reduced price school breakfasts under the Child Nutrition Act of 1966 (42 U.S.C. 1771 et seq.), for which an eligibility determination is made other than under paragraph (4) or (5).

(B) ELIGIBILITY DETERMINATION.—

(i) IN GENERAL.—An eligibility determination shall be made on the basis of a complete household application executed by an adult member of the household or in accordance with guidance issued by the Secretary.

(ii) ELECTRONIC SIGNATURES AND APPLICATIONS.—A household application may be executed using an electronic signature if—

(I) the application is submitted electronically; and

(II) the electronic application filing system meets confidentiality standards established by the Secretary.

(C) CHILDREN IN HOUSEHOLD.—

(i) IN GENERAL.—The household application shall identify the names of each child in the household for whom meal benefits are requested.

(ii) SEPARATE APPLICATIONS.—A State educational agency or local educational agency may not request a separate application for each child in the household that attends schools under the same local educational agency.

(D) VERIFICATION OF SAMPLE.—

(i) DEFINITIONS.—In this subparagraph:

(I) ERROR PRONE APPLICATION.—The term “error prone application” means an approved household application that—

(aa) indicates monthly income that is within \$100, or an annual income that is within \$1,200, of the income eligibility limitation for free or reduced price meals; or

(bb) in lieu of the criteria established under item (aa), meets criteria established by the Secretary.

(II) NON-RESPONSE RATE.—The term “non-response rate” means (in accordance with guidelines established by the Secretary) the percentage of approved household applications for which verification information has not been obtained by a local educational agency after attempted verification under subparagraphs (F) and (G).

(ii) VERIFICATION OF SAMPLE.—Each school year, a local educational agency shall verify eligibility of the

children in a sample of household applications approved for the school year by the local educational agency, as determined by the Secretary in accordance with this subsection.

(iii) **SAMPLE SIZE.**—Except as otherwise provided in this paragraph, the sample for a local educational agency for a school year shall equal the lesser of—

(I) 3 percent of all applications approved by the local educational agency for the school year, as of October 1 of the school year, selected from error prone applications; or

(II) 3,000 error prone applications approved by the local educational agency for the school year, as of October 1 of the school year.

(iv) **ALTERNATIVE SAMPLE SIZE.**—

(I) **IN GENERAL.**—If the conditions described in subclause (IV) are met, the verification sample size for a local educational agency shall be the sample size described in subclause (II) or (III), as determined by the local educational agency.

(II) **3,000/3 PERCENT OPTION.**—The sample size described in this subclause shall be the lesser of 3,000, or 3 percent of, applications selected at random from applications approved by the local educational agency for the school year, as of October 1 of the school year.

(III) **1,000/1 PERCENT PLUS OPTION.**—

(aa) **IN GENERAL.**—The sample size described in this subclause shall be the sum of—

(AA) the lesser of 1,000, or 1 percent of, all applications approved by the local educational agency for the school year, as of October 1 of the school year, selected from error prone applications; and

(BB) the lesser of 500, or  $\frac{1}{2}$  of 1 percent of, applications approved by the local educational agency for the school year, as of October 1 of the school year, that provide a case number (in lieu of income information) showing participation in a program described in item (bb) selected from those approved applications that provide a case number (in lieu of income information) verifying the participation.

(bb) **PROGRAMS.**—The programs described in this item are—

(AA) the supplemental nutrition assistance program established under the Food and Nutrition Act of 2008 (7 U.S.C. 2011 et seq.);

(BB) the food distribution program on Indian reservations established under section 4(b) of the Food and Nutrition Act of 2008 (7 U.S.C. 2013(b)); and



(CC) a State program funded under the program of block grants to States for temporary assistance for needy families established under part A of title IV of the Social Security Act (42 U.S.C. 601 et seq.) that the Secretary determines complies with standards established by the Secretary that ensure that the standards under the State program are comparable to or more restrictive than those in effect on June 1, 1995.

(IV) CONDITIONS.—The conditions referred to in subclause (I) shall be met for a local educational agency for a school year if—

(aa) the nonresponse rate for the local educational agency for the preceding school year is less than 20 percent; or

(bb) the local educational agency has more than 20,000 children approved by application by the local educational agency as eligible for free or reduced price meals for the school year, as of October 1 of the school year, and—

(AA) the nonresponse rate for the preceding school year is at least 10 percent below the nonresponse rate for the second preceding school year; or

(BB) in the case of the school year beginning July 2005, the local educational agency attempts to verify all approved household applications selected for verification through use of public agency records from at least 2 of the programs or sources of information described in subparagraph (F)(i).

(v) ADDITIONAL SELECTED APPLICATIONS.—A sample for a local educational agency for a school year under clauses (iii) and (iv)(III)(AA) shall include the number of additional randomly selected approved household applications that are required to comply with the sample size requirements in those clauses.

(E) PRELIMINARY REVIEW.—

(i) REVIEW FOR ACCURACY.—

(I) IN GENERAL.—Prior to conducting any other verification activity for approved household applications selected for verification, the local educational agency shall ensure that the initial eligibility determination for each approved household application is reviewed for accuracy by an individual other than the individual making the initial eligibility determination, unless otherwise determined by the Secretary.

(II) WAIVER.—The requirements of subclause (I) shall be waived for a local educational agency

if the local educational agency is using a technology-based solution that demonstrates a high level of accuracy, to the satisfaction of the Secretary, in processing an initial eligibility determination in accordance with the income eligibility guidelines of the school lunch program.

(ii) **CORRECT ELIGIBILITY DETERMINATION.**—If the review indicates that the initial eligibility determination is correct, the local educational agency shall verify the approved household application.

(iii) **INCORRECT ELIGIBILITY DETERMINATION.**—If the review indicates that the initial eligibility determination is incorrect, the local educational agency shall (as determined by the Secretary)—

(I) correct the eligibility status of the household;

(II) notify the household of the change;

(III) in any case in which the review indicates that the household is not eligible for free or reduced-price meals, notify the household of the reason for the ineligibility and that the household may reapply with income documentation for free or reduced-price meals; and

(IV) in any case in which the review indicates that the household is eligible for free or reduced-price meals, verify the approved household application.

(F) **DIRECT VERIFICATION.**—

(i) **IN GENERAL.**—Subject to clauses (ii) and (iii), to verify eligibility for free or reduced price meals for approved household applications selected for verification, the local educational agency may (in accordance with criteria established by the Secretary) first obtain and use income and program participation information from a public agency administering—

(I) the supplemental nutrition assistance program established under the Food and Nutrition Act of 2008 (7 U.S.C. 2011 et seq.);

(II) the food distribution program on Indian reservations established under section 4(b) of the Food and Nutrition Act of 2008 (7 U.S.C. 2013(b));

(III) the temporary assistance for needy families program funded under part A of title IV of the Social Security Act (42 U.S.C. 601 et seq.);

(IV) the State medicaid program under title XIX of the Social Security Act (42 U.S.C. 1396 et seq.); or

(V) a similar income-tested program or other source of information, as determined by the Secretary.

(ii) **FREE MEALS.**—Public agency records that may be obtained and used under clause (i) to verify eligibility for free meals for approved household applications selected for verification shall include the most re-

cent available information (other than information reflecting program participation or income before the 180-day period ending on the date of application for free meals) that is relied on to administer—

(I) a program or source of information described in clause (i) (other than clause (i)(IV)); or

(II) the State plan for medical assistance under title XIX of the Social Security Act (42 U.S.C. 1396 et seq.) in—

(aa) a State in which the income eligibility limit applied under section 1902(l)(2)(C) of that Act (42 U.S.C. 1396a(l)(2)(C)) is not more than 133 percent of the official poverty line described in section 1902(l)(2)(A) of that Act (42 U.S.C. 1396a(l)(2)(A)); or

(bb) a State that otherwise identifies households that have income that is not more than 133 percent of the official poverty line described in section 1902(l)(2)(A) of that Act (42 U.S.C. 1396a(l)(2)(A)).

(iii) **REDUCED PRICE MEALS.**—Public agency records that may be obtained and used under clause (i) to verify eligibility for reduced price meals for approved household applications selected for verification shall include the most recent available information (other than information reflecting program participation or income before the 180-day period ending on the date of application for reduced price meals) that is relied on to administer—

(I) a program or source of information described in clause (i) (other than clause (i)(IV)); or

(II) the State plan for medical assistance under title XIX of the Social Security Act (42 U.S.C. 1396 et seq.) in—

(aa) a State in which the income eligibility limit applied under section 1902(l)(2)(C) of that Act (42 U.S.C. 1396a(l)(2)(C)) is not more than 185 percent of the official poverty line described in section 1902(l)(2)(A) of that Act (42 U.S.C. 1396a(l)(2)(A)); or

(bb) a State that otherwise identifies households that have income that is not more than 185 percent of the official poverty line described in section 1902(l)(2)(A) of that Act (42 U.S.C. 1396a(l)(2)(A)).

(iv) **EVALUATION.**—Not later than 3 years after the date of enactment of this subparagraph, the Secretary shall complete an evaluation of—

(I) the effectiveness of direct verification carried out under this subparagraph in decreasing the portion of the verification sample that must be verified under subparagraph (G) while ensuring that adequate verification information is obtained; and

(II) the feasibility of direct verification by State agencies and local educational agencies.

(v) EXPANDED USE OF DIRECT VERIFICATION.—If the Secretary determines that direct verification significantly decreases the portion of the verification sample that must be verified under subparagraph (G), while ensuring that adequate verification information is obtained, and can be conducted by most State agencies and local educational agencies, the Secretary may require a State agency or local educational agency to implement direct verification through 1 or more of the programs described in clause (i), as determined by the Secretary, unless the State agency or local educational agency demonstrates (under criteria established by the Secretary) that the State agency or local educational agency lacks the capacity to conduct, or is unable to implement, direct verification.

(G) HOUSEHOLD VERIFICATION.—

(i) IN GENERAL.—If an approved household application is not verified through the use of public agency records, a local educational agency shall provide to the household written notice that—

(I) the approved household application has been selected for verification; and

(II) the household is required to submit verification information to confirm eligibility for free or reduced price meals.

(ii) PHONE NUMBER.—The written notice in clause (i) shall include a toll-free phone number that parents and legal guardians in households selected for verification can call for assistance with the verification process.

(iii) FOLLOWUP ACTIVITIES.—If a household does not respond to a verification request, a local educational agency shall make at least 1 attempt to obtain the necessary verification from the household in accordance with guidelines and regulations promulgated by the Secretary.

(iv) CONTRACT AUTHORITY FOR SCHOOL FOOD AUTHORITIES.—A local educational agency may contract (under standards established by the Secretary) with a third party to assist the local educational agency in carrying out clause (iii).

(H) VERIFICATION DEADLINE.—

(i) GENERAL DEADLINE.—

(I) IN GENERAL.—Subject to subclause (II), not later than November 15 of each school year, a local educational agency shall complete the verification activities required for the school year (including followup activities).

(II) EXTENSION.—Under criteria established by the Secretary, a State may extend the deadline established under subclause (I) for a school year

for a local educational agency to December 15 of the school year.

(ii) **ELIGIBILITY CHANGES.**—Based on the verification activities, the local educational agency shall make appropriate modifications to the eligibility determinations made for household applications in accordance with criteria established by the Secretary.

(I) **LOCAL CONDITIONS.**—In the case of a natural disaster, civil disorder, strike, or other local condition (as determined by the Secretary), the Secretary may substitute alternatives for—

(i) the sample size and sample selection criteria established under subparagraph (D); and

(ii) the verification deadline established under subparagraph (H).

(J) **INDIVIDUAL REVIEW.**—In accordance with criteria established by the Secretary, the local educational agency may, on individual review—

(i) decline to verify no more than 5 percent of approved household applications selected under subparagraph (D); and

(ii) replace the approved household applications with other approved household applications to be verified.

(K) **FEASIBILITY STUDY.**—

(i) **IN GENERAL.**—The Secretary shall conduct a study of the feasibility of using computer technology (including data mining) to reduce—

(I) overcertification errors in the school lunch program under this Act;

(II) waste, fraud, and abuse in connection with this paragraph; and

(III) errors, waste, fraud, and abuse in other nutrition programs, as determined to be appropriate by the Secretary.

(ii) **REPORT.**—Not later than 180 days after the date of enactment of this paragraph, the Secretary shall submit to the Committee on Education and the Workforce of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate a report describing—

(I) the results of the feasibility study conducted under this subsection;

(II) how a computer system using technology described in clause (i) could be implemented;

(III) a plan for implementation; and

(IV) proposed legislation, if necessary, to implement the system.

(4) **DIRECT CERTIFICATION FOR CHILDREN IN SUPPLEMENTAL NUTRITION ASSISTANCE PROGRAM HOUSEHOLDS.**—

(A) **IN GENERAL.**—Subject to subparagraph (D), each State agency shall enter into an agreement with the State agency conducting eligibility determinations for the sup-

plemental nutrition assistance program established under the Food and Nutrition Act of 2008 (7 U.S.C. 2011 et seq.).

(B) PROCEDURES.—Subject to paragraph (6), the agreement shall establish procedures under which a child who is a member of a household receiving assistance under the supplemental nutrition assistance program shall be certified as eligible for free lunches under this Act and free breakfasts under the Child Nutrition Act of 1966 (42 U.S.C. 1771 et seq.), without further application.

(C) CERTIFICATION.—Subject to paragraph (6), under the agreement, the local educational agency conducting eligibility determinations for a school lunch program under this Act and a school breakfast program under the Child Nutrition Act of 1966 (42 U.S.C. 1771 et seq.) shall certify a child who is a member of a household receiving assistance under the supplemental nutrition assistance program as eligible for free lunches under this Act and free breakfasts under the Child Nutrition Act of 1966 (42 U.S.C. 1771 et seq.), without further application.

(D) APPLICABILITY.—This paragraph applies to—

(i) in the case of the school year beginning July 2006, a school district that had an enrollment of 25,000 students or more in the preceding school year;

(ii) in the case of the school year beginning July 2007, a school district that had an enrollment of 10,000 students or more in the preceding school year; and

(iii) in the case of the school year beginning July 2008 and each subsequent school year, each local educational agency.

(E) PERFORMANCE AWARDS.—

(i) IN GENERAL.—Effective for each of the school years beginning July 1, 2011, July 1, 2012, and July 1, 2013, the Secretary shall offer performance awards to States to encourage the States to ensure that all children eligible for direct certification under this paragraph are certified in accordance with this paragraph.

(ii) REQUIREMENTS.—For each school year described in clause (i), the Secretary shall—

(I) consider State data from the prior school year, including estimates contained in the report required under section 4301 of the Food, Conservation, and Energy Act of 2008 (42 U.S.C. 1758a); and

(II) make performance awards to not more than 15 States that demonstrate, as determined by the Secretary—

(aa) outstanding performance; and

(bb) substantial improvement.

(iii) USE OF FUNDS.—A State agency that receives a performance award under clause (i)—

(I) shall treat the funds as program income; and

(II) may transfer the funds to school food authorities for use in carrying out the program.

(iv) FUNDING.—

(I) IN GENERAL.—On October 1, 2011, and each subsequent October 1 through October 1, 2013, out of any funds in the Treasury not otherwise appropriated, the Secretary of the Treasury shall transfer to the Secretary—

(aa) \$2,000,000 to carry out clause

(ii)(II)(aa); and

(bb) \$2,000,000 to carry out clause

(ii)(II)(bb).

(II) RECEIPT AND ACCEPTANCE.—The Secretary shall be entitled to receive, shall accept, and shall use to carry out this clause the funds transferred under subclause (I), without further appropriation.

(v) PAYMENTS NOT SUBJECT TO JUDICIAL REVIEW.—A determination by the Secretary whether, and in what amount, to make a performance award under this subparagraph shall not be subject to administrative or judicial review.

(F) CONTINUOUS IMPROVEMENT PLANS.—

(i) DEFINITION OF REQUIRED PERCENTAGE.—In this subparagraph, the term “required percentage” means—

(I) for the school year beginning July 1, 2011, 80 percent;

(II) for the school year beginning July 1, 2012, 90 percent; and

(III) for the school year beginning July 1, 2013, and each school year thereafter, 95 percent.

(ii) REQUIREMENTS.—Each school year, the Secretary shall—

(I) identify, using data from the prior year, including estimates contained in the report required under section 4301 of the Food, Conservation, and Energy Act of 2008 (42 U.S.C. 1758a), States that directly certify less than the required percentage of the total number of children in the State who are eligible for direct certification under this paragraph;

(II) require the States identified under subclause (I) to implement a continuous improvement plan to fully meet the requirements of this paragraph, which shall include a plan to improve direct certification for the following school year; and

(III) assist the States identified under subclause (I) to develop and implement a continuous improvement plan in accordance with subclause (II).

(iii) FAILURE TO MEET PERFORMANCE STANDARD.—

(I) IN GENERAL.—A State that is required to develop and implement a continuous improvement

plan under clause (ii)(II) shall be required to submit the continuous improvement plan to the Secretary, for the approval of the Secretary.

(II) REQUIREMENTS.—At a minimum, a continuous improvement plan under subclause (I) shall include—

(aa) specific measures that the State will use to identify more children who are eligible for direct certification, including improvements or modifications to technology, information systems, or databases;

(bb) a timeline for the State to implement those measures; and

(cc) goals for the State to improve direct certification results.

(G) WITHOUT FURTHER APPLICATION.—

(i) IN GENERAL.—In this paragraph, the term “without further application” means that no action is required by the household of the child.

(ii) CLARIFICATION.—A requirement that a household return a letter notifying the household of eligibility for direct certification or eligibility for free school meals does not meet the requirements of clause (i).

(5)<sup>3</sup> DISCRETIONARY CERTIFICATION.—Subject to paragraph (6), any local educational agency may certify any child as eligible for free lunches or breakfasts, without further application, by directly communicating with the appropriate State or local agency to obtain documentation of the status of the child as—

(A) a member of a family that is receiving assistance under the temporary assistance for needy families program funded under part A of title IV of the Social Security Act (42 U.S.C. 601 et seq.) that the Secretary determines complies with standards established by the Secretary that ensure that the standards under the State program are comparable to or more restrictive than those in effect on June 1, 1995;

(B) a homeless child or youth (defined as 1 of the individuals described in section 725(2) of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11434a(2));<sup>4</sup>

(C) served by the runaway and homeless youth grant program established under the Runaway and Homeless Youth Act (42 U.S.C. 5701 et seq.);

(D) a migratory child (as defined in section 1309 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 6399)); or

(E)(i) a foster child whose care and placement is the responsibility of an agency that administers a State plan under part B or E of title IV of the Social Security Act (42 U.S.C. 621 et seq.); or

<sup>3</sup>Effective July 1, 2005, paragraphs (5) through (8) added by section 104(b)(1) of P.L. 108–265, 118 Stat. 734, June 30, 2004. End quotation marks and the following period at the end of paragraph (5)(A) were struck to effectuate the probable intent of Congress.

<sup>4</sup>So in original. Probably should be an additional closed parenthesis.



(ii) a foster child who a court has placed with a caretaker household.

(6) USE OR DISCLOSURE OF INFORMATION.—

(A) IN GENERAL.—The use or disclosure of any information obtained from an application for free or reduced price meals, or from a State or local agency referred to in paragraph (3)(F), (4), or (5), shall be limited to—

(i) a person directly connected with the administration or enforcement of this Act or the Child Nutrition Act of 1966 (42 U.S.C. 1771 et seq.) (including a regulation promulgated under either Act);

(ii) a person directly connected with the administration or enforcement of—

(I) a Federal education program;

(II) a State health or education program administered by the State or local educational agency (other than a program carried out under title XIX or XXI of the Social Security Act (42 U.S.C. 1396 et seq.; 42 U.S.C. 1397aa et seq.)); or

(III) a Federal, State, or local means-tested nutrition program with eligibility standards comparable to the school lunch program under this Act;

(iii)(I) the Comptroller General of the United States for audit and examination authorized by any other provision of law; and

(II) notwithstanding any other provision of law, a Federal, State, or local law enforcement official for the purpose of investigating an alleged violation of any program covered by this paragraph or paragraph (3)(F), (4), or (5);

(iv) a person directly connected with the administration of the State medicaid program under title XIX of the Social Security Act (42 U.S.C. 1396 et seq.) or the State children's health insurance program under title XXI of that Act (42 U.S.C. 1397aa et seq.) solely for the purposes of—

(I) identifying children eligible for benefits under, and enrolling children in, those programs, except that this subclause shall apply only to the extent that the State and the local educational agency or school food authority so elect; and

(II) verifying the eligibility of children for programs under this Act or the Child Nutrition Act of 1966 (42 U.S.C. 1771 et seq.); and

(v) a third party contractor described in paragraph (3)(G)(iv).

(B) LIMITATION ON INFORMATION PROVIDED.—Information provided under clause (ii) or (v) of subparagraph (A) shall be limited to the income eligibility status of the child for whom application for free or reduced price meal benefits is made or for whom eligibility information is provided under paragraph (3)(F), (4), or (5), unless the consent of

the parent or guardian of the child for whom application for benefits was made is obtained.

(C) **CRIMINAL PENALTY.**—A person described in subparagraph (A) who publishes, divulges, discloses, or makes known in any manner, or to any extent not authorized by Federal law (including a regulation), any information obtained under this subsection shall be fined not more than \$1,000 or imprisoned not more than 1 year, or both.

(D) **REQUIREMENTS FOR WAIVER OF CONFIDENTIALITY.**—A State that elects to exercise the option described in subparagraph (A)(iv)(I) shall ensure that any local educational agency or school food authority acting in accordance with that option—

(i) has a written agreement with 1 or more State or local agencies administering health programs for children under titles XIX and XXI of the Social Security Act (42 U.S.C. 1396 et seq. and 1397aa et seq.) that requires the health agencies to use the information obtained under subparagraph (A) to seek to enroll children in those health programs; and

(ii)(I) notifies each household, the information of which shall be disclosed under subparagraph (A), that the information disclosed will be used only to enroll children in health programs referred to in subparagraph (A)(iv); and

(II) provides each parent or guardian of a child in the household with an opportunity to elect not to have the information disclosed.

(E) **USE OF DISCLOSED INFORMATION.**—A person to which information is disclosed under subparagraph (A)(iv)(I) shall use or disclose the information only as necessary for the purpose of enrolling children in health programs referred to in subparagraph (A)(iv).

(7) **FREE AND REDUCED PRICE POLICY STATEMENT.**—

(A) **IN GENERAL.**—After the initial submission, a local educational agency shall not be required to submit a free and reduced price policy statement to a State educational agency under this Act unless there is a substantive change in the free and reduced price policy of the local educational agency.

(B) **ROUTINE CHANGE.**—A routine change in the policy of a local educational agency (such as an annual adjustment of the income eligibility guidelines for free and reduced price meals) shall not be sufficient cause for requiring the local educational agency to submit a policy statement.

(8) **COMMUNICATIONS.**—

(A) **IN GENERAL.**—Any communication with a household under this subsection or subsection (d) shall be in an understandable and uniform format and, to the maximum extent practicable, in a language that parents and legal guardians can understand.

(B) **ELECTRONIC AVAILABILITY.**—In addition to the distribution of applications and descriptive material in paper

form as provided for in this paragraph, the applications and material may be made available electronically via the Internet.

(9) ELIGIBILITY FOR FREE AND REDUCED PRICE LUNCHES.—

(A) FREE LUNCHES.—Any child who is a member of a household whose income, at the time the application is submitted, is at an annual rate which does not exceed the applicable family size income level of the income eligibility guidelines for free lunches, as determined under paragraph (1), shall be served a free lunch.

(B) REDUCED PRICE LUNCHES.—

(i) IN GENERAL.—Any child who is a member of a household whose income, at the time the application is submitted, is at an annual rate greater than the applicable family size income level of the income eligibility guidelines for free lunches, as determined under paragraph (1), but less than or equal to the applicable family size income level of the income eligibility guidelines for reduced price lunches, as determined under paragraph (1), shall be served a reduced price lunch.

(ii) MAXIMUM PRICE.—The price charged for a reduced price lunch shall not exceed 40 cents.

(C) DURATION.—Except as otherwise specified in paragraph (3)(E), (3)(H)(ii), and section 11(a), eligibility for free or reduced price meals for any school year shall remain in effect—

(i) beginning on the date of eligibility approval for the current school year; and

(ii) ending on a date during the subsequent school year determined by the Secretary.

(10) No physical segregation of or other discrimination against any child eligible for a free lunch or a reduced price lunch under this subsection shall be made by the school nor shall there be any overt identification of any child by special tokens or tickets, announced or published list of names, or by other means.

(11) Any child who has a parent or guardian who (A) is responsible for the principal support of such child and (B) is unemployed shall be served a free or reduced price lunch, respectively, during any period (i) in which such child's parent or guardian continues to be unemployed and (ii) the income of the child's parents or guardians during such period of unemployment falls within the income eligibility criteria for free lunches or reduced price lunches, respectively, based on the current rate of income of such parents or guardians. Local educational agencies shall publicly announce that such children are eligible for free or reduced price lunch, and shall make determinations with respect to the status of any parent or guardian of any child under clauses (A) and (B) of the preceding sentence on the basis of a statement executed in such form as the Secretary may prescribe by such parent or guardian. No physical segregation of, or other discrimination against, any child eligible for a free or reduced price lunch under this paragraph shall be made by the school nor shall there be any overt identification of any such child by special tokens or tickets, announced or published lists of names, or by any other means.

(12)(A) A child shall be considered automatically eligible for a free lunch and breakfast under this Act and the Child Nutrition Act of 1966 (42 U.S.C. 1771 et seq.), respectively, without further application or eligibility determination, if the child is—

(i) a member of a household receiving assistance under the supplemental nutrition assistance program authorized under the Food and Nutrition Act of 2008 (7 U.S.C. 2011 et seq.);

(ii) a member of a family (under the State program funded under part A of title IV of the Social Security Act (42 U.S.C. 601 et seq.)) that the Secretary determines complies with standards established by the Secretary that ensure that the standards under the State program are comparable to or more restrictive than those in effect on June 1, 1995;

(iii) enrolled as a participant in a Head Start program authorized under the Head Start Act (42 U.S.C. 9831 et seq.), on the basis of a determination that the child meets the eligibility criteria prescribed under section 645(a)(1)(B) of the Head Start Act (42 U.S.C. 9840(a)(1)(B));

(iv) a homeless child or youth (defined as 1 of the individuals described in section 725(2) of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11434a(2)));

(v) served by the runaway and homeless youth grant program established under the Runaway and Homeless Youth Act (42 U.S.C. 5701 et seq.);

(vi) a migratory child (as defined in section 1309 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 6399)); or

(vii)(I) a foster child whose care and placement is the responsibility of an agency that administers a State plan under part B or E of title IV of the Social Security Act (42 U.S.C. 621 et seq.); or

(II) a foster child who a court has placed with a caretaker household.

(B) Proof of receipt of supplemental nutrition assistance program benefits or assistance under the State program funded under part A of title IV of the Social Security Act (42 U.S.C. 601 et seq.) that the Secretary determines complies with standards established by the Secretary that ensure that the standards under the State program are comparable to or more restrictive than those in effect on June 1, 1995, or of enrollment or participation in a Head Start program on the basis described in subparagraph (A)(iii), shall be sufficient to satisfy any verification requirement imposed under this subsection.

(13) EXCLUSION OF CERTAIN MILITARY HOUSING ALLOWANCES.—The amount of a basic allowance provided under section 403 of title 37, United States Code, on behalf of a member of a uniformed service for housing that is acquired or constructed under subchapter IV of chapter 169 of title 10, United States Code, or any related provision of law, shall not be considered to be income for the purpose of determining the eligibility of a child who is a member of the household of the member of a uniformed service for free or reduced price lunches under this Act.

(14) COMBAT PAY.—

(A) DEFINITION OF COMBAT PAY.—In this paragraph, the term “combat pay” means any additional payment under chapter 5 of title 37, United States Code, or otherwise designated by the Secretary to be appropriate for exclusion under this paragraph, that is received by or from a member of the United States Armed Forces deployed to a designated combat zone, if the additional pay—

(i) is the result of deployment to or service in a combat zone; and

(ii) was not received immediately prior to serving in a combat zone.

(B) EXCLUSION.—Combat pay shall not be considered to be income for the purpose of determining the eligibility for free or reduced price meals of a child who is a member of the household of a member of the United States Armed Forces.

(15) DIRECT CERTIFICATION FOR CHILDREN RECEIVING MEDICAID BENEFITS.—

(A) DEFINITIONS.—In this paragraph:

(i) ELIGIBLE CHILD.—The term “eligible child” means a child—

(I)(aa) who is eligible for and receiving medical assistance under the Medicaid program; and

(bb) who is a member of a family with an income as measured by the Medicaid program before the application of any expense, block, or other income disregard, that does not exceed 133 percent of the poverty line (as defined in section 673(2) of the Community Services Block Grant Act (42 U.S.C. 9902(2), including any revision required by such section)) applicable to a family of the size used for purposes of determining eligibility for the Medicaid program; or

(II) who is a member of a household (as that term is defined in section 245.2 of title 7, Code of Federal Regulations (or successor regulations) with a child described in subclause (I).

(ii) MEDICAID PROGRAM.—The term “Medicaid program” means the program of medical assistance established under title XIX of the Social Security Act (42 U.S.C. 1396 et seq.).

(B) DEMONSTRATION PROJECT.—

(i) IN GENERAL.—The Secretary, acting through the Administrator of the Food and Nutrition Service and in cooperation with selected State agencies, shall conduct a demonstration project in selected local educational agencies to determine whether direct certification of eligible children is an effective method of certifying children for free lunches and breakfasts under section 9(b)(1)(A) of this Act and section 4(e)(1)(A) of the Child Nutrition Act of 1966 (42 U.S.C. 1773(e)(1)(A)).

(ii) SCOPE OF PROJECT.—The Secretary shall carry out the demonstration project under this subparagraph—

(I) for the school year beginning July 1, 2012, in selected local educational agencies that collectively serve 2.5 percent of students certified for free and reduced price meals nationwide, based on the most recent available data;

(II) for the school year beginning July 1, 2013, in selected local educational agencies that collectively serve 5 percent of students certified for free and reduced price meals nationwide, based on the most recent available data; and

(III) for the school year beginning July 1, 2014, and each subsequent school year, in selected local educational agencies that collectively serve 10 percent of students certified for free and reduced price meals nationwide, based on the most recent available data.

(iii) PURPOSES OF THE PROJECT.—At a minimum, the purposes of the demonstration project shall be—

(I) to determine the potential of direct certification with the Medicaid program to reach children who are eligible for free meals but not certified to receive the meals;

(II) to determine the potential of direct certification with the Medicaid program to directly certify children who are enrolled for free meals based on a household application; and

(III) to provide an estimate of the effect on Federal costs and on participation in the school lunch program under this Act and the school breakfast program established by section 4 of the Child Nutrition Act of 1966 (42 U.S.C. 1773) of direct certification with the Medicaid program.

(iv) COST ESTIMATE.—For each of 2 school years of the demonstration project, the Secretary shall estimate the cost of the direct certification of eligible children for free school meals through data derived from—

(I) the school meal programs authorized under this Act and the Child Nutrition Act of 1966 (42 U.S.C. 1771 et seq.);

(II) the Medicaid program; and

(III) interviews with a statistically representative sample of households.

(C) AGREEMENT.—

(i) IN GENERAL.—Not later than July 1 of the first school year during which a State agency will participate in the demonstration project, the State agency shall enter into an agreement with the 1 or more State agencies conducting eligibility determinations for the Medicaid program.

(ii) WITHOUT FURTHER APPLICATION.—Subject to paragraph (6), the agreement described in subpara-

graph (D) shall establish procedures under which an eligible child shall be certified for free lunches under this Act and free breakfasts under section 4 of the Child Nutrition Act of 1966 (42 U.S.C. 1773), without further application (as defined in paragraph (4)(G)).

(D) CERTIFICATION.—For the school year beginning on July 1, 2012, and each subsequent school year, subject to paragraph (6), the local educational agencies participating in the demonstration project shall certify an eligible child as eligible for free lunches under this Act and free breakfasts under the Child Nutrition Act of 1966 (42 U.S.C. 1771 et seq.), without further application (as defined in paragraph (4)(G)).

(E) SITE SELECTION.—

(i) IN GENERAL.—To be eligible to participate in the demonstration project under this subsection, a State agency shall submit to the Secretary an application at such time, in such manner, and containing such information as the Secretary may require.

(ii) CONSIDERATIONS.—In selecting States and local educational agencies for participation in the demonstration project, the Secretary may take into consideration such factors as the Secretary considers to be appropriate, which may include—

(I) the rate of direct certification;

(II) the share of individuals who are eligible for benefits under the supplemental nutrition assistance program established under the Food and Nutrition Act of 2008 (7 U.S.C. 2011 et seq.) who participate in the program, as determined by the Secretary;

(III) the income eligibility limit for the Medicaid program;

(IV) the feasibility of matching data between local educational agencies and the Medicaid program;

(V) the socioeconomic profile of the State or local educational agencies; and

(VI) the willingness of the State and local educational agencies to comply with the requirements of the demonstration project.

(F) ACCESS TO DATA.—For purposes of conducting the demonstration project under this paragraph, the Secretary shall have access to—

(i) educational and other records of State and local educational and other agencies and institutions receiving funding or providing benefits for 1 or more programs authorized under this Act or the Child Nutrition Act of 1966 (42 U.S.C. 1771 et seq.); and

(ii) income and program participation information from public agencies administering the Medicaid program.

(G) REPORT TO CONGRESS.—

(i) IN GENERAL.—Not later than October 1, 2014, the Secretary shall submit to the Committee on Education and Labor of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate, an interim report that describes the results of the demonstration project required under this paragraph.

(ii) FINAL REPORT.—Not later than October 1, 2015, the Secretary shall submit a final report to the committees described in clause (i).

(H) FUNDING.—

(i) IN GENERAL.—On October 1, 2010, out of any funds in the Treasury not otherwise appropriated, the Secretary of the Treasury shall transfer to the Secretary to carry out subparagraph (G) \$5,000,000, to remain available until expended.

(ii) RECEIPT AND ACCEPTANCE.—The Secretary shall be entitled to receive, shall accept, and shall use to carry out subparagraph (G) the funds transferred under clause (i), without further appropriation.

(c) School lunch programs under this Act shall be operated on a nonprofit basis. Commodities purchased under the authority of section 32 of the Act of August 24, 1935, [(7 U.S.C. 612c)] may be donated by the Secretary to schools, in accordance with the needs as determined by local school authorities, for utilization in the school lunch program under this Act as well as to other schools carrying out nonprofit school lunch programs and institutions authorized to receive such commodities. The requirements of this section relating to the service of meals without cost or at a reduced cost shall apply to the lunch program of any school utilizing commodities donated under any provision of law.

(d)(1) The Secretary shall require as a condition of eligibility for receipt of free or reduced price lunches that the member of the household who executes the application furnish the last 4 digits of the social security account number of the parent or guardian who is the primary wage earner responsible for the care of the child for whom the application is made, or that of another appropriate adult member of the child's household, as determined by the Secretary.

(2) No member of a household may be provided a free or reduced price lunch under this Act unless—

(A) appropriate documentation relating to the income of such household (as prescribed by the Secretary) has been provided to the appropriate local educational agency so that the local educational agency may calculate the total income of such household;

(B) documentation showing that the household is participating in the supplemental nutrition assistance program under the Food and Nutrition Act of 2008 [(7 U.S.C. 2011 et seq.)] has been provided to the appropriate local educational agency;

(C) documentation has been provided to the appropriate local educational agency showing that the family is receiving assistance under the State program funded under part A of title IV of the Social Security Act that the Secretary determines complies with standards established by the Secretary



that ensure that the standards under the State program are comparable to or more restrictive than those in effect on June 1, 1995;

(D) documentation has been provided to the appropriate local educational agency showing that the child meets the criteria specified in clauses (iv) or (v) of subsection (b)(12)(A);

(E) documentation has been provided to the appropriate local educational agency showing the status of the child as a migratory child (as defined in section 1309 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 6399));

(F)(i) documentation has been provided to the appropriate local educational agency showing the status of the child as a foster child whose care and placement is the responsibility of an agency that administers a State plan under part B or E of title IV of the Social Security Act (42 U.S.C. 621 et seq.); or

(ii) documentation has been provided to the appropriate local educational agency showing the status of the child as a foster child who a court has placed with a caretaker household; or

(G) documentation has been provided to the appropriate local educational agency showing the status of the child as an eligible child (as defined in subsection (b)(15)(A)).

(e) A school or school food authority participating in a program under this Act may not contract with a food service company to provide a la carte food service unless the company agrees to offer free, reduced price, and full-price reimbursable meals to all eligible children.

(f) NUTRITIONAL REQUIREMENTS.—

(1) IN GENERAL.—Schools that are participating in the school lunch program or school breakfast program shall serve lunches and breakfasts that—

(A) are consistent with the goals of the most recent Dietary Guidelines for Americans published under section 301 of the National Nutrition Monitoring and Related Research Act of 1990 (7 U.S.C. 5341); and

(B) consider the nutrient needs of children who may be at risk for inadequate food intake and food insecurity.

(2) To assist schools in meeting the requirements of this subsection, the Secretary—

(A) shall—

(i) develop, and provide to schools, standardized recipes, menu cycles, and food product specification and preparation techniques; and

(ii) provide to schools information regarding nutrient standard menu planning, assisted nutrient standard menu planning, and food-based menu systems; and

(B) may provide to schools information regarding other approaches, as determined by the Secretary.

(3) USE OF ANY REASONABLE APPROACH.—

(A) IN GENERAL.—A school food service authority may use any reasonable approach, within guidelines established by the

Secretary in a timely manner, to meet the requirements of this subsection, including—

(i) using the school nutrition meal pattern in effect for the 1994–1995 school year; and

(ii) using any of the approaches described in paragraph (3).

(B) NUTRIENT ANALYSIS.—The Secretary may not require a school to conduct or use a nutrient analysis to meet the requirements of this subsection.

(4) WAIVER OF REQUIREMENT FOR WEIGHTED AVERAGES FOR NUTRIENT ANALYSIS.—During the period ending on September 30, 2010, the Secretary shall not require the use of weighted averages for nutrient analysis of menu items and foods offered or served as part of a meal offered or served under the school lunch program under this Act or the school breakfast program under section 4 of the Child Nutrition Act of 1966 (42 U.S.C. 1773).

(g) Not later than 1 year after the date of enactment of this subsection, the Secretary shall provide a notification to Congress that justifies the need for production records required under section 210.10(b) of title 7, Code of Federal Regulations, and describes how the Secretary has reduced paperwork relating to the school lunch and school breakfast programs.

(h) FOOD SAFETY.—

(1) IN GENERAL.—A school participating in the school lunch program under this Act or the school breakfast program under section 4 of the Child Nutrition Act of 1966 (42 U.S.C. 1773) shall—

(A) at least twice during each school year, obtain a food safety inspection conducted by a State or local governmental agency responsible for food safety inspections;

(B) post in a publicly visible location a report on the most recent inspection conducted under subparagraph (A); and

(C) on request, provide a copy of the report to a member of the public.

(2) STATE AND LOCAL GOVERNMENT INSPECTIONS.—Nothing in paragraph (1) prevents any State or local government from adopting or enforcing any requirement for more frequent food safety inspections of schools.

(3) AUDITS AND REPORTS BY STATES.—For fiscal year 2019<sup>5</sup>, each State shall annually—

(A) audit food safety inspections of schools conducted under paragraphs (1) and (2); and

(B) submit to the Secretary a report of the results of the audit.

<sup>5</sup> The account in title IV of division A of Public Law 115-141, under the heading “Food and Nutrition Service-child nutrition programs (including transfers of funds)” amends sections 9(h)(3) and 9(h)(4) in the first sentence by striking “for fiscal year 2017” and inserting “for fiscal year 2018”. The “f” in the word “for” from the stricken matter appeared capitalized in law, however, both amendments were carried out to reflect the probable intent of Congress, including also uppercasing the letter “f” in the word “for” in the matter being inserted.



Act and the school breakfast program established by section 4 of the Child Nutrition Act of 1966 (42 U.S.C. 1773) to report information about the school nutrition environment, for all schools under the jurisdiction of the local educational agencies, to the Secretary and to the public in the State on a periodic basis; and

(B) provide training and technical assistance to States and local educational agencies on the assessment and reporting of the school nutrition environment, including the use of any assessment materials developed by the Secretary.

(2) REQUIREMENTS.—In establishing the requirements for reporting on the school nutrition environment under paragraph (1), the Secretary shall—

(A) include information pertaining to food safety inspections, local wellness policies, meal program participation, the nutritional quality of program meals, and other information as determined by the Secretary; and

(B) ensure that information is made available to the public by local educational agencies in an accessible, easily understood manner in accordance with guidelines established by the Secretary.

(3) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out this subsection such sums as are necessary for each of fiscal years 2011 through 2015.

(I) FOOD DONATION PROGRAM.—

(1) IN GENERAL.—Each school and local educational agency participating in the school lunch program under this Act may donate any food not consumed under such program to eligible local food banks or charitable organizations.

(2) GUIDANCE.—

(A) IN GENERAL.—Not later than 180 days after the date of the enactment of this subsection, the Secretary shall develop and publish guidance to schools and local educational agencies participating in the school lunch program under this Act to assist such schools and local educational agencies in donating food under this subsection.

(B) UPDATES.—The Secretary shall update such guidance as necessary.

(3) LIABILITY.—Any school or local educational agency making donations pursuant to this subsection shall be exempt from civil and criminal liability to the extent provided under the Bill Emerson Good Samaritan Food Donation Act (42 U.S.C. 1791).

(4) DEFINITION.—In this subsection, the term “eligible local food banks or charitable organizations” means any food bank or charitable organization which is exempt from tax under section 501(c)(3) of the Internal Revenue Code of 1986 (26 U.S.C. 501(c)(3)).

**SEC. 9A. [42 U.S.C. 1758b] LOCAL SCHOOL WELLNESS POLICY.**

(a) IN GENERAL.—Each local educational agency participating in a program authorized by this Act or the Child Nutrition Act of 1966 (42 U.S.C. 1771 et seq.) shall establish a local school wellness

policy for all schools under the jurisdiction of the local educational agency.

(b) **GUIDELINES.**—The Secretary shall promulgate regulations that provide the framework and guidelines for local educational agencies to establish local school wellness policies, including, at a minimum,—

(1) goals for nutrition promotion and education, physical activity, and other school-based activities that promote student wellness;

(2) for all foods available on each school campus under the jurisdiction of the local educational agency during the school day, nutrition guidelines that—

(A) are consistent with sections 9 and 17 of this Act, and sections 4 and 10 of the Child Nutrition Act of 1966 (42 U.S.C. 1773, 1779); and

(B) promote student health and reduce childhood obesity;

(3) a requirement that the local educational agency permit parents, students, representatives of the school food authority, teachers of physical education, school health professionals, the school board, school administrators, and the general public to participate in the development, implementation, and periodic review and update of the local school wellness policy;

(4) a requirement that the local educational agency inform and update the public (including parents, students, and others in the community) about the content and implementation of the local school wellness policy; and

(5) a requirement that the local educational agency—

(A) periodically measure and make available to the public an assessment on the implementation of the local school wellness policy, including—

(i) the extent to which schools under the jurisdiction of the local educational agency are in compliance with the local school wellness policy;

(ii) the extent to which the local school wellness policy of the local educational agency compares to model local school wellness policies; and

(iii) a description of the progress made in attaining the goals of the local school wellness policy; and

(B) designate 1 or more local educational agency officials or school officials, as appropriate, to ensure that each school complies with the local school wellness policy.

(c) **LOCAL DISCRETION.**—The local educational agency shall use the guidelines promulgated by the Secretary under subsection (b) to determine specific policies appropriate for the schools under the jurisdiction of the local educational agency.

(d) **TECHNICAL ASSISTANCE AND BEST PRACTICES.**—

(1) **IN GENERAL.**—The Secretary, in consultation with the Secretary of Education and the Secretary of Health and Human Services, acting through the Centers for Disease Control and Prevention, shall provide information and technical assistance to local educational agencies, school food authorities, and State educational agencies for use in establishing healthy

school environments that are intended to promote student health and wellness.

(2) CONTENT.—The Secretary shall provide technical assistance that—

(A) includes resources and training on designing, implementing, promoting, disseminating, and evaluating local school wellness policies and overcoming barriers to the adoption of local school wellness policies;

(B) includes model local school wellness policies and best practices recommended by Federal agencies, State agencies, and nongovernmental organizations;

(C) includes such other technical assistance as is required to promote sound nutrition and establish healthy school nutrition environments; and

(D) is consistent with the specific needs and requirements of local educational agencies.

(3) STUDY AND REPORT.—

(A) IN GENERAL.—Subject to the availability of appropriations, the Secretary, in conjunction with the Director of the Centers for Disease Control and Prevention, shall prepare a report on the implementation, strength, and effectiveness of the local school wellness policies carried out in accordance with this section.

(B) STUDY OF LOCAL SCHOOL WELLNESS POLICIES.—The study described in subparagraph (A) shall include—

(i) an analysis of the strength and weaknesses of local school wellness policies and how the policies compare with model local wellness policies recommended under paragraph (2)(B); and

(ii) an assessment of the impact of the local school wellness policies in addressing the requirements of subsection (b).

(C) REPORT.—Not later than January 1, 2014, the Secretary shall submit to the Committee on Education and Labor of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate a report that describes the findings of the study.

(D) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out this paragraph \$3,000,000 for fiscal year 2011, to remain available until expended.

#### DISBURSEMENT TO SCHOOLS BY THE SECRETARY

SEC. 10. [42 U.S.C. 1759] (a) The Secretary shall withhold funds payable to a State under this Act and disburse the funds directly to schools, institutions, or service institutions within the State for the purposes authorized by this Act to the extent that the Secretary has so withheld and disbursed such funds continuously since October 1, 1980, but only to such extent (except as otherwise required by subsection (b)). Any funds so withheld and disbursed by the Secretary shall be used for the same purposes, and shall be subject to the same conditions, as applicable to a State disbursing funds made available under this Act. If the Secretary is administering (in whole or in part) any program authorized under this

Act, the State in which the Secretary is administering the program may, upon request to the Secretary, assume administration of that program.

(b) If a State educational agency is not permitted by law to disburse the funds paid to it under this Act to any of the nonpublic schools in the State, the Secretary shall disburse the funds directly to such schools within the State for the same purposes and subject to the same conditions as are authorized or required with respect to the disbursements to public schools within the State by the State educational agency.

#### SPECIAL ASSISTANCE

SEC. 11. [42 U.S.C. 1759a] (a)(1)(A) Except as provided in section 10 of this Act, in each fiscal year each State educational agency shall receive special assistance payments in an amount equal to the sum of the product obtained by multiplying the number of lunches (consisting of a combination of foods which meet the minimum nutritional requirements prescribed by the Secretary pursuant to subsection 9(a) of this Act) served free to children eligible for such lunches in schools within that State during such fiscal year by the special assistance factor for free lunches prescribed by the Secretary for such fiscal year and the product obtained by multiplying the number of lunches served at a reduced price to children eligible for such reduced price lunches in schools within that State during such fiscal year by the special assistance factor for reduced price lunches prescribed by the Secretary for such fiscal year.

(B) Except as provided in subparagraph (C), (D), (E), or (F), in the case of any school which determines that at least 80 percent of the children in attendance during a school year (hereinafter in this sentence referred to as the "first school year") are eligible for free lunches or reduced price lunches, special assistance payments shall be paid to the State educational agency with respect to that school, if that school so requests for the school year following the first school year, on the basis of the number of free lunches or reduced priced lunches, as the case may be, that are served by that school during the school year for which the request is made, to those children who were determined to be so eligible in the first school year and the number of free lunches and reduced price lunches served during that year to other children determined for that year to be eligible for such lunches.

(C)(i) Except as provided in subparagraph (D), in the case of any school or school district that—

(I) elects to serve all children in the school or school district free lunches under the school lunch program during any period of 4 successive school years, or in the case of a school or school district that serves both lunches and breakfasts, elects to serve all children in the school or school district free lunches and free breakfasts under the school lunch program and the school breakfast program established under section 4 of the Child Nutrition Act of 1966 (42 U.S.C. 1773) during any period of 4 successive school years; and

(II) pays, from sources other than Federal funds, for the costs of serving the lunches or breakfasts that are in excess of

the value of assistance received under this Act and the Child Nutrition Act of 1966 (42 U.S.C. 1771 et seq.) with respect to the number of lunches or breakfasts served during the period; special assistance payments shall be paid to the State educational agency with respect to the school or school district during the period on the basis of the number of lunches or breakfasts determined under clause (ii) or (iii).

(ii) For purposes of making special assistance payments under clause (i), except as provided in clause (iii), the number of lunches or breakfasts served by a school or school district to children who are eligible for free lunches or breakfasts or reduced price lunches or breakfasts during each school year of the 4-school-year period shall be considered to be equal to the number of lunches or breakfasts served by the school or school district to children eligible for free lunches or breakfasts or reduced price lunches or breakfasts during the first school year of the period.

(iii) For purposes of computing the amount of the payments, a school or school district may elect to determine on a more frequent basis the number of children who are eligible for free or reduced price lunches or breakfasts who are served lunches or breakfasts during the 4-school-year period.

(D)(i) In the case of any school or school district that is receiving special assistance payments under this paragraph for a 4-school-year period described in subparagraph (C), the State may grant, at the end of the 4-school-year period, an extension of the period for an additional 4 school years, if the State determines, through available socioeconomic data approved by the Secretary, that the income level of the population of the school or school district has remained stable.

(ii) A school or school district described in clause (i) may reapply to the State at the end of the 4-school-year period, and at the end of each 4-school-year period thereafter for which the school or school district receives special assistance payments under this paragraph, for the purpose of continuing to receive the payments for a subsequent 4-school-year period.

(iii) If the Secretary determines after considering the best available socioeconomic data that the income level of families of children enrolled in a school or school district has not remained stable, the Secretary may require the submission of applications for free and reduced price lunches, or for free and reduced price lunches and breakfasts, in the first school year of any 4-school-year period for which the school or school district receives special assistance payments under this paragraph, for the purpose of calculating the special assistance payments.

(iv) For the purpose of updating information and reimbursement levels, a school or school district described in clause (i) that carries out a school lunch or school breakfast program may at any time require submission of applications for free and reduced price lunches or for free and reduced price lunches and breakfasts.

(E)(i) In the case of any school or school district that—

(I) elects to serve all children in the school or school district free lunches under the school lunch program during any period of 4 successive school years, or in the case of a school or school district that serves both lunches and breakfasts,



elects to serve all children in the school or school district free lunches and free breakfasts under the school lunch program and the school breakfast program during any period of 4 successive school years; and

(II) pays, from sources other than Federal funds, for the costs of serving the lunches or breakfasts that are in excess of the value of assistance received under this Act and the Child Nutrition Act of 1966 (42 U.S.C. 1771 et seq.) with respect to the number of lunches or breakfasts served during the period; total Federal cash reimbursements and total commodity assistance shall be provided to the State educational agency with respect to the school or school district at a level that is equal to the total Federal cash reimbursements and total commodity assistance received by the school or school district in the last school year for which the school or school district accepted applications under the school lunch or school breakfast program, adjusted annually for inflation in accordance with paragraph (3)(B) and for changes in enrollment, to carry out the school lunch or school breakfast program.

(ii) A school or school district described in clause (i) may re-apply to the State at the end of the 4-school-year period described in clause (i), and at the end of each 4-school-year period thereafter for which the school or school district receives reimbursements and assistance under this subparagraph, for the purpose of continuing to receive the reimbursements and assistance for a subsequent 4-school-year period. The State may approve an application under this clause if the State determines, through available socioeconomic data approved by the Secretary, that the income level of the population of the school or school district has remained consistent with the income level of the population of the school or school district in the last school year for which the school or school district accepted the applications described in clause (i).

(F) UNIVERSAL MEAL SERVICE IN HIGH POVERTY AREAS.—

(i) DEFINITION OF IDENTIFIED STUDENTS.—The term “identified students” means students certified based on documentation of benefit receipt or categorical eligibility as described in section 245.6a(c)(2) of title 7, Code of Federal Regulations (or successor regulations).

(ii) ELECTION OF SPECIAL ASSISTANCE PAYMENTS.—

(I) IN GENERAL.—A local educational agency may, for all schools in the district or on behalf of certain schools in the district, elect to receive special assistance payments under this subparagraph in lieu of special assistance payments otherwise made available under this paragraph based on applications for free and reduced price lunches if—

(aa) during a period of 4 successive school years, the local educational agency elects to serve all children in the applicable schools free lunches and breakfasts under the school lunch program under this Act and the school breakfast program established under section 4

of the Child Nutrition Act of 1966 (42 U.S.C. 1773);

(bb) the local educational agency pays, from sources other than Federal funds, the costs of serving the lunches or breakfasts that are in excess of the value of assistance received under this Act and the Child Nutrition Act of 1966 (42 U.S.C. 1771 et seq.);

(cc) the local educational agency is not a residential child care institution (as that term is used in section 210.2 of title 7, Code of Federal Regulations (or successor regulations)); and

(dd) during the school year prior to the first year of the period for which the local educational agency elects to receive special assistance payments under this subparagraph, the local educational agency or school had a percentage of enrolled students who were identified students that meets or exceeds the threshold described in clause (viii).

(II) ELECTION TO STOP RECEIVING PAYMENTS.—A local educational agency may, for all schools in the district or on behalf of certain schools in the district, elect to stop receiving special assistance payments under this subparagraph for the following school year by notifying the State agency not later than June 30 of the current school year of the intention to stop receiving special assistance payments under this subparagraph.

(iii) FIRST YEAR OF OPTION.—

(I) SPECIAL ASSISTANCE PAYMENT.—For each month of the first school year of the 4-year period during which a school or local educational agency elects to receive payments under this subparagraph, special assistance payments at the rate for free meals shall be made under this subparagraph for a percentage of all reimbursable meals served in an amount equal to the product obtained by multiplying—

(aa) the multiplier described in clause (vii); by

(bb) the percentage of identified students at the school or local educational agency as of April 1 of the prior school year, up to a maximum of 100 percent.

(II) PAYMENT FOR OTHER MEALS.—The percentage of meals served that is not described in subclause (I) shall be reimbursed at the rate provided under section 4.

(iv) SECOND, THIRD, OR FOURTH YEAR OF OPTION.—

(I) SPECIAL ASSISTANCE PAYMENT.—For each month of the second, third, or fourth school year

of the 4-year period during which a school or local educational agency elects to receive payments under this subparagraph, special assistance payments at the rate for free meals shall be made under this subparagraph for a percentage of all reimbursable meals served in an amount equal to the product obtained by multiplying—

(aa) the multiplier described in clause (vii); by

(bb) the higher of the percentage of identified students at the school or local educational agency as of April 1 of the prior school year or the percentage of identified students at the school or local educational agency as of April 1 of the school year prior to the first year that the school or local educational agency elected to receive special assistance payments under this subparagraph, up to a maximum of 100 percent.

(II) PAYMENT FOR OTHER MEALS.—The percentage of meals served that is not described in subclause (I) shall be reimbursed at the rate provided under section 4.

(v) GRACE YEAR.—

(I) IN GENERAL.—If, not later than April 1 of the fourth year of a 4-year period described in clause (ii)(I), a school or local educational agency has a percentage of enrolled students who are identified students that meets or exceeds a percentage that is 10 percentage points lower than the threshold described in clause (viii), the school or local educational agency may elect to receive special assistance payments under subclause (II) for an additional grace year.

(II) SPECIAL ASSISTANCE PAYMENT.—For each month of a grace year, special assistance payments at the rate for free meals shall be made under this subparagraph for a percentage of all reimbursable meals served in an amount equal to the product obtained by multiplying—

(aa) the multiplier described in clause (vii); by

(bb) the percentage of identified students at the school or local educational agency as of April 1 of the prior school year, up to a maximum of 100 percent.

(III) PAYMENT FOR OTHER MEALS.—The percentage of meals served that is not described in subclause (II) shall be reimbursed at the rate provided under section 4.

(vi) APPLICATIONS.—A school or local educational agency that receives special assistance payments under this subparagraph may not be required to collect applications for free and reduced price lunches.

## (vii) MULTIPLIER.—

(I) PHASE-IN.—For each school year beginning on or before July 1, 2013, the multiplier shall be 1.6.

(II) FULL IMPLEMENTATION.—For each school year beginning on or after July 1, 2014, the Secretary may use, as determined by the Secretary—  
(aa) a multiplier between 1.3 and 1.6; and  
(bb) subject to item (aa), a different multiplier for different schools or local educational agencies.

## (viii) THRESHOLD.—

(I) PHASE-IN.—For each school year beginning on or before July 1, 2013, the threshold shall be 40 percent.

(II) FULL IMPLEMENTATION.—For each school year beginning on or after July 1, 2014, the Secretary may use a threshold that is less than 40 percent.

## (ix) PHASE-IN.—

(I) IN GENERAL.—In selecting States for participation during the phase-in period, the Secretary shall select States with an adequate number and variety of schools and local educational agencies that could benefit from the option under this subparagraph, as determined by the Secretary.

(II) LIMITATION.—The Secretary may not approve additional schools and local educational agencies to receive special assistance payments under this subparagraph after the Secretary has approved schools and local educational agencies in—

(aa) for the school year beginning on July 1, 2011, 3 States; and

(bb) for each of the school years beginning July 1, 2012 and July 1, 2013, an additional 4 States per school year.

## (x) ELECTION OF OPTION.—

(I) IN GENERAL.—For each school year beginning on or after July 1, 2014, any local educational agency eligible to make the election described in clause (ii) for all schools in the district or on behalf of certain schools in the district may elect to receive special assistance payments under clause (iii) for the next school year if, not later than June 30 of the current school year, the local educational agency submits to the State agency the percentage of identified students at the school or local educational agency.

(II) STATE AGENCY NOTIFICATION.—Not later than May 1 of each school year beginning on or after July 1, 2011, each State agency with schools or local educational agencies that may be eligible

to elect to receive special assistance payments under this subparagraph shall notify—

(aa) each local educational agency that meets or exceeds the threshold described in clause (viii) that the local educational agency is eligible to elect to receive special assistance payments under clause (iii) for the next 4 school years, of the blended reimbursement rate the local educational agency would receive under clause (iii), and of the procedures for the local educational agency to make the election;

(bb) each local educational agency that receives special assistance payments under clause (iii) of the blended reimbursement rate the local educational agency would receive under clause (iv);

(cc) each local educational agency in the fourth year of electing to receive special assistance payments under this subparagraph that meets or exceeds a percentage that is 10 percentage points lower than the threshold described in clause (viii) and that receives special assistance payments under clause (iv), that the local educational agency may continue to receive such payments for the next school year, of the blended reimbursement rate the local educational agency would receive under clause (v), and of the procedures for the local educational agency to make the election; and

(dd) each local educational agency that meets or exceeds a percentage that is 10 percentage points lower than the threshold described in clause (viii) that the local educational agency may be eligible to elect to receive special assistance payments under clause (iii) if the threshold described in clause (viii) is met by April 1 of the school year or if the threshold is met for a subsequent school year.

(III) PUBLIC NOTIFICATION OF LOCAL EDUCATIONAL AGENCIES.—Not later than May 1 of each school year beginning on or after July 1, 2011, each State agency with 1 or more schools or local educational agencies eligible to elect to receive special assistance payments under clause (iii) shall submit to the Secretary, and the Secretary shall publish, lists of the local educational agencies receiving notices under subclause (II).

(IV) PUBLIC NOTIFICATION OF SCHOOLS.—Not later than May 1 of each school year beginning on or after July 1, 2011, each local educational agency in a State with 1 or more schools eligible to

elect to receive special assistance payments under clause (iii) shall submit to the State agency, and the State agency shall publish—

(aa) a list of the schools that meet or exceed the threshold described in clause (viii);

(bb) a list of the schools that meet or exceed a percentage that is 10 percentage points lower than the threshold described in clause (viii) and that are in the fourth year of receiving special assistance payments under clause (iv); and

(cc) a list of the schools that meet or exceed a percentage that is 10 percentage points lower than the threshold described in clause (viii).

(xi) IMPLEMENTATION.—

(I) GUIDANCE.—Not later than 90 days after the date of enactment of this subparagraph, the Secretary shall issue guidance to implement this subparagraph.

(II) REGULATIONS.—Not later than December 31, 2013, the Secretary shall promulgate regulations that establish procedures for State agencies, local educational agencies, and schools to meet the requirements of this subparagraph, including exercising the option described in this subparagraph.

(III) PUBLICATION.—If the Secretary uses the authority provided in clause (vii)(II)(bb) to use a different multiplier for different schools or local educational agencies, for each school year beginning on or after July 1, 2014, not later than April 1, 2014, the Secretary shall publish on the website of the Secretary a table that indicates—

(aa) each local educational agency that may elect to receive special assistance payments under clause (ii);

(bb) the blended reimbursement rate that each local educational agency would receive; and

(cc) an explanation of the methodology used to calculate the multiplier or threshold for each school or local educational agency.

(xii) REPORT.—Not later than December 31, 2013, the Secretary shall publish a report that describes—

(I) an estimate of the number of schools and local educational agencies eligible to elect to receive special assistance payments under this subparagraph that do not elect to receive the payments;

(II) for schools and local educational agencies described in subclause (I)—

(aa) barriers to participation in the special assistance option under this subpara-

graph, as described by the nonparticipating schools and local educational agencies; and

(bb) changes to the special assistance option under this subparagraph that would make eligible schools and local educational agencies more likely to elect to receive special assistance payments;

(III) for schools and local educational agencies that elect to receive special assistance payments under this subparagraph—

(aa) the number of schools and local educational agencies;

(bb) an estimate of the percentage of identified students and the percentage of enrolled students who were certified to receive free or reduced price meals in the school year prior to the election to receive special assistance payments under this subparagraph, and a description of how the ratio between those percentages compares to 1.6;

(cc) an estimate of the number and share of schools and local educational agencies in which more than 80 percent of students are certified for free or reduced price meals that elect to receive special assistance payments under that clause; and

(dd) whether any of the schools or local educational agencies stopped electing to receive special assistance payments under this subparagraph;

(IV) the impact of electing to receive special assistance payments under this subparagraph on—

(aa) program integrity;

(bb) whether a breakfast program is offered;

(cc) the type of breakfast program offered;

(dd) the nutritional quality of school meals; and

(ee) program participation; and

(V) the multiplier and threshold, as described in clauses (vii) and (viii) respectively, that the Secretary will use for each school year beginning on or after July 1, 2014 and the rationale for any change in the multiplier or threshold.

(xiii) FUNDING.—

(I) IN GENERAL.—On October 1, 2010, out of any funds in the Treasury not otherwise appropriated, the Secretary of the Treasury shall transfer to the Secretary to carry out clause (xii) \$5,000,000, to remain available until September 30, 2014.

(II) RECEIPT AND ACCEPTANCE.—The Secretary shall be entitled to receive, shall accept, and shall

use to carry out clause (xii) the funds transferred under subclause (I), without further appropriation.

(2) The special assistance factor prescribed by the Secretary for free lunches shall be 98.75 cents and the special assistance factor for reduced price lunches shall be 40 cents less than the special assistance factor for free lunches.

(3)(A) The Secretary shall prescribe on July 1, 1982, and on each subsequent July 1, an annual adjustment in the following:

(i) The national average payment rates for lunches (as established under section 4 of this Act).

(ii) the special assistance factor for lunches (as established under paragraph (2) of this subsection).

(iii) The national average payment rates for breakfasts (as established under section 4(b) of the Child Nutrition Act of 1966 [(42 U.S.C. 1773(b))]).

(iv) The national average payment rates for supplements (as established under section 17(c) of this Act).

(B) COMPUTATION OF ADJUSTMENT.—

(i) IN GENERAL.—The annual adjustment under this paragraph shall reflect changes in the cost of operating meal programs under this Act and the Child Nutrition Act of 1966 [(42 U.S.C. 1771 et seq.)], as indicated by the change in the series for food away from home of the Consumer Price Index for all Urban Consumers, published by the Bureau of Labor Statistics of the Department of Labor.

(ii) BASIS.—Each annual adjustment shall reflect the changes in the series for food away from home for the most recent 12-month period for which such data are available.

(iii) ROUNDING.—On July 1, 1999, and on each subsequent July 1, the national average payment rates for meals and supplements shall be adjusted to the nearest lower cent increment and shall be based on the unrounded amounts for the preceding 12-month period.

(b) Except as provided in section 10 of the Child Nutrition Act of 1966 [(42 U.S.C. 1779)], the special assistance payments made to each State agency during each fiscal year under the provisions of this section shall be used by such State agency to assist schools of that State in providing free and reduced price lunches served to children pursuant to subsection 9(b) of this Act. The amount of such special assistance funds that a school shall from time to time receive, within a maximum per lunch amount established by the Secretary for all States, shall be based on the need of the school for such special assistance. Such maximum per lunch amount established by the Secretary shall not be less than 60 cents.

(c) Special assistance payments to any State under this section shall be made as provided in the last sentence of section 7 of this Act.

(d)(1) The Secretary, when appropriate, may request each school participating in the school lunch program under this Act to report monthly to the State educational agency the average num-



ber of children in the school who received free lunches and the average number of children who received reduced price lunches during the immediately preceding month.

(2) On request of the Secretary, the State educational agency of each State shall report to the Secretary the average number of children in the State who received free lunches and the average number of children in the State who received reduced price lunches during the immediately preceding month.

(e) Commodity only schools shall also be eligible for special assistance payments under this section. Such schools shall serve meals free to children who meet the eligibility requirements for free meals under section 9(b) of this Act, and shall serve meals at a reduced price, not exceeding the price specified in section 9(b)(9) of this Act, to children meeting the eligibility requirements for reduced price meals under such section. No physical segregation of, or other discrimination against, any child eligible for a free or reduced priced lunch shall be made by the school, nor shall there be any overt identification of any such child by any means.

[(f)<sup>6</sup>]

(g) UNIVERSAL MEAL SERVICE THROUGH CENSUS DATA.—

(1) IN GENERAL.—To the maximum extent practicable, the Secretary shall identify alternatives to—

(A) the daily counting by category of meals provided by school lunch programs under this Act and the school breakfast program established by section 4 of the Child Nutrition Act of 1966 (42 U.S.C. 1773); and

(B) the use of annual applications as the basis for eligibility to receive free meals or reduced price meals under this Act.

(2) RECOMMENDATIONS.—

(A) CONSIDERATIONS.—

(i) IN GENERAL.—In identifying alternatives under paragraph (1), the Secretary shall consider the recommendations of the Committee on National Statistics of the National Academy of Sciences relating to use of the American Community Survey of the Bureau of the Census and other data sources.

(ii) SOCIOECONOMIC SURVEY.—The Secretary shall consider use of a periodic socioeconomic survey of households of children attending school in the school food authority in not more than 3 school food authorities participating in the school lunch program under this Act.

(iii) SURVEY PARAMETERS.—The Secretary shall establish requirements for the use of a socioeconomic survey under clause (ii), which shall—

(I) include criteria for survey design, sample frame validity, minimum level of statistical precision, minimum survey response rates, frequency of data collection, and other criteria as determined by the Secretary;

<sup>6</sup>Subsec. (f) struck by sec. 441(a)(3) of P.L. 111-296, 124 Stat. 3261, Dec. 13, 2010.

(II) be consistent with the Standards and Guidelines for Statistical Surveys, as published by the Office of Management and Budget;

(III) be consistent with standards and requirements that ensure proper use of Federal funds; and

(IV) specify that the socioeconomic survey be conducted at least once every 4 years.

(B) USE OF ALTERNATIVES.—Alternatives described in subparagraph (A) that provide accurate and effective means of providing meal reimbursement consistent with the eligibility status of students may be—

(i) implemented for use in schools or by school food authorities that agree—

(I) to serve all breakfasts and lunches to students at no cost in accordance with regulations issued by the Secretary; and

(II) to pay, from sources other than Federal funds, the costs of serving any lunches and breakfasts that are in excess of the value of assistance received under this Act or the Child Nutrition Act of 1966 (42 U.S.C. 1771 et seq.) with respect to the number of lunches and breakfasts served during the applicable period; or

(ii) further tested through demonstration projects carried out by the Secretary in accordance with subparagraph (C).

(C) DEMONSTRATION PROJECTS.—

(i) IN GENERAL.—For the purpose of carrying out demonstration projects described in subparagraph (B), the Secretary may waive any requirement of this Act relating to—

(I) counting of meals provided by school lunch or breakfast programs;

(II) applications for eligibility for free or reduced priced meals; or

(III) required direct certification under section 9(b)(4).

(ii) NUMBER OF PROJECTS.—The Secretary shall carry out demonstration projects under this paragraph in not more than 5 local educational agencies for each alternative model that is being tested.

(iii) LIMITATION.—A demonstration project carried out under this paragraph shall have a duration of not more than 3 years.

(iv) EVALUATION.—The Secretary shall evaluate each demonstration project carried out under this paragraph in accordance with procedures established by the Secretary.

(v) REQUIREMENT.—In carrying out evaluations under clause (iv), the Secretary shall evaluate, using comparisons with local educational agencies with similar demographic characteristics—

(I) the accuracy of the 1 or more methodologies adopted as compared to the daily counting by category of meals provided by school meal programs under this Act or the Child Nutrition Act of 1966 (42 U.S.C. 1771 et seq.) and the use of annual applications as the basis for eligibility to receive free or reduced price meals under those Acts;

(II) the effect of the 1 or more methodologies adopted on participation in programs under those Acts;

(III) the effect of the 1 or more methodologies adopted on administration of programs under those Acts; and

(IV) such other matters as the Secretary determines to be appropriate.

#### MISCELLANEOUS PROVISIONS AND DEFINITIONS

SEC. 12. [42 U.S.C. 1760] (a) States, State educational agencies, and schools participating in the school lunch program under this Act shall keep such accounts and records as may be necessary to enable the Secretary to determine whether the provisions of this Act are being complied with. Such accounts and records shall be available at any reasonable time for inspection and audit by representatives of the Secretary and shall be preserved for such period of time, not in excess of five years, as the Secretary determines is necessary.

#### (b) AGREEMENTS.—

(1) IN GENERAL.—The Secretary shall incorporate, in the agreement of the Secretary with the State agencies administering programs authorized under this Act or the Child Nutrition Act of 1966 (42 U.S.C. 1771 et seq.), the express requirements with respect to the operation of the programs to the extent applicable and such other provisions as in the opinion of the Secretary are reasonably necessary or appropriate to effectuate the purposes of this Act and the Child Nutrition Act of 1966 (42 U.S.C. 1771 et seq.).

(2) EXPECTATIONS FOR USE OF FUNDS.—Agreements described in paragraph (1) shall include a provision that—

(A) supports full use of Federal funds provided to State agencies for the administration of programs authorized under this Act or the Child Nutrition Act of 1966 (42 U.S.C. 1771 et seq.); and

(B) excludes the Federal funds from State budget restrictions or limitations including, at a minimum—

- (i) hiring freezes;
- (ii) work furloughs; and
- (iii) travel restrictions.

(c) In carrying out the provisions of this Act, the Secretary shall not impose any requirement with respect to teaching personnel, curriculum, instruction, methods of instruction, and materials of instruction in any school.

(d) For the purposes of this Act—

(1) CHILD.—

(A) IN GENERAL.—The term “child” includes an individual, regardless of age, who—

(i) is determined by a State educational agency, in accordance with regulations prescribed by the Secretary, to have one or more disabilities; and

(ii) is attending any institution, as defined in section 17(a), or any nonresidential public or nonprofit private school of high school grade or under, for the purpose of participating in a school program established for individuals with disabilities.

(B) RELATIONSHIP TO CHILD AND ADULT CARE FOOD PROGRAM.—No institution that is not otherwise eligible to participate in the program under section 17 shall be considered eligible because of this paragraph.

(2) “Commodity only schools” means schools that do not participate in the school lunch program under this Act, but which receive commodities made available by the Secretary for use by such schools in nonprofit lunch programs.

(3)<sup>7</sup> DISABILITY.—The term “disability” has the meaning given the term in the Rehabilitation Act of 1973 for purposes of title II of that Act (29 U.S.C 760 et seq.).

(4) LOCAL EDUCATIONAL AGENCY.—

(A) IN GENERAL.—The term “local educational agency” has the meaning given the term in section 8101 of the Elementary and Secondary Education Act of 1965.

(B) INCLUSION.—The term “local educational agency” includes, in the case of a private nonprofit school, an appropriate entity determined by the Secretary.

(5) “School” means (A) any public or nonprofit private school of high school grade or under, and (B) any public or licensed nonprofit private residential child care institution (including, but not limited to, orphanages and homes for the mentally retarded, but excluding Job Corps Centers funded by the Department of Labor). For purposes of this paragraph, the term “nonprofit”, when applied to any such private school or institution, means any such school or institution which is exempt from tax under section 501(c)(3) of the Internal Revenue Code of 1986.

(6) “School year” means the annual period from July 1 through June 30.

(7) “Secretary” means the Secretary of Agriculture.

(8) “State” means any of the fifty States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, or the Commonwealth of the Northern Mariana Islands.

(9) “State educational agency” means, as the State legislature may determine, (A) the chief State school officer (such as the State superintendent of public instruction, commissioner of education, or similar officer), or (B) a board of education controlling the State department of education.

<sup>7</sup> This definition added by section 107(j)(3)(A)(ii) of P.L. 105–336, 112 Stat. 3153, Oct. 31, 1998. Omission of period after “U.S.C” is so in original.

(e) The value of assistance to children under this Act shall not be considered to be income or resources for any purposes under any Federal or State laws, including laws relating to taxation and welfare and public assistance programs.

(f) In providing assistance for breakfasts, lunches, suppers, and supplements served in Alaska, Hawaii, Guam, American Samoa, Puerto Rico, the Virgin Islands of the United States, and the Commonwealth of the Northern Mariana Islands, the Secretary may establish appropriate adjustments for each such State to the national average payment rates prescribed under sections 4, 11, 13, and 17 of this Act and section 4 of the Child Nutrition Act of 1966 [(42 U.S.C. 1773)], to reflect the differences between the costs of providing meals and supplements in those States and the costs of providing meals and supplements in all other States.

(g) Whoever embezzles, willfully misapplies, steals, or obtains by fraud any funds, assets, or property that are the subject of a grant or other form of assistance under this Act or the Child Nutrition Act of 1966 [(42 U.S.C. 1771 et seq.)], whether received directly or indirectly from the United States Department of Agriculture, or whoever receives, conceals, or retains such funds, assets, or property to personal use or gain, knowing such funds, assets, or property have been embezzled, willfully misapplied, stolen, or obtained by fraud shall, if such funds, assets, or property are of the value of \$100 or more, be fined not more than \$25,000 or imprisoned not more than five years, or both, or, if such funds, assets, or property are of a value of less than \$100, shall be fined not more than \$1,000 or imprisoned for not more than one year, or both.

(h) No provision of this Act or of the Child Nutrition Act of 1966 [(42 U.S.C. 1771 et seq.)] shall require any school receiving funds under this Act and the Child Nutrition Act of 1966 to account separately for the cost incurred in the school lunch and school breakfast programs.

(i) Facilities, equipment, and personnel provided to a school food authority for a program authorized under this Act or the Child Nutrition Act of 1966 [(42 U.S.C. 1771 et seq.)] may be used, as determined by a local educational agency, to support a nonprofit nutrition program for the elderly, including a program funded under the Older Americans Act of 1965 [(42 U.S.C. 3001 et seq.)].

(j)(1) Except as provided in paragraph (2), the Secretary may provide reimbursements for final claims for service of meals, supplements, and milk submitted to State agencies by eligible schools, summer camps, family day care homes, institutions, and service institutions only if—

(A) the claims have been submitted to the State agencies not later than 60 days after the last day of the month for which the reimbursement is claimed; and

(B) the final program operations report for the month is submitted to the Secretary not later than 90 days after the last day of the month.

(2) The Secretary may waive the requirements of paragraph (1) at the discretion of the Secretary.

**[(k)<sup>8</sup>]**

(1)(A) Except as provided in paragraph (4), the Secretary may waive any requirement under this Act or the Child Nutrition Act of 1966 (42 U.S.C. 1771 et seq.), or any regulation issued under either such Act, for a State or eligible service provider that requests a waiver if—

(i) the Secretary determines that the waiver of the requirement would facilitate the ability of the State or eligible service provider to carry out the purpose of the program;

(ii) the State or eligible service provider has provided notice and information to the public regarding the proposed waiver; and

(iii) the State or eligible service provider demonstrates to the satisfaction of the Secretary that the waiver will not increase the overall cost of the program to the Federal Government, and, if the waiver does increase the overall cost to the Federal Government, the cost will be paid from non-Federal funds.

(B) The notice and information referred to in subparagraph (A)(ii) shall be provided in the same manner in which the State or eligible service provider customarily provides similar notices and information to the public.

(2)(A) To request a waiver under paragraph (1), a State or eligible service provider (through the appropriate administering State agency) shall submit an application to the Secretary that—

(i) identifies the statutory or regulatory requirements that are requested to be waived;

(ii) in the case of a State requesting a waiver, describes actions, if any, that the State has undertaken to remove State statutory or regulatory barriers;

(iii) describes the goal of the waiver to improve services under the program and the expected outcomes if the waiver is granted; and

(iv) includes a description of the impediments to the efficient operation and administration of the program.

(B) An application described in subparagraph (A) shall be developed by the State or eligible service provider and shall be submitted to the Secretary by the State.

(3) The Secretary shall act promptly on a waiver request contained in an application submitted under paragraph (2) and shall either grant or deny the request. The Secretary shall state in writing the reasons for granting or denying the request.

(4) The Secretary may not grant a waiver under this subsection that increases Federal costs or that relates to—

(A) the nutritional content of meals served;

(B) Federal reimbursement rates;

(C) the provision of free and reduced price meals;

(D) limits on the price charged for a reduced price meal;

(E) maintenance of effort;

(F) equitable participation of children in private schools;

(G) distribution of funds to State and local school food service authorities and service institutions participating in a

<sup>8</sup> Subsec. (k) struck by sec. 441(a)(4) of P.L. 111-296, 124 Stat. 3261, Dec. 13, 2010.

program under this Act and the Child Nutrition Act of 1966 (42 U.S.C. 1771 et seq.);

(H) the disclosure of information relating to students receiving free or reduced price meals and other recipients of benefits;

(I) prohibiting the operation of a profit producing program;

(J) the sale of competitive foods;

(K) the commodity distribution program under section 14;

(L) the special supplemental nutrition program authorized under section 17 of the Child Nutrition Act of 1966 (42 U.S.C. 1786); or

(M) enforcement of any constitutional or statutory right of an individual, including any right under—

(i) title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d et seq.);

(ii) section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794);

(iii) title IX of the Education Amendments of 1972 (20 U.S.C. 1681 et seq.);

(iv) the Age Discrimination Act of 1975 (42 U.S.C. 6101 et seq.);

(v) the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et seq.); and

(vi) the Individuals with Disabilities Education Act (20 U.S.C. 1400 et seq.).

(5) The Secretary shall periodically review the performance of any State or eligible service provider for which the Secretary has granted a waiver under this subsection and shall terminate the waiver if the performance of the State or service provider has been inadequate to justify a continuation of the waiver. The Secretary shall terminate the waiver if, after periodic review, the Secretary determines that the waiver has resulted in an increase in the overall cost of the program to the Federal Government and the increase has not been paid for in accordance with paragraph (1)(A)(iii).

(6) The Secretary shall annually submit to the Committee on Education and Labor of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate, a report—

(A) summarizing the use of waivers by the State and eligible service providers;

(B) describing whether the waivers resulted in improved services to children;

(C) describing the impact of the waivers on providing nutritional meals to participants; and

(D) describing how the waivers reduced the quantity of paperwork necessary to administer the program.

(7) As used in this subsection, the term “eligible service provider” means—

(A) a local school food service authority;

(B) a service institution or private nonprofit organization described in section 13; or

(C) a family or group day care home sponsoring organization described in section 17.

(m) PROCUREMENT TRAINING.—

(1) **IN GENERAL.**—Subject to the availability of funds made available under paragraph (4), the Secretary shall provide technical assistance and training to States, State agencies, schools, and school food authorities in the procurement of goods and services for programs under this Act or the Child Nutrition Act of 1966 (42 U.S.C. 1771 et seq.) (other than section 17 of that Act (42 U.S.C. 1786)).

(2) **BUY AMERICAN TRAINING.**—Activities carried out under paragraph (1) shall include technical assistance and training to ensure compliance with subsection (n).

(3) **PROCURING SAFE FOODS.**—Activities carried out under paragraph (1) shall include technical assistance and training on procuring safe foods, including the use of model specifications for procuring safe foods.

(4) **AUTHORIZATION OF APPROPRIATIONS.**—There is authorized to be appropriated to carry out this subsection \$1,000,000 for each of fiscal years 2010 through 2015, to remain available until expended.

(n) **BUY AMERICAN.**—

(1) **DEFINITION OF DOMESTIC COMMODITY OR PRODUCT.**—In this subsection, the term “domestic commodity or product” means—

(A) an agricultural commodity that is produced in the United States; and

(B) a food product that is processed in the United States substantially using agricultural commodities that are produced in the United States.

(2) **REQUIREMENT.**—

(A) **IN GENERAL.**—Subject to subparagraph (B), the Secretary shall require that a school food authority purchase, to the maximum extent practicable, domestic commodities or products.

(B) **LIMITATIONS.**—Subparagraph (A) shall apply only to—

(i) a school food authority located in the contiguous United States; and

(ii) a purchase of a domestic commodity or product for the school lunch program under this Act or the school breakfast program under section 4 of the Child Nutrition Act of 1966 (42 U.S.C. 1773).

(3) **APPLICABILITY TO HAWAII.**—Paragraph (2)(A) shall apply to a school food authority in Hawaii with respect to domestic commodities or products that are produced in Hawaii in sufficient quantities to meet the needs of meals provided under the school lunch program under this Act or the school breakfast program under section 4 of the Child Nutrition Act of 1966 (42 U.S.C. 1773).

(4) **APPLICABILITY TO PUERTO RICO.**—Paragraph (2)(A) shall apply to a school food authority in the Commonwealth of Puerto Rico with respect to domestic commodities or products that are produced in the Commonwealth of Puerto Rico in sufficient quantities to meet the needs of meals provided under the school lunch program under this Act or the school breakfast



program under section 4 of the Child Nutrition Act of 1966 (42 U.S.C. 1773).

(o) **PROCUREMENT CONTRACTS.**—In acquiring a good or service for programs under this Act or the Child Nutrition Act of 1966 (42 U.S.C. 1771 et seq.) (other than section 17 of that Act (42 U.S.C. 1786)), a State, State agency, school, or school food authority may enter into a contract with a person that has provided specification information to the State, State agency, school, or school food authority for use in developing contract specifications for acquiring such good or service.

(p) **PRICE FOR A PAID LUNCH.**—

(1) **DEFINITION OF PAID LUNCH.**—In this subsection, the term “paid lunch” means a reimbursable lunch served to students who are not certified to receive free or reduced price meals.

(2) **REQUIREMENT.**—

(A) **IN GENERAL.**—For each school year beginning July 1, 2011, each school food authority shall establish a price for paid lunches in accordance with this subsection.

(B) **LOWER PRICE.**—

(i) **IN GENERAL.**—In the case of a school food authority that established a price for a paid lunch in the previous school year that was less than the difference between the total Federal reimbursement for a free lunch and the total Federal reimbursement for a paid lunch, the school food authority shall establish an average price for a paid lunch that is not less than the price charged in the previous school year, as adjusted by a percentage equal to the sum obtained by adding—

(I) 2 percent; and

(II) the percentage change in the Consumer Price Index for All Urban Consumers (food away from home index) used to increase the Federal reimbursement rate under section 11 for the most recent school year for which data are available, as published in the Federal Register.

(ii) **ROUNDING.**—A school food authority may round the adjusted price for a paid lunch under clause (i) down to the nearest 5 cents.

(iii) **MAXIMUM REQUIRED PRICE INCREASE.**—

(I) **IN GENERAL.**—The maximum annual average price increase required to meet the requirements of this subparagraph shall not exceed 10 cents for any school food authority.

(II) **DISCRETIONARY INCREASE.**—A school food authority may increase the average price for a paid lunch for a school year by more than 10 cents.

(C) **EQUAL OR GREATER PRICE.**—

(i) **IN GENERAL.**—In the case of a school food authority that established an average price for a paid lunch in the previous school year that was equal to or greater than the difference between the total Federal

reimbursement for a free lunch and the total Federal reimbursement for a paid lunch, the school food authority shall establish an average price for a paid lunch that is not less than the difference between the total Federal reimbursement for a free lunch and the total Federal reimbursement for a paid lunch.

(ii) **ROUNDING.**—A school food authority may round the adjusted price for a paid lunch under clause (i) down to the nearest 5 cents.

(3) **EXCEPTIONS.**—

(A) **REDUCTION IN PRICE.**—A school food authority may reduce the average price of a paid lunch established under this subsection if the State agency ensures that funding from non-Federal sources (other than in-kind contributions) is added to the nonprofit school food service account of the school food authority in an amount estimated to be equal to at least the difference between—

(i) the average price required of the school food authority for the paid lunches under paragraph (2); and

(ii) the average price charged by the school food authority for the paid lunches.

(B) **NON-FEDERAL SOURCES.**—For the purposes of subparagraph (A), non-Federal sources does not include revenue from the sale of foods sold in competition with meals served under the school lunch program authorized under this Act or the school breakfast program established by section 4 of the Child Nutrition Act of 1966 (42 U.S.C. 1773).

(C) **OTHER PROGRAMS.**—This subsection shall not apply to lunches provided under section 17 of this Act.

(4) **REGULATIONS.**—The Secretary shall establish procedures to carry out this subsection, including collecting and publishing the prices that school food authorities charge for paid meals on an annual basis and procedures that allow school food authorities to average the pricing of paid lunches at schools throughout the jurisdiction of the school food authority.

(q) **NONPROGRAM FOOD SALES.**—

(1) **DEFINITION OF NONPROGRAM FOOD.**—In this subsection:

(A) **IN GENERAL.**—The term “nonprogram food” means food that is—

(i) sold in a participating school other than a reimbursable meal provided under this Act or the Child Nutrition Act of 1966 (42 U.S.C. 1771 et seq.); and

(ii) purchased using funds from the nonprofit school food service account of the school food authority of the school.

(B) **INCLUSION.**—The term “nonprogram food” includes food that is sold in competition with a program established under this Act or the Child Nutrition Act of 1966 (42 U.S.C. 1771 et seq.).

(2) **REVENUES.**—

(A) **IN GENERAL.**—The proportion of total school food service revenue provided by the sale of nonprogram foods

to the total revenue of the school food service account shall be equal to or greater than the proportion of total food costs associated with obtaining nonprogram foods to the total costs associated with obtaining program and nonprogram foods from the account.

(B) ACCRUAL.—All revenue from the sale of nonprogram foods shall accrue to the nonprofit school food service account of a participating school food authority.

(C) EFFECTIVE DATE.—This subsection shall be effective beginning on July 1, 2011.

(r) DISQUALIFIED SCHOOLS, INSTITUTIONS, AND INDIVIDUALS.—Any school, institution, service institution, facility, or individual that has been terminated from any program authorized under this Act or the Child Nutrition Act of 1966 (42 U.S.C. 1771 et seq.) and is on a list of disqualified institutions and individuals under section 13 or section 17(d)(5)(E) of this Act may not be approved to participate in or administer any program authorized under this Act or the Child Nutrition Act of 1966 (42 U.S.C. 1771 et seq.).

**SEC. 13. [42 U.S.C. 1761] SUMMER FOOD SERVICE PROGRAM FOR CHILDREN.**

(a) IN GENERAL.—

(1) DEFINITIONS.—In this section:

(A) AREA IN WHICH POOR ECONOMIC CONDITIONS EXIST.—

(i) IN GENERAL.—Subject to clause (ii), the term “area in which poor economic conditions exist”, as the term relates to an area in which a program food service site is located, means—

(I) the attendance area of a school in which at least 50 percent of the enrolled children have been determined eligible for free or reduced price school meals under this Act and the Child Nutrition Act of 1966 (42 U.S.C. 1771 et seq.);

(II) a geographic area, as defined by the Secretary based on the most recent census data available, in which at least 50 percent of the children residing in that area are eligible for free or reduced price school meals under this Act and the Child Nutrition Act of 1966 (42 U.S.C. 1771 et seq.);

(III) an area—

(aa) for which the program food service site documents the eligibility of enrolled children through the collection of income eligibility statements from the families of enrolled children or other means; and

(bb) at least 50 percent of the children enrolled at the program food service site meet the income standards for free or reduced price school meals under this Act and the Child Nutrition Act of 1966 (42 U.S.C. 1771 et seq.);

(IV) a geographic area, as defined by the Secretary based on information provided from a department of welfare or zoning commission, in

which at least 50 percent of the children residing in that area are eligible for free or reduced price school meals under this Act and the Child Nutrition Act of 1966 (42 U.S.C. 1771 et seq.); or

(V) an area for which the program food service site demonstrates through other means approved by the Secretary that at least 50 percent of the children enrolled at the program food service site are eligible for free or reduced price school meals under this Act and the Child Nutrition Act of 1966 (42 U.S.C. 1771 et seq.).

(ii) DURATION OF DETERMINATION.—A determination that an area is an “area in which poor economic conditions exist” under clause (i) shall be in effect for—

(I) in the case of an area described in clause

(i)(I), 5 years;

(II) in the case of an area described in clause

(i)(II), until more recent census data are available;

(III) in the case of an area described in clause

(i)(III), 1 year; and

(IV) in the case of an area described in subclause (IV) or (V) of clause (i), a period of time to be determined by the Secretary, but not less than 1 year.

(B) CHILDREN.—The term “children” means—

(i) individuals who are 18 years of age and under;

and

(ii) individuals who are older than 18 years of age

who are—

(I) determined by a State educational agency or a local public educational agency of a State, in accordance with regulations promulgated by the Secretary, to have a disability, and

(II) participating in a public or nonprofit private school program established for individuals who have a disability.

(C) PROGRAM.—The term “program” means the summer food service program for children authorized by this section.

(D) SERVICE INSTITUTION.—The term “service institution” means a public or private nonprofit school food authority, local, municipal, or county government, public or private nonprofit higher education institution participating in the National Youth Sports Program, or residential public or private nonprofit summer camp, that develops special summer or school vacation programs providing food service similar to food service made available to children during the school year under the school lunch program under this Act or the school breakfast program under the Child Nutrition Act of 1966 (42 U.S.C. 1771 et seq.).

(E) STATE.—The term “State” means—

(i) each of the several States of the United States;

(ii) the District of Columbia;

- (iii) the Commonwealth of Puerto Rico;
- (iv) Guam;
- (v) American Samoa;
- (vi) the Commonwealth of the Northern Mariana Islands; and
- (vii) the United States Virgin Islands.

## (2) PROGRAM AUTHORIZATION.—

(A) IN GENERAL.—The Secretary may carry out a program to assist States, through grants-in-aid and other means, to initiate and maintain nonprofit summer food service programs for children in service institutions.

## (B) PREPARATION OF FOOD.—

(i) IN GENERAL.—To the maximum extent feasible, consistent with the purposes of this section, any food service under the program shall use meals prepared at the facilities of the service institution or at the food service facilities of public and nonprofit private schools.

(ii) INFORMATION AND TECHNICAL ASSISTANCE.—The Secretary shall assist States in the development of information and technical assistance to encourage increased service of meals prepared at the facilities of service institutions and at public and nonprofit private schools.

## (3) ELIGIBLE SERVICE INSTITUTIONS.—Eligible service institutions entitled to participate in the program shall be limited to those that—

(A) demonstrate adequate administrative and financial responsibility to manage an effective food service;

(B) have not been seriously deficient in operating under the program;

(C)(i) conduct a regularly scheduled food service for children from areas in which poor economic conditions exist; or

(ii) qualify as camps; and

(D) provide an ongoing year-round service to the community to be served under the program (except that an otherwise eligible service institution shall not be disqualified for failure to meet this requirement for ongoing year-round service if the State determines that its disqualification would result in an area in which poor economic conditions exist not being served or in a significant number of needy children not having reasonable access to a summer food service program).

## (4) PRIORITY.—

(A) IN GENERAL.—The following order of priority shall be used by the State in determining participation where more than one eligible service institution proposes to serve the same area:

(i) Local schools.

(ii) All other service institutions and private nonprofit organizations eligible under paragraph (7) that have demonstrated successful program performance in a prior year.

(iii) New public institutions.

(iv) New private nonprofit organizations eligible under paragraph (7).

(B) RURAL AREAS.—The Secretary and the States, in carrying out their respective functions under this section, shall actively seek eligible service institutions located in rural areas, for the purpose of assisting such service institutions in applying to participate in the program.

(5) CAMPS.—Camps that satisfy all other eligibility requirements of this section shall receive reimbursement only for meals served to children who meet the eligibility requirements for free or reduced price meals, as determined under this Act and the Child Nutrition Act of 1966 [(42 U.S.C. 1771 et seq.)].

(6) GOVERNMENT INSTITUTIONS.—Service institutions that are local, municipal, or county governments shall be eligible for reimbursement for meals served in programs under this section only if such programs are operated directly by such governments.

(7) PRIVATE NONPROFIT ORGANIZATIONS.—

(A) DEFINITION OF PRIVATE NONPROFIT ORGANIZATION.—In this paragraph, the term “private nonprofit organization” means an organization that—

(i) exercises full control and authority over the operation of the program at all sites under the sponsorship of the organization;

(ii) provides ongoing year-round activities for children or families;

(iii) demonstrates that the organization has adequate management and the fiscal capacity to operate a program under this section;

(iv) is an organization described in section 501(c) of the Internal Revenue Code of 1986 and exempt from taxation under 501(a) of that Code; and

(v) meets applicable State and local health, safety, and sanitation standards.

(B) ELIGIBILITY.—Private nonprofit organizations (other than organizations eligible under paragraph (1)) shall be eligible for the program under the same terms and conditions as other service institutions.

(8) SEAMLESS SUMMER OPTION.—Except as otherwise determined by the Secretary, a service institution that is a public or private nonprofit school food authority may provide summer or school vacation food service in accordance with applicable provisions of law governing the school lunch program established under this Act or the school breakfast program established under the Child Nutrition Act of 1966 (42 U.S.C. 1771 et seq.).

(9) EXEMPTION.—

(A) IN GENERAL.—For each of calendar years 2005 and 2006 in rural areas of the State of Pennsylvania (as determined by the Secretary), the threshold for determining “areas in which poor economic conditions exist” under paragraph (1)(C) shall be 40 percent.

(B) EVALUATION.—

(i) **IN GENERAL.**—The Secretary, acting through the Administrator of the Food and Nutrition Service, shall evaluate the impact of the eligibility criteria described in subparagraph (A) as compared to the eligibility criteria described in paragraph (1)(C).

(ii) **IMPACT.**—The evaluation shall assess the impact of the threshold in subparagraph (A) on—

(I) the number of sponsors offering meals through the summer food service program;

(II) the number of sites offering meals through the summer food service program;

(III) the geographic location of the sites;

(IV) services provided to eligible children; and

(V) other factors determined by the Secretary.

(iii) **REPORT.**—Not later than January 1, 2008, the Secretary shall submit to the Committee on Education and the Workforce of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate a report describing the results of the evaluation under this subparagraph.

(iv) **FUNDING.**—

(I) **IN GENERAL.**—On January 1, 2005, out of any funds in the Treasury not otherwise appropriated, the Secretary of the Treasury shall transfer to the Secretary of Agriculture to carry out this subparagraph \$400,000, to remain available until expended.

(II) **RECEIPT AND ACCEPTANCE.**—The Secretary shall be entitled to receive, shall accept, and shall use to carry out this subparagraph the funds transferred under subclause (I), without further appropriation.

(10) **SUMMER FOOD SERVICE RURAL TRANSPORTATION.**—

(A) **IN GENERAL.**—The Secretary shall provide grants, through not more than 5 eligible State agencies selected by the Secretary, to not more than 60 eligible service institutions selected by the Secretary to increase participation at congregate feeding sites in the summer food service program for children authorized by this section through innovative approaches to limited transportation in rural areas.

(B) **ELIGIBILITY.**—To be eligible to receive a grant under this paragraph—

(i) a State agency shall submit an application to the Secretary, in such manner as the Secretary shall establish, and meet criteria established by the Secretary; and

(ii) a service institution shall agree to the terms and conditions of the grant, as established by the Secretary.

(C) **DURATION.**—A service institution that receives a grant under this paragraph may use the grant funds during the 3-fiscal year period beginning in fiscal year 2006.

(D) **REPORTS.**—The Secretary shall submit to the Committee on Education and the Workforce of the House of

Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate—

(i) not later than January 1, 2008, an interim report that describes—

(I) the use of funds made available under this paragraph; and

(II) any progress made by using funds from each grant provided under this paragraph; and

(ii) not later than January 1, 2009, a final report that describes—

(I) the use of funds made available under this paragraph;

(II) any progress made by using funds from each grant provided under this paragraph;

(III) the impact of this paragraph on participation in the summer food service program for children authorized by this section; and

(IV) any recommendations by the Secretary concerning the activities of the service institutions receiving grants under this paragraph.

(E) FUNDING.—

(i) IN GENERAL.—Out of any funds in the Treasury not otherwise appropriated, the Secretary of the Treasury shall transfer to the Secretary of Agriculture to carry out this paragraph—

(I) on October 1, 2005, \$2,000,000; and

(II) on October 1, 2006, and October 1, 2007, \$1,000,000.

(ii) RECEIPT AND ACCEPTANCE.—The Secretary shall be entitled to receive, shall accept, and shall use to carry out this paragraph the funds transferred under clause (i), without further appropriation.

(iii) AVAILABILITY OF FUNDS.—Funds transferred under clause (i) shall remain available until expended.

(iv) REALLOCATION.—The Secretary may reallocate any amounts made available to carry out this paragraph that are not obligated or expended, as determined by the Secretary.

(11) OUTREACH TO ELIGIBLE FAMILIES.—

(A) IN GENERAL.—The Secretary shall require each State agency that administers the national school lunch program under this Act to ensure that, to the maximum extent practicable, school food authorities participating in the school lunch program under this Act cooperate with participating service institutions to distribute materials to inform families of—

(i) the availability and location of summer food service program meals; and

(ii) the availability of reimbursable breakfasts served under the school breakfast program established by section 4 of the Child Nutrition Act of 1966 (42 U.S.C. 1773).

(B) INCLUSIONS.—Informational activities carried out under subparagraph (A) may include—



(i) the development or dissemination of printed materials, to be distributed to all school children or the families of school children prior to the end of the school year, that inform families of the availability and location of summer food service program meals;

(ii) the development or dissemination of materials, to be distributed using electronic means to all school children or the families of school children prior to the end of the school year, that inform families of the availability and location of summer food service program meals; and

(iii) such other activities as are approved by the applicable State agency to promote the availability and location of summer food service program meals to school children and the families of school children.

(C) MULTIPLE STATE AGENCIES.—If the State agency administering the program under this section is not the same State agency that administers the school lunch program under this Act, the 2 State agencies shall work cooperatively to implement this paragraph.

(12) SUMMER FOOD SERVICE SUPPORT GRANTS.—

(A) IN GENERAL.—The Secretary shall use funds made available to carry out this paragraph to award grants on a competitive basis to State agencies to provide to eligible service institutions—

(i) technical assistance;

(ii) assistance with site improvement costs; or

(iii) other innovative activities that improve and encourage sponsor retention.

(B) ELIGIBILITY.—To be eligible to receive a grant under this paragraph, a State agency shall submit an application to the Secretary in such manner, at such time, and containing such information as the Secretary may require.

(C) PRIORITY.—In making grants under this paragraph, the Secretary shall give priority to—

(i) applications from States with significant low-income child populations; and

(ii) State plans that demonstrate innovative approaches to retain and support summer food service programs after the expiration of the start-up funding grants.

(D) USE OF FUNDS.—A State and eligible service institution may use funds made available under this paragraph to pay for such costs as the Secretary determines are necessary to establish and maintain summer food service programs.

(E) REALLOCATION.—The Secretary may reallocate any amounts made available to carry out this paragraph that are not obligated or expended, as determined by the Secretary.

(F) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to carry out this paragraph \$20,000,000 for fiscal years 2011 through 2015.

## (b) SERVICE INSTITUTIONS.—

## (1) PAYMENTS.—

(A)<sup>9</sup> IN GENERAL.—Subject to subparagraph (B) and in addition to amounts made available under paragraph (3), payments to service institutions shall be—

(i) \$1.97 for each lunch and supper served;

(ii) \$1.13 for each breakfast served; and

(iii) 46 cents for each meal supplement served.

(B) ADJUSTMENTS.—Amounts specified in subparagraph (A) shall be adjusted on January 1, 1997, and each January 1 thereafter, to the nearest lower cent increment to reflect changes for the 12-month period ending the preceding November 30 in the series for food away from home of the Consumer Price Index for All Urban Consumers published by the Bureau of Labor Statistics of the Department of Labor. Each adjustment shall be based on the unrounded adjustment for the prior 12-month period.

(C) SEAMLESS SUMMER REIMBURSEMENTS.—A service institution described in subsection (a)(8) shall be reimbursed for meals and meal supplements in accordance with the applicable provisions under this Act (other than subparagraphs (A) and (B) of this paragraph and paragraph (4)) and the Child Nutrition Act of 1966 (42 U.S.C. 1771 et seq.), as determined by the Secretary.

(2) Any service institution may only serve lunch and either breakfast or a meal supplement during each day of operation, except that any service institution that is a camp or that serves meals primarily to migrant children may serve up to 3 meals, or 2 meals and 1 supplement, during each day of operation, if (A) the service institution has the administrative capability and the food preparation and food holding capabilities (where applicable) to serve more than one meal per day, and (B) the service period of different meals does not coincide or overlap.

## (3) PERMANENT OPERATING AGREEMENTS AND BUDGET FOR ADMINISTRATIVE COSTS.—

## (A) PERMANENT OPERATING AGREEMENTS.—

(i) IN GENERAL.—Subject to clauses (ii) and (iii), to participate in the program, a service institution that meets the conditions of eligibility described in this section and in regulations promulgated by the Secretary, shall be required to enter into a permanent agreement with the applicable State agency.

(ii) AMENDMENTS.—A permanent agreement described in clause (i) may be amended as necessary to ensure that the service institution is in compliance with all requirements established in this section or by the Secretary.

(iii) TERMINATION.—A permanent agreement described in clause (i)—

<sup>9</sup> Effective Jan. 1, 2008, sec. 738(a)(1)(C) of division A of P.L. 110-161, Dec. 26, 2007, amended this subpara. by striking “(B)” and all that follows through “shall not exceed” and inserting “(A)” and all that follows through “shall be”. Although this subpara. was already previously redesignated as subparagraph (A) by sec. 738(a)(1)(B) of division A of P.L. 110-161, the amendment was executed to effectuate the probable intent of Congress.

(I) may be terminated for convenience by the service institution and State agency that is a party to the permanent agreement; and

(II) shall be terminated—

(aa) for cause by the applicable State agency in accordance with subsection (q) and with regulations promulgated by the Secretary; or

(bb) on termination of participation of the service institution in the program.

(B) BUDGET FOR ADMINISTRATIVE COSTS.—

(i) IN GENERAL.—When applying for participation in the program, and not less frequently than annually thereafter, each service institution shall submit a complete budget for administrative costs related to the program, which shall be subject to approval by the State.

(ii) AMOUNT.—Payment to service institutions for administrative costs shall equal the levels determined by the Secretary pursuant to the study required in paragraph (4).

(4)(A) The Secretary shall conduct a study of the food service operations carried out under the program. Such study shall include, but shall not be limited to—

(i) an evaluation of meal quality as related to costs; and

(ii) a determination whether adjustments in the maximum reimbursement levels for food service operation costs prescribed in paragraph (1) of this subsection should be made, including whether different reimbursement levels should be established for self-prepared meals and vendored meals and which site-related costs, if any, should be considered as part of administrative costs.

(B) The Secretary shall also study the administrative costs of service institutions participating in the program and shall thereafter prescribe maximum allowable levels for administrative payments that reflect the costs of such service institutions, taking into account the number of sites and children served, and such other factors as the Secretary determines appropriate to further the goals of efficient and effective administration of the program.

(C) The Secretary shall report the results of such studies to Congress not later than December 1, 1977.

(c)(1) Payments shall be made to service institutions only for meals served during the months of May through September, except in the case of service institutions that operate food service programs for children on school vacation at any time under a continuous school calendar or that provide meal service at non-school sites to children who are not in school for a period during the months of October through April due to a natural disaster, building repair, court order, or similar cause.

(2) Children participating in National Youth Sports Programs operated by higher education institutions shall be eligible to participate in the program under this paragraph on showing residence in areas in which poor economic conditions exist or on the basis of income eligibility statements for children enrolled in the program.

(d) Not later than April 15, May 15, and July 1 of each year, the Secretary shall forward to each State a letter of credit (advance program payment) that shall be available to each State for the payment of meals to be served in the month for which the letter of credit is issued. The amount of the advance program payment shall be an amount which the State demonstrates, to the satisfaction of the Secretary, to be necessary for advance program payments to service institutions in accordance with subsection (e) of this section. The Secretary shall also forward such advance program payments, by the first day of the month prior to the month in which the program will be conducted, to States that operate the program in months other than May through September. The Secretary shall forward any remaining payments due pursuant to subsection (b) of this section not later than sixty days following receipt of valid claims therefor.

(e)(1) Not later than June 1, July 15, and August 15 of each year, or, in the case of service institutions that operate under a continuous school calendar, the first day of each month of operation, the State shall forward advance program payments to each service institution. The State shall not release the second month's advance program payment to any service institution (excluding a school) that has not certified that it has held training sessions for its own personnel and the site personnel with regard to program duties and responsibilities. No advance program payment may be made for any month in which the service institution will operate under the program for less than ten days.

(2) The amount of the advance program payment for any month in the case of any service institution shall be an amount equal to (A) the total program payment for meals served by such service institution in the same calendar month of the preceding calendar year, (B) 50 percent of the amount established by the State to be needed by such service institution for meals if such service institution contracts with a food service management company, or (C) 65 percent of the amount established by the State to be needed by such service institution for meals if such service institution prepares its own meals, whichever amount is greatest: *Provided*, That the advance program payment may not exceed the total amount estimated by the State to be needed by such service institution for meals to be served in the month for which such advance program payment is made or \$40,000, whichever is less, except that a State may make a larger advance program payment to such service institution where the State determines that such larger payment is necessary for the operation of the program by such service institution and sufficient administrative and management capability to justify a larger payment is demonstrated. The State shall forward any remaining payment due a service institution not later than seventy-five days following receipt of valid claims. If the State has reason to believe that a service institution will not be able to submit a valid claim for reimbursement covering the period for which an advance program payment has been made, the subsequent month's advance program payment shall be withheld until such time as the State has received a valid claim. Program payments advanced to service institutions that are not subsequently deducted from a valid claim for reimbursement shall be repaid upon demand by the

State. Any prior payment that is under dispute may be subtracted from an advance program payment.

(f)(1) Service institutions receiving funds under this section shall serve meals consisting of a combination of foods and meeting minimum nutritional standards prescribed by the Secretary on the basis of tested nutritional research.

(2) The Secretary shall provide technical assistance to service institutions and private nonprofit organizations participating in the program to assist the institutions and organizations in complying with the nutritional requirements prescribed by the Secretary pursuant to this subsection.

(3) Meals described in paragraph (1) shall be served without cost to children attending service institutions approved for operation under this section, except that, in the case of camps, charges may be made for meals served to children other than those who meet the eligibility requirements for free or reduced price meals in accordance with subsection (a)(5) of this section.

(4) To assure meal quality, States shall, with the assistance of the Secretary, prescribe model meal specifications and model food quality standards, and ensure that all service institutions contracting for the preparation of meals with food service management companies include in their contracts menu cycles, local food safety standards, and food quality standards approved by the State.

(5) Such contracts shall require (A) periodic inspections, by an independent agency or the local health department for the locality in which the meals are served, of meals prepared in accordance with the contract in order to determine bacteria levels present in such meals, and (B) conformance with standards set by local health authorities.

(6) Such inspections and any testing resulting therefrom shall be in accordance with the practices employed by such local health authority.

(7) OFFER VERSUS SERVE.—A school food authority participating as a service institution may permit a child to refuse one or more items of a meal that the child does not intend to consume, under rules that the school uses for school meals programs. A refusal of an offered food item shall not affect the amount of payments made under this section to a school for the meal.

(g) The Secretary shall publish proposed regulations relating to the implementation of the program by November 1 of each fiscal year, final regulations by January 1 of each fiscal year, and guidelines, applications and handbooks by February 1 of each fiscal year. In order to improve program planning, the Secretary may provide that service institutions be paid as startup costs not to exceed 20 percent of the administrative funds provided for in the administrative budget approved by the State under subsection (b)(3) of this section. Any payments made for startup costs shall be subtracted from amounts otherwise payable for administrative costs subsequently made to service institutions under subsection (b)(3) of this section.

(h) Each service institution shall, insofar as practicable, use in its food service under the program foods designated from time to time by the Secretary as being in abundance. The Secretary is au-

thorized to donate to States, for distribution to service institutions, food available under section 416 of the Agricultural Act of 1949 [(7 U.S.C. 1431)], or purchased under section 32 of the Act of August 24, 1935 [(7 U.S.C. 612c)] or section 709 of the Food and Agriculture Act of 1965 [(7 U.S.C. 1446a-1)]. Donated foods may be distributed only to service institutions that can use commodities efficiently and effectively, as determined by the Secretary.

**[(i) Repealed<sup>10</sup>]**

(j) Expenditures of funds from State and local sources for the maintenance of food programs for children shall not be diminished as a result of funds received under this section.

(k)(1) The Secretary shall pay to each State for its administrative costs incurred under this section in any fiscal year an amount equal to (A) 20 percent of the first \$50,000 in funds distributed to that State for the program in the preceding fiscal year; (B) 10 percent of the next \$100,000 distributed to that State for the program in the preceding fiscal year; (C) 5 percent of the next \$250,000 in funds distributed to that State for the program in the preceding fiscal year, and (D) 2½ percent of any remaining funds distributed to that State for the program in the preceding fiscal year: *Provided*, That such amounts may be adjusted by the Secretary to reflect changes in the size of that State's program since the preceding fiscal year.

(2) The Secretary shall establish standards and effective dates for the proper, efficient, and effective administration of the program by the State. If the Secretary finds that the State has failed without good cause to meet any of the Secretary's standards or has failed without good cause to carry out the approved State management and administration plan under subsection (n) of this section, the Secretary may withhold from the State such funds authorized under this subsection as the Secretary determines to be appropriate.

(3) To provide for adequate nutritional and food quality monitoring, and to further the implementation of the program, an additional amount, not to exceed the lesser of actual costs or 1 percent of program funds, shall be made available by the Secretary to States to pay for State or local health department inspections, and to reinspect facilities and deliveries to test meal quality.

(l)(1) Service institutions may contract on a competitive basis with food service management companies for the furnishing of meals or management of the entire food service under the program, except that a food service management company entering into a contract with a service institution under this section may not subcontract with a single company for the total meal, with or without milk, or for the assembly of the meal. The Secretary shall prescribe additional conditions and limitations governing assignment of all or any part of a contract entered into by a food service management company under this section. Any food service management company shall, in its bid, provide the service institution information as to its meal capacity.

<sup>10</sup>Section 817(b) of P.L. 97-35, 95 Stat. 532, Aug. 13, 1981, eliminated subsection (i) concerning the Secretary's authority to directly administer the program.

(2) Each State may provide for the registration of food service management companies.

(3) In accordance with regulations issued by the Secretary, positive efforts shall be made by service institutions to use small businesses and minority-owned businesses as sources of supplies and services. Such efforts shall afford those sources the maximum feasible opportunity to compete for contracts using program funds.

(4) Each State, with the assistance of the Secretary, shall establish a standard form of contract for use by service institutions and food service management companies. The Secretary shall prescribe requirements governing bid and contract procedures for acquisition of the services of food service management companies, including, but not limited to, bonding requirements (which may provide exemptions applicable to contracts of \$100,000 or less), procedures for review of contracts by States, and safeguards to prevent collusive bidding activities between service institutions and food service management companies.

(m) States and service institutions participating in programs under this section shall keep such accounts and records as may be necessary to enable the Secretary to determine whether there has been compliance with this section and the regulations issued hereunder. Such accounts and records shall be available at any reasonable time for inspection and audit by representatives of the Secretary and shall be preserved for such period of time, not in excess of five years, as the Secretary determines necessary.

(n) Each State desiring to participate in the program shall notify the Secretary by January 1 of each year of its intent to administer the program and shall submit for approval by February 15 a management and administration plan for the program for the fiscal year, which shall include, but not be limited to, (1) the State's administrative budget for the fiscal year, and the State's plans to comply with any standards prescribed by the Secretary under subsection (k) of this section; (2) the State's plans for use of program funds and funds from within the State to the maximum extent practicable to reach needy children; (3) the State's plans for providing technical assistance and training eligible service institutions; (4) the State's plans for monitoring and inspecting service institutions, feeding sites, and food service management companies and for ensuring that such companies do not enter into contracts for more meals than they can provide effectively and efficiently; (5) the State's plan for timely and effective action against program violators; and (6) the State's plan for ensuring fiscal integrity by auditing service institutions not subject to auditing requirements prescribed by the Secretary.

(o)(1) Whoever, in connection with any application, procurement, recordkeeping entry, claim for reimbursement, or other document or statement made in connection with the program, knowingly and willfully falsifies, conceals, or covers up by any trick, scheme, or device a material fact, or makes any false, fictitious, or fraudulent statements or representations, or makes or uses any false writing or document knowing the same to contain any false, fictitious, or fraudulent statement or entry, or whoever, in connection with the program, knowingly makes an opportunity for any person to defraud the United States, or does or omits to do any act

with intent to enable any person to defraud the United States, shall be fined not more than \$10,000 or imprisoned not more than five years, or both.

(2) Whoever being a partner, officer, director, or managing agent connected in any capacity with any partnership, association, corporation, business, or organization, either public or private, that receives benefits under the program, knowingly or willfully embezzles, misapplies, steals, or obtains by fraud, false statement, or forgery, any benefits provided by this section or any money, funds, assets, or property derived from benefits provided by this section, shall be fined not more than \$10,000 or imprisoned for not more than five years, or both (but, if the benefits, money, funds, assets, or property involved is not over \$200, then the penalty shall be a fine or not more than \$1,000 or imprisonment for not more than one year, or both).

(3) If two or more persons conspire or collude to accomplish any act made unlawful under this subsection, and one or more of such persons to any act to effect the object of the conspiracy or collusion, each shall be fined not more than \$10,000 or imprisoned for not more than five years, or both.

(p)(1) In addition to the normal monitoring of organizations receiving assistance under this section, the Secretary shall establish a system under which the Secretary and the States shall monitor the compliance of private nonprofit organizations with the requirements of this section and with regulations issued to implement this section.

(2) In the fiscal year 1990 and each succeeding fiscal year, the Secretary may reserve for purposes of carrying out paragraph (1) not more than  $\frac{1}{2}$  of 1 percent of amounts appropriated for purposes of carrying out this section.

(q) TERMINATION AND DISQUALIFICATION OF PARTICIPATING ORGANIZATIONS.—

(1) IN GENERAL.—Each State agency shall follow the procedures established by the Secretary for the termination of participation of institutions under the program.

(2) FAIR HEARING.—The procedures described in paragraph (1) shall include provision for a fair hearing and prompt determination for any service institution aggrieved by any action of the State agency that affects—

(A) the participation of the service institution in the program; or

(B) the claim of the service institution for reimbursement under this section.

(3) LIST OF DISQUALIFIED INSTITUTIONS AND INDIVIDUALS.—

(A) IN GENERAL.—The Secretary shall maintain a list of service institutions and individuals that have been terminated or otherwise disqualified from participation in the program under the procedures established pursuant to paragraph (1).

(B) AVAILABILITY.—The Secretary shall make the list available to States for use in approving or renewing applications by service institutions for participation in the program.



(r) For the period beginning October 1, 1977, and ending September 30, 2015, there are hereby authorized to be appropriated such sums as are necessary to carry out the purposes of this section.

**[ TEMPORARY EMERGENCY ASSISTANCE TO PROVIDE  
NUTRITIOUS MEALS TO NEEDY CHILDREN IN SCHOOLS ]**

**[SEC. 13A.<sup>11</sup> [42 U.S.C. 1762]]**

COMMODITY DISTRIBUTION PROGRAM

SEC. 14. **[42 U.S.C. 1762a]** (a) Notwithstanding any other provision of law, the Secretary shall—

(1) use funds available to carry out the provisions of section 32 of the Act of August 24, 1935 (7 U.S.C. 612c) which are not expended or needed to carry out such provisions, to purchase (without regard to the provisions of existing law governing the expenditure of public funds) agricultural commodities and their products of the types customarily purchased under such section (which may include domestic seafood commodities and their products), for donation to maintain the annually programmed level of assistance for programs carried on under this Act, the Child Nutrition Act of 1966 **[(42 U.S.C. 1771 et seq.)]**, and title III of the Older Americans Act of 1965 **[(42 U.S.C. 3021 et seq.)]**; and

(2) if stocks of the Commodity Credit Corporation are not available, use the funds of such Corporation to purchase agricultural commodities and their products of the types customarily available under section 416 of the Agricultural Act of 1949 (7 U.S.C. 1431), for such donation.

(b)(1) The Secretary shall maintain and continue to improve the overall nutritional quality of entitlement commodities provided to schools to assist the schools in improving the nutritional content of meals.

(2) The Secretary shall—

(A) require that nutritional content information labels be placed on packages or shipments of entitlement commodities provided to the schools; or

(B) otherwise provide nutritional content information regarding the commodities provided to the schools.

(c) The Secretary may use funds appropriated from the general fund of the Treasury to purchase agricultural commodities and their products of the types customarily purchased for donation under section 311(a)(4) of the Older Americans Act of 1965 (42 U.S.C. 3030(a)(4)) or for cash payments in lieu of such donations under section 311(b)(1) of such Act (42 U.S.C. 3030(b)(1)).<sup>12</sup> There are hereby authorized to be appropriated such sums as are necessary to carry out the purposes of this subsection.

(d) In providing assistance under this Act and the Child Nutrition Act of 1966 **[(42 U.S.C. 1771 et seq.)]** for school lunch and breakfast programs, the Secretary shall establish procedures which will—

<sup>11</sup>This section repealed by section 308 of P.L. 101-147, 103 Stat. 915, Nov. 10, 1989.

<sup>12</sup>Citation to 42 U.S.C. 3030(b)(1) probably should be to 42 U.S.C. 3030a(b)(1).

(1) ensure that the views of local school districts and private nonprofit schools with respect to the type of commodity assistance needed in schools are fully and accurately reflected in reports to the Secretary by the State with respect to State commodity preferences and that such views are considered by the Secretary in the purchase and distribution of commodities and by the States in the allocation of such commodities among schools within the States;

(2) solicit the views of States with respect to the acceptability of commodities;

(3) ensure that the timing of commodity deliveries to States is consistent with State school year calendars and that such deliveries occur with sufficient advance notice;

(4) provide for systematic review of the costs and benefits of providing commodities of the kind and quantity that are suitable to the needs of local school districts and private nonprofit schools; and

(5) make available technical assistance on the use of commodities available under this Act and the Child Nutrition Act of 1966.

(e) Each State agency that receives food assistance payments under this section for any school year shall consult with representatives of schools in the State that participate in the school lunch program with respect to the needs of such schools relating to the manner of selection and distribution of commodity assistance for such program.

(f) Commodity only schools shall be eligible to receive donated commodities equal in value to the sum of the national average value of donated foods established under section 6(c) of this Act and the national average payment established under section 4 of this Act. Such schools shall be eligible to receive up to 5 cents per meal of such value in cash for processing and handling expenses related to the use of such commodities. Lunches served in such schools shall consist of a combination of foods which meet the minimum nutritional requirements prescribed by the Secretary under section 9(a) of this Act, and shall represent the four basic food groups, including a serving of fluid milk.

(g)(1) As used in this subsection, the term “eligible school district” has the same meaning given such term in section 1581(a) of the Food Security Act of 1985.

(2) In accordance with the terms and conditions of section 1581 of such Act, the Secretary shall permit an eligible school district to continue to receive assistance in the form of cash or commodity letters of credit assistance, in lieu of commodities, to carry out the school lunch program operated in the district.

(h) NOTICE OF IRRADIATED FOOD PRODUCTS.—

(1) IN GENERAL.—The Secretary shall develop a policy and establish procedures for the purchase and distribution of irradiated food products in school meals programs under this Act and the Child Nutrition Act of 1966 (42 U.S.C. 1771 et seq.).

(2) MINIMUM REQUIREMENTS.—The policy and procedures shall ensure, at a minimum, that—

(A) irradiated food products are made available only at the request of States and school food authorities;

(B) reimbursements to schools for irradiated food products are equal to reimbursements to schools for food products that are not irradiated;

(C) States and school food authorities are provided factual information on the science and evidence regarding irradiation technology, including—

(i) notice that irradiation is not a substitute for safe food handling techniques; and

(ii) any other similar information determined by the Secretary to be necessary to promote food safety in school meals programs;

(D) States and school food authorities are provided model procedures for providing to school food authorities, parents, and students—

(i) factual information on the science and evidence regarding irradiation technology; and

(ii) any other similar information determined by the Secretary to be necessary to promote food safety in school meals;

(E) irradiated food products distributed to the Federal school meals program under this Act and the Child Nutrition Act of 1966 (42 U.S.C. 1771 et seq.) are labeled with a symbol or other printed notice that—

(i) indicates that the product was irradiated; and

(ii) is prominently displayed in a clear and understandable format on the container;

(F) irradiated food products are not commingled in containers with food products that are not irradiated; and

(G) schools that offer irradiated food products are encouraged to offer alternatives to irradiated food products as part of the meal plan used by the schools.

#### 【 NATIONAL ADVISORY COUNCIL 】

【SEC. 15.<sup>13</sup> 【42 U.S.C. 1763】 Repealed.】

#### ELECTION TO RECEIVE CASH PAYMENTS

SEC. 16. 【42 U.S.C. 1765】 (a) Notwithstanding any other provision of law, where a State phased out its commodity distribution facilities prior to June 30, 1974, such State may, for purposes of the programs authorized by this Act and the Child Nutrition Act of 1966 【(42 U.S.C. 1771 et seq.)】, elect to receive cash payments in lieu of donated foods. Where such an election is made, the Secretary shall make cash payments to such State in an amount equivalent in value to the donated foods that the State would otherwise have received if it had retained its commodity distribution facilities. The amount of cash payments in the case of lunches shall be governed by section 6(c) of this Act.

(b) When such payments are made, the State educational agency shall promptly and equitably disburse any cash it receives in lieu of commodities to eligible schools and institutions, and such disbursements shall be used by such schools and institutions to

<sup>13</sup>Section 15, which established a National Advisory Council, repealed by section 104 of P.L. 101-147, 103 Stat. 883, Nov. 10, 1989.

purchase United States agricultural commodities and other foods for their food service programs.

**SEC. 17. [42 U.S.C. 1766] CHILD AND ADULT CARE FOOD PROGRAM.**

(a) PROGRAM PURPOSE, GRANT AUTHORITY AND INSTITUTION ELIGIBILITY.—

(1) IN GENERAL.—

(A) PROGRAM PURPOSE.—

(i) FINDINGS.—Congress finds that—

(I) eating habits and other wellness-related behavior habits are established early in life; and

(II) good nutrition and wellness are important contributors to the overall health of young children and essential to cognitive development.

(ii) PURPOSE.—The purpose of the program authorized by this section is to provide aid to child and adult care institutions and family or group day care homes for the provision of nutritious foods that contribute to the wellness, healthy growth, and development of young children, and the health and wellness of older adults and chronically impaired disabled persons.

(B) GRANT AUTHORITY.—The Secretary may carry out a program to assist States through grants-in-aid and other means to initiate and maintain nonprofit food service programs for children in institutions providing child care.

(2) DEFINITION OF INSTITUTION.—In this section, the term “institution” means—

(A) any public or private nonprofit organization providing nonresidential child care or day care outside school hours for school children, including any child care center, settlement house, recreational center, Head Start center, and institution providing child care facilities for children with disabilities;

(B) any other private organization providing nonresidential child care or day care outside school hours for school children, if—

(i) at least 25 percent of the children served by the organization meet the income eligibility criteria established under section 9(b) for free or reduced price meals; or

(ii) the organization receives compensation from amounts granted to the States under title XX of the Social Security Act (42 U.S.C. 1397 et seq.) (but only if the organization receives compensation under that title for at least 25 percent of its enrolled children or 25 percent of its licensed capacity, whichever is less);

(C) any public or private nonprofit organization acting as a sponsoring organization for one or more of the organizations described in subparagraph (A) or (B) or for an adult day care center (as defined in subsection (o)(2));

(D) any other private organization acting as a sponsoring organization for, and that is part of the same legal entity as, one or more organizations that are—

- (i) described in subparagraph (B); or
  - (ii) proprietary title XIX or title XX centers (as defined in subsection (o)(2));
  - (E) any public or private nonprofit organization acting as a sponsoring organization for one or more family or group day care homes; and
  - (F) any emergency shelter (as defined in subsection (t)).
- (3) AGE LIMIT.—Except as provided in subsection (r), reimbursement may be provided under this section only for meals or supplements served to children not over 12 years of age (except that such age limitation shall not be applicable for children of migrant workers if 15 years of age or less or for children with disabilities).
- (4) ADDITIONAL GUIDELINES.—The Secretary may establish separate guidelines for institutions that provide care to school children outside of school hours.
- (5) LICENSING.—In order to be eligible, an institution (except a school or family or group day care home sponsoring organization) or family or group day care home shall—
- (A)(i) be licensed, or otherwise have approval, by the appropriate Federal, State, or local licensing authority; or
  - (ii) be in compliance with appropriate procedures for renewing participation in the program, as prescribed by the Secretary, and not be the subject of information possessed by the State indicating that the license of the institution or home will not be renewed;
  - (B) if Federal, State, or local licensing or approval is not available—
    - (i) meet any alternate approval standards established by the appropriate State or local governmental agency; or
    - (ii) meet any alternate approval standards established by the Secretary after consultation with the Secretary of Health and Human Services; or
  - (C) if the institution provides care to school children outside of school hours and Federal, State, or local licensing or approval is not required for the institution, meet State or local health and safety standards.
- (6) ELIGIBILITY CRITERIA.—No institution shall be eligible to participate in the program unless it satisfies the following criteria:
- (A) accepts final administrative and financial responsibility for management of an effective food service;
  - (B) has not been seriously deficient in its operation of the child and adult care food program, or any other program under this Act or the Child Nutrition Act of 1966 [(42 U.S.C. 1771 et seq.)], or has not been determined to be ineligible to participate in any other publicly funded program by reason of violation of the requirements of the program, for a period of time specified by the Secretary;
  - (C)(i) will provide adequate supervisory and operational personnel for overall monitoring and management of the child care food program; and

(ii) in the case of a sponsoring organization, the organization shall employ an appropriate number of monitoring personnel based on the number and characteristics of child care centers and family or group day care homes sponsored by the organization, as approved by the State (in accordance with regulations promulgated by the Secretary), to ensure effective oversight of the operations of the child care centers and family or group day care homes;

(D) in the case of a family or group day care home sponsoring organization that employs more than one employee, the organization does not base payments to an employee of the organization on the number of family or group day care homes recruited;

(E) in the case of a sponsoring organization, the organization has in effect a policy that restricts other employment by employees that interferes with the responsibilities and duties of the employees of the organization with respect to the program; and

(F) in the case of a sponsoring organization that applies for initial participation in the program on or after the date of the enactment of this subparagraph and that operates in a State that requires such institutions to be bonded under State law, regulation, or policy, the institution is bonded in accordance with such law, regulation, or policy.

(b) For the fiscal year ending September 30, 1979, and for each subsequent fiscal year, the Secretary shall provide cash assistance to States for meals as provided in subsection (f) of this section, except that, in any fiscal year, the aggregate amount of assistance provided to a State by the Secretary under this section shall not exceed the sum of (1) the Federal funds provided by the State to participating institutions within the State for that fiscal year and (2) any funds used by the State under section 10 of the Child Nutrition Act of 1966 [(42 U.S.C. 1779)].

(c)(1) For purposes of this section, except as provided in subsection (f)(3), the national average payment rate for free lunches and suppers, the national average payment rate for reduced price lunches and suppers, and the national average payment rate for paid lunches and suppers shall be the same as the national average payment rates for free lunches, reduced price lunches, and paid lunches, respectively, under sections 4 and 11 of this Act as appropriate (as adjusted pursuant to section 11(a) of this Act).

(2) For purposes of this section, except as provided in subsection (f)(3), the national average payment rate for free breakfasts, the national average payment rate for reduced price breakfasts, and the national average payment rate for paid breakfasts shall be the same as the national average payment rates for free breakfasts, reduced price breakfasts, and paid breakfasts, respectively, under section 4(b) of the Child Nutrition Act of 1966 [(42 U.S.C. 1773(b))] (as adjusted pursuant to section 11(a) of this Act).

(3) For purposes of this section, except as provided in subsection (f)(3), the national average payment rate for free supplements shall be 30 cents, the national average payment rate for reduced price supplements shall be one-half the rate for free supplements, and the national average payment rate for paid supple-

ments shall be 2.75 cents (as adjusted pursuant to section 11(a) of this Act).

(4) Determinations with regard to eligibility for free and reduced price meals and supplements shall be made in accordance with the income eligibility guidelines for free lunches and reduced price lunches, respectively, under section 9 of this Act.

(5)<sup>14</sup> A child shall be considered automatically eligible for benefits under this section without further application or eligibility determination, if the child is enrolled as a participant in a Head Start program authorized under the Head Start Act (42 U.S.C. 9831 et seq.), on the basis of a determination that the child meets the eligibility criteria prescribed under section 645(a)(1)(B) of the Head Start Act (42 U.S.C. 9840(a)(1)(B)).

(6) A child who has not yet entered kindergarten shall be considered automatically eligible for benefits under this section without further application or eligibility determination if the child is enrolled as a participant in the Even Start program under part B of chapter 1 of title I of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 2741 et seq.).

(d) INSTITUTION APPROVAL AND APPLICATIONS.—

(1) INSTITUTION APPROVAL.—

(A) ADMINISTRATIVE CAPABILITY.—Subject to subparagraph (B) and except as provided in subparagraph (C), the State agency shall approve an institution that meets the requirements of this section for participation in the child and adult care food program if the State agency determines that the institution—

- (i) is financially viable;
- (ii) is administratively capable of operating the program (including whether the sponsoring organization has business experience and management plans appropriate to operate the program) described in the application of the institution; and
- (iii) has internal controls in effect to ensure program accountability.

(B) APPROVAL OF PRIVATE INSTITUTIONS.—

(i) IN GENERAL.—In addition to the requirements established by subparagraph (A) and subject to clause (ii), the State agency shall approve a private institution that meets the requirements of this section for participation in the child and adult care food program only if—

- (I) the State agency conducts a satisfactory visit to the institution before approving the participation of the institution in the program; and
- (II) the institution—

(aa) has tax exempt status under the Internal Revenue Code of 1986;

<sup>14</sup> Effective September 25, 1995, this paragraph added by section 109(b) of P.L. 103-448, 108 Stat. 4705, Nov. 2, 1994. Although such section 109 amended this subsection “by adding at the end” paragraph (5) and delayed the amendment until after paragraph (6) was added, paragraph (5) was inserted before paragraph (6) to effectuate the probable intent of Congress.

(bb) is operating a Federal program requiring nonprofit status to participate in the program; or

(cc) is described in subsection (a)(2)(B).

(ii) EXCEPTION FOR FAMILY OR GROUP DAY CARE HOMES.—Clause (i) shall not apply to a family or group day care home.

(C) EXCEPTION FOR CERTAIN SPONSORING ORGANIZATIONS.—

(i) IN GENERAL.—The State agency may approve an eligible institution acting as a sponsoring organization for one or more family or group day care homes or centers that, at the time of application, is not participating in the child and adult care food program only if the State agency determines that—

(I) the institution meets the requirements established by subparagraphs (A) and (B); and

(II) the participation of the institution will help to ensure the delivery of benefits to otherwise unserved family or group day care homes or centers or to unserved children in an area.

(ii) CRITERIA FOR SELECTION.—The State agency shall establish criteria for approving an eligible institution acting as a sponsoring organization for one or more family or group day care homes or centers that, at the time of application, is not participating in the child and adult care food program for the purpose of determining if the participation of the institution will help ensure the delivery of benefits to otherwise unserved family or group day care homes or centers or to unserved children in an area.

(D) NOTIFICATION TO APPLICANTS.—Not later than 30 days after the date on which an applicant institution files a completed application with the State agency, the State agency shall notify the applicant institution whether the institution has been approved or disapproved to participate in the child and adult care food program.

(E) PERMANENT OPERATING AGREEMENTS.—

(i) IN GENERAL.—Subject to clauses (ii) and (iii), to participate in the child and adult care food program, an institution that meets the conditions of eligibility described in this subsection shall be required to enter into a permanent agreement with the applicable State agency.

(ii) AMENDMENTS.—A permanent agreement described in clause (i) may be amended as necessary to ensure that the institution is in compliance with all requirements established in this section or by the Secretary.

(iii) TERMINATION.—A permanent agreement described in clause (i)—

(I) may be terminated for convenience by the institution or State agency that is a party to the permanent agreement; and



(II) shall be terminated—

(aa) for cause by the applicable State agency in accordance with paragraph (5); or

(bb) on termination of participation of the institution in the child and adult care food program.

(2) PROGRAM APPLICATIONS.—

(A) IN GENERAL.—The Secretary shall develop a policy under which each institution providing child care that participates in the program under this section shall—

(i) submit to the State agency an initial application to participate in the program that meets all requirements established by the Secretary by regulation;

(ii) annually confirm to the State agency that the institution, and any facilities of the institution in which the program is operated by a sponsoring organization, is in compliance with subsection (a)(5); and

(iii) annually submit to the State agency any additional information necessary to confirm that the institution is in compliance with all other requirements to participate in the program, as established in this Act and by the Secretary by regulation.

(B) REQUIRED REVIEWS OF SPONSORED FACILITIES.—

(i) IN GENERAL.—The Secretary shall develop a policy under which each sponsoring organization participating in the program under this section shall conduct—

(I) periodic unannounced site visits at not less than 3-year intervals to sponsored child and adult care centers and family or group day care homes to identify and prevent management deficiencies and fraud and abuse under the program; and

(II) at least 1 scheduled site visit each year to sponsored child and adult care centers and family or group day care homes to identify and prevent management deficiencies and fraud and abuse under the program and to improve program operations.

(ii) VARIED TIMING.—Sponsoring organizations shall vary the timing of unannounced reviews under clause (i)(I) in a manner that makes the reviews unpredictable to sponsored facilities.

(C) REQUIRED REVIEWS OF INSTITUTIONS.—The Secretary shall develop a policy under which each State agency shall conduct—

(i) at least 1 scheduled site visit at not less than 3-year intervals to each institution under the State agency participating in the program under this section—

(I) to identify and prevent management deficiencies and fraud and abuse under the program; and

(II) to improve program operations; and

(ii) more frequent reviews of any institution that—

(I) sponsors a significant share of the facilities participating in the program;

(II) conducts activities other than the program authorized under this section;

(III) has serious management problems, as identified in a prior review, or is at risk of having serious management problems; or

(IV) meets such other criteria as are defined by the Secretary.

(D) DETECTION AND DETERRENCE OF ERRONEOUS PAYMENTS AND FALSE CLAIMS.—

(i) IN GENERAL.—The Secretary may develop a policy to detect and deter, and recover erroneous payments to, and false claims submitted by, institutions, sponsored child and adult care centers, and family or group day care homes participating in the program under this section.

(ii) BLOCK CLAIMS.—

(I) DEFINITION OF BLOCK CLAIM.—In this clause, the term “block claim” has the meaning given the term in section 226.2 of title 7, Code of Federal Regulations (or successor regulations).

(II) PROGRAM EDIT CHECKS.—The Secretary may not require any State agency, sponsoring organization, or other institution to perform edit checks or on-site reviews relating to the detection of block claims by any child care facility.

(III) ALLOWANCE.—Notwithstanding subclause (II), the Secretary may require any State agency, sponsoring organization, or other institution to collect, store, and transmit to the appropriate entity information necessary to develop any other policy developed under clause (i).

(3) PROGRAM INFORMATION.—

(A) IN GENERAL.—On enrollment of a child in a sponsored child care center or family or group day care home participating in the program, the center or home (or its sponsoring organization) shall provide to the child’s parents or guardians—

(i) information that describes the program and its benefits; and

(ii) the name and telephone number of the sponsoring organization of the center or home and the State agency involved in the operation of the program.

(B) FORM.—The information described in subparagraph (A) shall be in a form and, to the maximum extent practicable, language easily understandable by the child’s parents or guardians.

(4) ALLOWABLE ADMINISTRATIVE EXPENSES FOR SPONSORING ORGANIZATIONS.—In consultation with State agencies and sponsoring organizations, the Secretary shall develop, and provide for the dissemination to State agencies and sponsoring organi-

zations of, a list of allowable reimbursable administrative expenses for sponsoring organizations under the program.

(5) TERMINATION OR SUSPENSION OF PARTICIPATING ORGANIZATIONS.—

(A) IN GENERAL.—The Secretary shall establish procedures for the termination of participation by institutions and family or group day care homes under the program.

(B) STANDARDS.—Procedures established pursuant to subparagraph (A) shall include standards for terminating the participation of an institution or family or group day care home that—

(i) engages in unlawful practices, falsifies information provided to the State agency, or conceals a criminal background; or

(ii) substantially fails to fulfill the terms of its agreement with the State agency.

(C) CORRECTIVE ACTION.—Procedures established pursuant to subparagraph (A)—

(i) shall require an entity described in subparagraph (B) to undertake corrective action; and

(ii) may require the immediate suspension of operation of the program by an entity described in subparagraph (B), without the opportunity for corrective action, if the State agency determines that there is imminent threat to the health or safety of a participant at the entity or the entity engages in any activity that poses a threat to public health or safety.

(D) HEARING.—

(i) IN GENERAL.—Except as provided in clause (ii), an institution or family or group day care home shall be provided a fair hearing in accordance with subsection (e)(1) prior to any determination to terminate participation by the institution or family or group day care home under the program.

(ii) EXCEPTION FOR FALSE OR FRAUDULENT CLAIMS.—

(I) IN GENERAL.—If a State agency determines that an institution has knowingly submitted a false or fraudulent claim for reimbursement, the State agency may suspend the participation of the institution in the program in accordance with this clause.

(II) REQUIREMENT FOR REVIEW.—Prior to any determination to suspend participation of an institution under subclause (I), the State agency shall provide for an independent review of the proposed suspension in accordance with subclause (III).

(III) REVIEW PROCEDURE.—The review shall—

(aa) be conducted by an independent and impartial official other than, and not accountable to, any person involved in the determination to suspend the institution;

(bb) provide the State agency and the institution the right to submit written docu-

mentation relating to the suspension, including State agency documentation of the alleged false or fraudulent claim for reimbursement and the response of the institution to the documentation;

(cc) require the reviewing official to determine, based on the review, whether the State agency has established, based on a preponderance of the evidence, that the institution has knowingly submitted a false or fraudulent claim for reimbursement;

(dd) require the suspension to be in effect for not more than 120 calendar days after the institution has received notification of a determination of suspension in accordance with this clause; and

(ee) require the State agency during the suspension to ensure that payments continue to be made to sponsored centers and family and group day care homes meeting the requirements of the program.

(IV) HEARING.—A State agency shall provide an institution that has been suspended from participation in the program under this clause an opportunity for a fair hearing on the suspension conducted in accordance with subsection (e)(1).

(E) LIST OF DISQUALIFIED INSTITUTIONS AND INDIVIDUALS.—

(i) IN GENERAL.—The Secretary shall maintain a list of institutions, sponsored family or group day care homes, and individuals that have been terminated or otherwise disqualified from participation in the program.

(ii) AVAILABILITY.—The Secretary shall make the list available to State agencies for use in approving or renewing applications by institutions, sponsored family or group day care homes, and individuals for participation in the program.

(e) HEARINGS.—

(1) IN GENERAL.—Except as provided in paragraph (4), each State agency shall provide, in accordance with regulations promulgated by the Secretary, an opportunity for a fair hearing and a prompt determination to any institution aggrieved by any action of the State agency that affects—

(A) the participation of the institution in the program authorized by this section; or

(B) the claim of the institution for reimbursement under this section.

(2) REIMBURSEMENT.—In accordance with paragraph (3), a State agency that fails to meet timeframes for providing an opportunity for a fair hearing and a prompt determination to any institution under paragraph (1) in accordance with regulations promulgated by the Secretary, shall pay, from non-Federal sources, all valid claims for reimbursement to the institution

and the facilities of the institution during the period beginning on the day after the end of any regulatory deadline for providing the opportunity and making the determination and ending on the date on which a hearing determination is made.

(3) NOTICE TO STATE AGENCY.—The Secretary shall provide written notice to a State agency at least 30 days prior to imposing any liability for reimbursement under paragraph (2).

(4) FEDERAL AUDIT DETERMINATION.—A State is not required to provide a hearing to an institution concerning a State action taken on the basis of a Federal audit determination.

(5) SECRETARIAL HEARING.—If a State does not provide a hearing to an institution concerning a State action taken on the basis of a Federal audit determination, the Secretary, on request, shall afford a hearing to the institution concerning the action.

(f) STATE DISBURSEMENTS TO INSTITUTIONS.—

(1) IN GENERAL.—

(A) REQUIREMENT.—Funds paid to any State under this section shall be disbursed to eligible institutions by the State under agreements approved by the Secretary. Disbursements to any institution shall be made only for the purpose of assisting in providing meals to children attending institutions, or in family or group day care homes. Disbursement to any institution shall not be dependent upon the collection of moneys from participating children. All valid claims from such institutions shall be paid within forty-five days of receipt by the State. The State shall notify the institution within fifteen days of receipt of a claim if the claim as submitted is not valid because it is incomplete or incorrect.

(B) FRAUD OR ABUSE.—

(i) IN GENERAL.—The State may recover funds disbursed under subparagraph (A) to an institution if the State determines that the institution has engaged in fraud or abuse with respect to the program or has submitted an invalid claim for reimbursement.

(ii) PAYMENT.—Amounts recovered under clause (i)—

(I) may be paid by the institution to the State over a period of one or more years; and

(II) shall not be paid from funds used to provide meals and supplements.

(iii) HEARING.—An institution shall be provided a fair hearing in accordance with subsection (e)(1) prior to any determination to recover funds under this subparagraph.

(2)(A) Subject to subparagraph (B) of this paragraph, the disbursement for any fiscal year to any State for disbursement to institutions, other than family or group day care home sponsoring organizations, for meals provided under this section shall be equal to the sum of the products obtained by multiplying the total number of each type of meal (breakfast, lunch, or supper, or supplement) served in such institution in that fiscal year by the applicable na-

tional average payment rate for each such type of meal, as determined under subsection (c).

(B) No reimbursement may be made to any institution under this paragraph, or to family or group day care home sponsoring organizations under paragraph (3) of this subsection, for more than two meals and one supplement per day per child, or in the case of an institution (but not in the case of a family or group day care home sponsoring organization), 2 meals and 1 supplement per day per child, for children that are maintained in a child care setting for eight or more hours per day.

(C) LIMITATION ON ADMINISTRATIVE EXPENSES FOR CERTAIN SPONSORING ORGANIZATIONS.—

(i) IN GENERAL.—Except as provided in clause (ii), a sponsoring organization of a day care center may reserve not more than 15 percent of the funds provided under paragraph (1) for the administrative expenses of the organization.

(ii) WAIVER.—A State may waive the requirement in clause (i) with respect to a sponsoring organization if the organization provides justification to the State that the organization requires funds in excess of 15 percent of the funds provided under paragraph (1) to pay the administrative expenses of the organization.

(3) REIMBURSEMENT OF FAMILY OR GROUP DAY CARE HOME SPONSORING ORGANIZATIONS.—

(A) REIMBURSEMENT FACTOR.—

(i) IN GENERAL.—An institution that participates in the program under this section as a family or group day care home sponsoring organization shall be provided, for payment to a home sponsored by the organization, reimbursement factors in accordance with this subparagraph for the cost of obtaining and preparing food and prescribed labor costs involved in providing meals under this section.

(ii) TIER I FAMILY OR GROUP DAY CARE HOMES.—

(I) DEFINITION OF TIER I FAMILY OR GROUP DAY CARE HOME.—In this paragraph, the term “tier I family or group day care home” means—

(aa) a family or group day care home that is located in a geographic area, as defined by the Secretary based on census data, in which at least 50 percent of the children residing in the area are members of households whose incomes meet the income eligibility guidelines for free or reduced price meals under section 9;

(bb) a family or group day care home that is located in an area served by a school enrolling students in which at least 50 percent of the total number of children enrolled are certified eligible to receive free or reduced price school meals under this Act or the Child Nutrition Act of 1966 (42 U.S.C. 1771 et seq.); or

(cc) a family or group day care home that is operated by a provider whose household meets the income eligibility guidelines for free or reduced price meals under section 9 and whose income is verified by the sponsoring organization of the home under regulations established by the Secretary.

(II) REIMBURSEMENT.—Except as provided in subclause (III), a tier I family or group day care home shall be provided reimbursement factors under this clause without a requirement for documentation of the costs described in clause (i), except that reimbursement shall not be provided under this subclause for meals or supplements served to the children of a person acting as a family or group day care home provider unless the children meet the income eligibility guidelines for free or reduced price meals under section 9.

(III) FACTORS.—Except as provided in subclause (IV), the reimbursement factors applied to a home referred to in subclause (II) shall be the factors in effect on July 1, 1996.

(IV) ADJUSTMENTS.—The reimbursement factors under this subparagraph shall be adjusted on July 1, 1997, and each July 1 thereafter, to reflect changes in the Consumer Price Index for food at home for the most recent 12-month period for which the data are available. The reimbursement factors under this subparagraph shall be rounded to the nearest lower cent increment and based on the unrounded adjustment in effect on June 30 of the preceding school year.

(iii) TIER II FAMILY OR GROUP DAY CARE HOMES.—

(I) IN GENERAL.—

(aa) FACTORS.—Except as provided in subclause (II), with respect to meals or supplements served under this clause by a family or group day care home that does not meet the criteria set forth in clause (ii)(I), the reimbursement factors shall be 95 cents for lunches and suppers, 27 cents for breakfasts, and 13 cents for supplements.

(bb) ADJUSTMENTS.—The factors shall be adjusted on July 1, 1997, and each July 1 thereafter, to reflect changes in the Consumer Price Index for food at home for the most recent 12-month period for which the data are available. The reimbursement factors under this item shall be rounded down to the nearest lower cent increment and based on the unrounded adjustment for the preceding 12-month period.

(cc) REIMBURSEMENT.—A family or group day care home shall be provided reimburse-

ment factors under this subclause without a requirement for documentation of the costs described in clause (i), except that reimbursement shall not be provided under this subclause for meals or supplements served to the children of a person acting as a family or group day care home provider unless the children meet the income eligibility guidelines for free or reduced price meals under section 9.

(II) OTHER FACTORS.—A family or group day care home that does not meet the criteria set forth in clause (ii)(I) may elect to be provided reimbursement factors determined in accordance with the following requirements:

(aa) CHILDREN ELIGIBLE FOR FREE OR REDUCED PRICE MEALS.—In the case of meals or supplements served under this subsection to children who are members of households whose incomes meet the income eligibility guidelines for free or reduced price meals under section 9, the family or group day care home shall be provided reimbursement factors set by the Secretary in accordance with clause (ii)(III).

(bb) INELIGIBLE CHILDREN.—In the case of meals or supplements served under this subsection to children who are members of households whose incomes do not meet the income eligibility guidelines, the family or group day care home shall be provided reimbursement factors in accordance with subclause (I).

(III) INFORMATION AND DETERMINATIONS.—

(aa) IN GENERAL.—If a family or group day care home elects to claim the factors described in subclause (II), the family or group day care home sponsoring organization serving the home shall collect the necessary income information, as determined by the Secretary, from any parent or other caretaker to make the determinations specified in subclause (II) and shall make the determinations in accordance with rules prescribed by the Secretary.

(bb) CATEGORICAL ELIGIBILITY.—In making a determination under item (aa), a family or group day care home sponsoring organization may consider a child participating in or subsidized under, or a child with a parent participating in or subsidized under, a federally or State supported child care or other benefit program with an income eligibility limit that does not exceed the eligibility standard for free or reduced price meals



under section 9 to be a child who is a member of a household whose income meets the income eligibility guidelines under section 9.

(cc) FACTORS FOR CHILDREN ONLY.—A family or group day care home may elect to receive the reimbursement factors prescribed under clause (ii)(III) solely for the children participating in a program referred to in item (bb) if the home elects not to have income statements collected from parents or other caretakers.

(dd) TRANSMISSION OF INCOME INFORMATION BY SPONSORED FAMILY OR GROUP DAY CARE HOMES.—If a family or group day care home elects to be provided reimbursement factors described in subclause (II), the family or group day care home may assist in the transmission of necessary household income information to the family or group day care home sponsoring organization in accordance with the policy described in item (ee).

(ee) POLICY.—The Secretary shall develop a policy under which a sponsored family or group day care home described in item (dd) may, under terms and conditions specified by the Secretary and with the written consent of the parents or guardians of a child in a family or group day care home participating in the program, assist in the transmission of the income information of the family to the family or group day care home sponsoring organization.

(IV) SIMPLIFIED MEAL COUNTING AND REPORTING PROCEDURES.—The Secretary shall prescribe simplified meal counting and reporting procedures for use by a family or group day care home that elects to claim the factors under subclause (II) and by a family or group day care home sponsoring organization that sponsors the home. The procedures the Secretary prescribes may include 1 or more of the following:

(aa) Setting an annual percentage for each home of the number of meals served that are to be reimbursed in accordance with the reimbursement factors prescribed under clause (ii)(III) and an annual percentage of the number of meals served that are to be reimbursed in accordance with the reimbursement factors prescribed under subclause (I), based on the family income of children enrolled in the home in a specified month or other period.

(bb) Placing a home into 1 of 2 or more reimbursement categories annually based on

the percentage of children in the home whose households have incomes that meet the income eligibility guidelines under section 9, with each such reimbursement category carrying a set of reimbursement factors such as the factors prescribed under clause (ii)(III) or subclause (I) or factors established within the range of factors prescribed under clause (ii)(III) and subclause (I).

(cc) Such other simplified procedures as the Secretary may prescribe.

(V) MINIMUM VERIFICATION REQUIREMENTS.—The Secretary may establish any minimum verification requirements that are necessary to carry out this clause.

(B) ADMINISTRATIVE FUNDS.—

(i) IN GENERAL.—In addition to reimbursement factors described in subparagraph (A), a family or group day care home sponsoring organization shall receive reimbursement for the administrative expenses of the sponsoring organization in an amount that is not less than the product obtained each month by multiplying—

(I) the number of family and group day care homes of the sponsoring organization submitting a claim for reimbursement during the month; by

(II) the appropriate administrative rate determined by the Secretary.

(ii) ANNUAL ADJUSTMENT.—The administrative reimbursement levels specified in clause (i) shall be adjusted July 1 of each year to reflect changes in the Consumer Price Index for All Urban Consumers published by the Bureau of Labor Statistics of the Department of Labor for the most recent 12-month period for which such data are available.

(iii) CARRYOVER FUNDS.—The Secretary shall develop procedures under which not more than 10 percent of the amount made available to sponsoring organizations under this section for administrative expenses for a fiscal year may remain available for obligation or expenditure in the succeeding fiscal year.

(C)(i) Reimbursement for administrative expenses shall also include start-up funds to finance the administrative expenses for such institutions to initiate successful operation under the program and expansion funds to finance the administrative expenses for such institutions to expand into low-income or rural areas. Institutions that have received start-up funds may also apply at a later date for expansion funds. Such start-up funds and expansion funds shall be in addition to other reimbursement to such institutions for administrative expenses. Start-up funds and expansion funds shall be payable to enable institutions satisfying the criteria of subsection (d) of this section, and any other standards prescribed by the Secretary, to develop an application for participation in the program as a family or group day care home sponsoring organization

or to implement the program upon approval of the application. Such start-up funds and expansion funds shall be payable in accordance with the procedures prescribed by the Secretary. The amount of start-up funds and expansion funds payable to an institution shall be not less than the institution's anticipated reimbursement for administrative expenses under the program for one month and not more than the institution's anticipated reimbursement for administrative expenses under the program for two months.

(ii) Funds for administrative expenses may be used by family or group day care home sponsoring organizations assist unlicensed family or group day care homes in becoming licensed.

(D) LIMITATIONS ON ABILITY OF FAMILY OR GROUP DAY CARE HOMES TO TRANSFER SPONSORING ORGANIZATIONS.—

(i) IN GENERAL.—Subject to clause (ii), a State agency shall limit the ability of a family or group day care home to transfer from a sponsoring organization to another sponsoring organization more frequently than once a year.

(ii) GOOD CAUSE.—The State agency may permit or require a family or group day care home to transfer from a sponsoring organization to another sponsoring organization more frequently than once a year for good cause (as determined by the State agency), including circumstances in which the sponsoring organization of the family or group day care home ceases to participate in the child and adult care food program.

(E) PROVISION OF DATA TO FAMILY OR GROUP DAY CARE HOME SPONSORING ORGANIZATIONS.—

(i) CENSUS DATA.—The Secretary shall provide to each State agency administering a child and adult care food program under this section data from the most recent decennial census survey or other appropriate census survey for which the data are available showing which areas in the State meet the requirements of subparagraph (A)(ii)(I)(aa). The State agency shall provide the data to family or group day care home sponsoring organizations located in the State.

(ii) SCHOOL DATA.—

(I) IN GENERAL.—A State agency administering the school lunch program under this Act or the school breakfast program under the Child Nutrition Act of 1966 (42 U.S.C. 1771 et seq.) shall provide to approved family or group day care home sponsoring organizations a list of schools serving elementary school children in the State in which not less than ½ of the children enrolled are certified to receive free or reduced price meals. The State agency shall collect the data necessary to create the list annually and provide the list on a timely basis to any approved family or group day care home sponsoring organization that requests the list.

(II) USE OF DATA FROM PRECEDING SCHOOL YEAR.—In determining for a fiscal year or other annual period whether a home qualifies as a tier I family or group day care home under subparagraph (A)(ii)(I), the State agency administering the program under this section, and a family or group day care home sponsoring organization, shall use the most current available data at the time of the determination.

(iii) DURATION OF DETERMINATION.—For purposes of this section, a determination that a family or group day care home is located in an area that qualifies the home as a tier I family or group day care home (as the term is defined in subparagraph (A)(ii)(I)), shall be in effect for 5 years (unless the determination is made on the basis of census data, in which case the determination shall remain in effect until more recent census data are available) unless the State agency determines that the area in which the home is located no longer qualifies the home as a tier I family or group day care home.

(4) By the first day of each month of operation, the State may provide advance payments for the month to each approved institution in an amount that reflects the full level of valid claims customarily received from such institution for one month's operation. In the case of a newly participating institution, the amount of the advance shall reflect the State's best estimate of the level of valid claims such institutions will submit. If the State has reason to believe that an institution will not be able to submit a valid claim covering the period for which such an advance has been made, the subsequent month's advance payment shall be withheld until the State receives a valid claim. Payments advanced to institutions that are not subsequently deducted from a valid claim for reimbursement shall be repaid upon demand by the State. Any prior payment that is under dispute may be subtracted from an advance payment.

(g) NUTRITIONAL REQUIREMENTS FOR MEALS AND SNACKS SERVED IN INSTITUTIONS AND FAMILY OR GROUP DAY CARE HOMES.—

(1) DEFINITION OF DIETARY GUIDELINES.—In this subsection, the term "Dietary Guidelines" means the Dietary Guidelines for Americans published under section 301 of the National Nutrition Monitoring and Related Research Act of 1990 (7 U.S.C. 5341).

(2) NUTRITIONAL REQUIREMENTS.—

(A) IN GENERAL.—Except as provided in subparagraph (C), reimbursable meals and snacks served by institutions, family or group day care homes, and sponsored centers participating in the program under this section shall consist of a combination of foods that meet minimum nutritional requirements prescribed by the Secretary on the basis of tested nutritional research.

(B) CONFORMITY WITH THE DIETARY GUIDELINES AND AUTHORITATIVE SCIENCE.—

(i) IN GENERAL.—Not less frequently than once every 10 years, the Secretary shall review and, as appropriate, update requirements for meals served under the program under this section to ensure that the meals—

(I) are consistent with the goals of the most recent Dietary Guidelines; and

(II) promote the health of the population served by the program authorized under this section, as indicated by the most recent relevant nutrition science and appropriate authoritative scientific agency and organization recommendations.

(ii) COST REVIEW.—The review required under clause (i) shall include a review of the cost to child care centers and group or family day care homes resulting from updated requirements for meals and snacks served under the program under this section.

(iii) REGULATIONS.—Not later than 18 months after the completion of the review of the meal pattern under clause (i), the Secretary shall promulgate proposed regulations to update the meal patterns for meals and snacks served under the program under this section.

(C) EXCEPTIONS.—

(i) SPECIAL DIETARY NEEDS.—The minimum nutritional requirements prescribed under subparagraph (A) shall not prohibit institutions, family or group day care homes, and sponsored centers from substituting foods to accommodate the medical or other special dietary needs of individual participants.

(ii) EXEMPT INSTITUTIONS.—The Secretary may elect to waive all or part of the requirements of this subsection for emergency shelters participating in the program under this section.

(3) MEAL SERVICE.—Institutions, family or group day care homes, and sponsored centers shall ensure that reimbursable meal service contributes to the development and socialization of enrolled children by providing that food is not used as a punishment or reward.

(4) FLUID MILK.—

(A) IN GENERAL.—If an institution, family or group day care home, or sponsored center provides fluid milk as part of a reimbursable meal or supplement, the institution, family or group day care home, or sponsored center shall provide the milk in accordance with the most recent version of the Dietary Guidelines.

(B) MILK SUBSTITUTES.—In the case of children who cannot consume fluid milk due to medical or other special dietary needs other than a disability, an institution, family or group day care home, or sponsored center may substitute for the fluid milk required in meals served, a nondairy beverage that—

(i) is nutritionally equivalent to fluid milk; and

(ii) meets nutritional standards established by the Secretary, including, among other requirements established by the Secretary, fortification of calcium, protein, vitamin A, and vitamin D to levels found in cow's milk.

(C) APPROVAL.—

(i) IN GENERAL.—A substitution authorized under subparagraph (B) may be made—

(I) at the discretion of and on approval by the participating day care institution; and

(II) if the substitution is requested by written statement of a medical authority, or by the parent or legal guardian of the child, that identifies the medical or other special dietary need that restricts the diet of the child.

(ii) EXCEPTION.—An institution, family or group day care home, or sponsored center that elects to make a substitution authorized under this paragraph shall not be required to provide beverages other than beverages the State has identified as acceptable substitutes.

(D) EXCESS EXPENSES BORNE BY INSTITUTION.—A participating institution, family or group day care home, or sponsored center shall be responsible for any expenses that—

(i) are incurred by the institution, family or group day care home, or sponsored center to provide substitutions under this paragraph; and

(ii) are in excess of expenses covered under reimbursements under this Act.

(5) NONDISCRIMINATION POLICY.—No physical segregation or other discrimination against any person shall be made because of the inability of the person to pay, nor shall there be any overt identification of any such person by special tokens or tickets, different meals or meal service, announced or published lists of names, or other means.

(6) USE OF ABUNDANT AND DONATED FOODS.—To the maximum extent practicable, each institution shall use in its food service foods that are—

(A) designated from time to time by the Secretary as being in abundance, either nationally or in the food service area; or

(B) donated by the Secretary.

(h)(1)(A) The Secretary shall donate agricultural commodities produced in the United States for use in institutions participating in the child care food program under this section.

(B) The value of the commodities donated under subparagraph (A) (or cash in lieu of commodities) to each State for each school year shall be, at a minimum, the amount obtained by multiplying the number of lunches and suppers served in participating institutions in that State during the preceding school year by the rate for commodities or cash in lieu of commodities established under section 6(c) for the school year concerned.

(C) After the end of each school year, the Secretary shall—

(i) reconcile the number of lunches and suppers served in participating institutions in each State during such school year with the number of lunches and suppers served by participating institutions in each State during the preceding school year; and

(ii) based on such reconciliation, increase or reduce subsequent commodity assistance or cash in lieu of commodities provided to each State.

(D) Any State receiving assistance under this section for institutions participating in the child care food program may, upon application to the Secretary, receive cash in lieu of some or all of the commodities to which it would otherwise be entitled under this subsection. In determining whether to request cash in lieu of commodities, the State shall base its decision on the preferences of individual participating institutions within the State, unless this proves impracticable due to the small number of institutions preferring donated commodities.

(2) The Secretary is authorized to provide agricultural commodities obtained by the Secretary under the provisions of the Agricultural Act of 1949 (7 U.S.C. 1421 et seq.) and donated under the provisions of section 416 of such Act, to the Department of Defense for use by its institutions providing child care services, when such commodities are in excess of the quantities needed to meet the needs of all other child nutrition programs, domestic and foreign food assistance and export enhancement programs. The Secretary shall require reimbursement from the Department of Defense for the costs, or some portion thereof, of delivering such commodities to overseas locations, unless the Secretary determines that it is in the best interest of the program that the Department of Agriculture shall assume such costs.

(i) AUDITS.—

(1) DISREGARDS.—

(A) IN GENERAL.—Subject to subparagraph (B), in conducting management evaluations, reviews, or audits under this section, the Secretary or a State agency may disregard any overpayment to an institution for a fiscal year if the total overpayment to the institution for the fiscal year does not exceed an amount that is consistent with the disregards allowed in other programs under this Act and recognizes the cost of collecting small claims, as determined by the Secretary.

(B) CRIMINAL OR FRAUD VIOLATIONS.—In carrying out this paragraph, the Secretary and a State agency shall not disregard any overpayment for which there is evidence of a violation of a criminal law or civil fraud law.

(2) FUNDING.—

(A) IN GENERAL.—The Secretary shall make available for each fiscal year to each State agency administering the child and adult care food program, for the purpose of conducting audits of participating institutions, an amount of up to 1.5 percent of the funds used by each State in the program under this section, during the second preceding fiscal year.

(B) ADDITIONAL FUNDING.—

(i) **IN GENERAL.**—Subject to clause (ii), for fiscal year 2016 and each fiscal year thereafter, the Secretary may increase the amount of funds made available to any State agency under subparagraph (A), if the State agency demonstrates that the State agency can effectively use the funds to improve program management under criteria established by the Secretary.

(ii) **LIMITATION.**—The total amount of funds made available to any State agency under this paragraph shall not exceed 2 percent of the funds used by each State agency in the program under this section, during the second preceding fiscal year.

(j) **AGREEMENTS.**—

(1) **IN GENERAL.**—The Secretary shall issue regulations directing States to develop and provide for the use of a standard form of agreement between each sponsoring organization and the family or group day care homes or sponsored day care centers participating in the program under such organization, for the purpose of specifying the rights and responsibilities of each party.

(2) **DURATION.**—An agreement under paragraph (1) shall remain in effect until terminated by either party to the agreement.

(k) **TRAINING AND TECHNICAL ASSISTANCE.**—A State participating in the program established under this section shall provide sufficient training, technical assistance, and monitoring to facilitate effective operation of the program. The Secretary shall assist the State in developing plans to fulfill the requirements of this subsection.

(l) Expenditures of funds from State and local sources for the maintenance of food programs for children shall not be diminished as a result of funds received under this section.

(m) States and institutions participating in the program under this section shall keep such accounts and records as may be necessary to enable the Secretary to determine whether there has been compliance with the requirements of this section. Such accounts and records shall be available at any reasonable time for inspection and audit by representatives of the Secretary, the Comptroller General of the United States, and appropriate State representatives and shall be preserved for such period of time, not in excess of five years, as the Secretary determines necessary.

(n) There are hereby authorized to be appropriated for each fiscal year such funds as are necessary to carry out the purposes of this section.

(o)(1) For purposes of this section, adult day care centers shall be considered eligible institutions for reimbursement for meals or supplements served to persons 60 years of age or older or to chronically impaired disabled persons, including victims of Alzheimer's disease and related disorders with neurological and organic brain dysfunction. Reimbursement provided to such institutions for such purposes shall improve the quality of meals or level of services provided or increase participation in the program. Lunches served by each such institution for which reimbursement is claimed under this section shall provide, on the average, approximately  $\frac{1}{3}$  of the



daily recommended dietary allowance established by the Food and Nutrition Board of the National Research Council of the National Academy of Sciences. Such institutions shall make reasonable efforts to serve meals that meet the special dietary requirements of participants, including efforts to serve foods in forms palatable to participants.

(2) For purposes of this subsection—

(A) the term “adult day care center” means any public agency or private nonprofit organization, or any proprietary title XIX or title XX center, which—

(i) is licensed or approved by Federal, State, or local authorities to provide adult day care services to chronically impaired disabled adults or persons 60 years of age or older in a group setting outside their homes, or a group living arrangement, on a less than 24-hour basis; and

(ii) provides for such care and services directly or under arrangements made by the agency or organization whereby the agency or organization maintains professional management responsibility for all such services; and

(B) the term “proprietary title XIX or title XX center” means any private, for-profit center providing adult day care services for which it receives compensation from amounts granted to the States under title XIX or XX of the Social Security Act [(42 U.S.C. 1396 et seq.)] and which title XIX or title XX beneficiaries were not less than 25 percent of enrolled eligible participants in a calendar month preceding initial application or annual reapplication for program participation.

(3)(A) The Secretary, in consultation with the Assistant Secretary for Aging, shall establish, within 6 months of enactment [enacted on October 1, 1988], separate guidelines for reimbursement of institutions described in this subsection. Such reimbursement shall take into account the nutritional requirements of eligible persons, as determined by the Secretary on the basis of tested nutritional research, except that such reimbursement shall not be less than would otherwise be required under this section.

(B) The guidelines shall contain provisions designed to assure that reimbursement under this subsection shall not duplicate reimbursement under part C of title III of the Older Americans Act of 1965 [(42 U.S.C. 3030e et seq.)], for the same meal served.

(4) For the purpose of establishing eligibility for free or reduced price meals or supplements under this subsection, income shall include only the income of an eligible person and, if any, the spouse and dependents with whom the eligible person resides.

(5) A person described in paragraph (1) shall be considered automatically eligible for free meals or supplements under this subsection, without further application or eligibility determination, if the person is—

(A) a member of a household receiving assistance under the Food and Nutrition Act of 2008 (7 U.S.C. 2011 et seq.); or

(B) a recipient of assistance under title XVI or XIX of the Social Security Act (42 U.S.C. 1381 et seq.).

(6) The Governor of any State may designate to administer the program under this subsection a State agency other than the agency that administers the child care food program under this section.

[(p)<sup>15</sup>]

(q) MANAGEMENT SUPPORT.—

(1) TECHNICAL AND TRAINING ASSISTANCE.—In addition to the training and technical assistance that is provided to State agencies under other provisions of this Act and the Child Nutrition Act of 1966 (42 U.S.C. 1771 et seq.), the Secretary shall provide training and technical assistance in order to assist the State agencies in improving their program management and oversight under this section.

(2) TECHNICAL AND TRAINING ASSISTANCE FOR IDENTIFICATION AND PREVENTION OF FRAUD AND ABUSE.—As part of training and technical assistance provided under paragraph (1), the Secretary shall provide training on a continuous basis to State agencies, and shall ensure that such training is provided to sponsoring organizations, for the identification and prevention of fraud and abuse under the program and to improve management of the program.

(r) PROGRAM FOR AT-RISK SCHOOL CHILDREN.—

(1) DEFINITION OF AT-RISK SCHOOL CHILD.—In this subsection, the term “at-risk school child” means a school child who—

(A) is not more than 18 years of age, except that the age limitation provided by this subparagraph shall not apply to a child described in section 12(d)(1)(A); and

(B) participates in a program authorized under this section operated at a site located in a geographical area served by a school in which at least 50 percent of the children enrolled are certified as eligible to receive free or reduced price school meals under this Act or the Child Nutrition Act of 1966 (42 U.S.C. 1771 et seq.).

(2) PARTICIPATION IN CHILD AND ADULT CARE FOOD PROGRAM.—An institution may participate in the program authorized under this section only if the institution provides meals or supplements under a program—

(A) organized primarily to provide care to at-risk school children during after-school hours, weekends, or holidays during the regular school year; and

(B) with an educational or enrichment purpose.

(3) ADMINISTRATION.—Except as otherwise provided in this subsection, the other provisions of this section apply to an institution described in paragraph (2).

(4) MEAL AND SUPPLEMENT REIMBURSEMENT.—

(A) LIMITATIONS.—An institution may claim reimbursement under this subsection only for one meal per child per day and one supplement per child per day served under a program organized primarily to provide care to at-risk school children during after-school hours, weekends, or holidays during the regular school year.

(B) RATES.—

(i) MEALS.—A meal shall be reimbursed under this subsection at the rate established for free meals under subsection (c).

<sup>15</sup>Subsec. (p) struck by sec. 441(a)(7) of P.L. 111–296, 124 Stat. 3264, Dec. 13, 2010.

- (ii) SUPPLEMENTS.—A supplement shall be reimbursed under this subsection at the rate established for a free supplement under subsection (c)(3).
- (C) NO CHARGE.—A meal or supplement claimed for reimbursement under this subsection shall be served without charge.
- (5) LIMITATION.—An institution participating in the program under this subsection may not claim reimbursement for meals and snacks that are served under section 18(h) on the same day.
- (6) HANDBOOK.—
- (A) IN GENERAL.—Not later than 180 days after the date of enactment of the Healthy, Hunger-Free Kids Act of 2010, the Secretary shall—
- (i) issue guidelines for afterschool meals for at-risk school children; and
- (ii) publish a handbook reflecting those guidelines.
- (B) REVIEW.—Each year after the issuance of guidelines under subparagraph (A), the Secretary shall—
- (i) review the guidelines; and
- (ii) issue a revised handbook reflecting changes made to the guidelines.
- (s) INFORMATION CONCERNING THE SPECIAL SUPPLEMENTAL NUTRITION PROGRAM FOR WOMEN, INFANTS, AND CHILDREN.—
- (1) IN GENERAL.—The Secretary shall provide each State agency administering a child and adult care food program under this section with information concerning the special supplemental nutrition program for women, infants, and children authorized under section 17 of the Child Nutrition Act of 1966 (42 U.S.C. 1786).
- (2) REQUIREMENTS FOR STATE AGENCIES.—Each State agency shall ensure that each participating family and group day care home and child care center (other than an institution providing care to school children outside school hours)—
- (A) receives materials that include—
- (i) a basic explanation of the importance and benefits of the special supplemental nutrition program for women, infants, and children;
- (ii) the maximum State income eligibility standards, according to family size, for the program; and
- (iii) information concerning how benefits under the program may be obtained;
- (B) receives periodic updates of the information described in subparagraph (A); and
- (C) provides the information described in subparagraph (A) to parents of enrolled children at enrollment.
- (t) PARTICIPATION BY EMERGENCY SHELTERS.—
- (1) DEFINITION OF EMERGENCY SHELTER.—In this subsection, the term “emergency shelter” means—

- (A) an emergency shelter (as defined in section 321 of the Stewart B. McKinney Homeless Assistance Act <sup>16</sup> (42 U.S.C. 11351)); or
- (B) a site operated by the shelter.
- (2) ADMINISTRATION.—Except as otherwise provided in this subsection, an emergency shelter shall be eligible to participate in the program authorized under this section in accordance with the terms and conditions applicable to eligible institutions described in subsection (a).
- (3) LICENSING REQUIREMENTS.—The licensing requirements contained in subsection (a)(5) shall not apply to an emergency shelter.
- (4) HEALTH AND SAFETY STANDARDS.—To be eligible to participate in the program authorized under this section, an emergency shelter shall comply with applicable State or local health and safety standards.
- (5) MEAL OR SUPPLEMENT REIMBURSEMENT.—
- (A) LIMITATIONS.—An emergency shelter may claim reimbursement under this subsection—
- (i) only for a meal or supplement served to children residing at an emergency shelter, if the children are—
- (I) not more than 18 years of age; or
- (II) children with disabilities; and
- (ii) for not more than 3 meals, or 2 meals and a supplement, per child per day.
- (B) RATE.—A meal or supplement eligible for reimbursement shall be reimbursed at the rate at which free meals and supplements are reimbursed under subsection (c).
- (C) NO CHARGE.—A meal or supplement claimed for reimbursement shall be served without charge.
- (u) PROMOTING HEALTH AND WELLNESS IN CHILD CARE.—
- (1) PHYSICAL ACTIVITY AND ELECTRONIC MEDIA USE.—The Secretary shall encourage participating child care centers and family or group day care homes—
- (A) to provide to all children under the supervision of the participating child care centers and family or group day care homes daily opportunities for structured and unstructured age-appropriate physical activity; and
- (B) to limit among children under the supervision of the participating child care centers and family or group day care homes the use of electronic media to an appropriate level.
- (2) WATER CONSUMPTION.—Participating child care centers and family or group day care homes shall make available to children, as nutritionally appropriate, potable water as an acceptable fluid for consumption throughout the day, including at meal times.
- (3) TECHNICAL ASSISTANCE AND GUIDANCE.—

<sup>16</sup>Sec. 2 of P.L. 106-400, 114 Stat. 1675, Oct. 30, 2000, provides that any reference in any law, regulation, document, paper, or other record of the United States to the Stewart B. McKinney Homeless Assistance Act shall be deemed to be a reference to the “McKinney-Vento Homeless Assistance Act”.

(A) IN GENERAL.—The Secretary shall provide technical assistance to institutions participating in the program under this section to assist participating child care centers and family or group day care homes in complying with the nutritional requirements and wellness recommendations prescribed by the Secretary in accordance with this subsection and subsection (g).

(B) GUIDANCE.—Not later than January 1, 2012, the Secretary shall issue guidance to States and institutions to encourage participating child care centers and family or group day care homes serving meals and snacks under this section to—

(i) include foods that are recommended for increased serving consumption in amounts recommended by the most recent Dietary Guidelines for Americans published under section 301 of the National Nutrition Monitoring and Related Research Act of 1990 (7 U.S.C. 5341), including fresh, canned, dried, or frozen fruits and vegetables, whole grain products, lean meat products, and low-fat and non-fat dairy products; and

(ii) reduce sedentary activities and provide opportunities for regular physical activity in quantities recommended by the most recent Dietary Guidelines for Americans described in clause (i).

(C) NUTRITION.—Technical assistance relating to the nutritional requirements of this subsection and subsection (g) shall include—

(i) nutrition education, including education that emphasizes the relationship between nutrition, physical activity, and health;

(ii) menu planning;

(iii) interpretation of nutrition labels; and

(iv) food preparation and purchasing guidance to produce meals and snacks that are—

(I) consistent with the goals of the most recent Dietary Guidelines; and

(II) promote the health of the population served by the program under this section, as recommended by authoritative scientific organizations.

(D) PHYSICAL ACTIVITY.—Technical assistance relating to the physical activity requirements of this subsection shall include—

(i) education on the importance of regular physical activity to overall health and well being; and

(ii) sharing of best practices for physical activity plans in child care centers and homes as recommended by authoritative scientific organizations.

(E) ELECTRONIC MEDIA USE.—Technical assistance relating to the electronic media use requirements of this subsection shall include—

(i) education on the benefits of limiting exposure to electronic media by children; and

(ii) sharing of best practices for the development of daily activity plans that limit use of electronic media.

(F) **MINIMUM ASSISTANCE.**—At a minimum, the technical assistance required under this paragraph shall include a handbook, developed by the Secretary in coordination with the Secretary for Health and Human Services, that includes recommendations, guidelines, and best practices for participating institutions and family or group day care homes that are consistent with the nutrition, physical activity, and wellness requirements and recommendations of this subsection.

(G) **ADDITIONAL ASSISTANCE.**—In addition to the requirements of this paragraph, the Secretary shall develop and provide such appropriate training and education materials, guidance, and technical assistance as the Secretary considers to be necessary to comply with the nutritional and wellness requirements of this subsection and subsection (g).

(H) **FUNDING.**—

(i) **IN GENERAL.**—On October 1, 2010, out of any funds in the Treasury not otherwise appropriated, the Secretary of the Treasury shall transfer to the Secretary to provide technical assistance under this subsection \$10,000,000, to remain available until expended.

(ii) **RECEIPT AND ACCEPTANCE.**—The Secretary shall be entitled to receive, shall accept, and shall use to carry out this subsection the funds transferred under clause (i), without further appropriation.

**SEC. 17A. [42 U.S.C. 1766a] MEAL SUPPLEMENTS FOR CHILDREN IN AFTERSCHOOL CARE.**

(a) **GENERAL AUTHORITY.**—

(1) **GRANTS TO STATES.**—The Secretary shall carry out a program to assist States through grants-in-aid and other means to provide meal supplements under a program organized primarily to provide care for children in afterschool care in eligible elementary and secondary schools.

(2) **ELIGIBLE SCHOOLS.**—For the purposes of this section, the term “eligible elementary and secondary schools” means schools that—

(A) operate school lunch programs under this Act;

(B) sponsor afterschool care programs; and

(C) operate afterschool programs with an educational or enrichment purpose.

(b) **ELIGIBLE CHILDREN.**—Reimbursement may be provided under this section only for supplements served to school children who are not more than 18 years of age, except that the age limitation provided by this subsection shall not apply to a child described in section 12(d)(1)(A).

(c) **REIMBURSEMENT.**—

(1) **AT-RISK SCHOOL CHILDREN.**—In the case of an eligible child who is participating in a program authorized under this section operated at a site located in a geographical area served

by a school in which at least 50 percent of the children enrolled are certified as eligible to receive free or reduced price school meals under this Act or the Child Nutrition Act of 1966 (42 U.S.C. 1771 et seq.), a supplement provided under this section to the child shall be—

(A) reimbursed at the rate at which free supplements are reimbursed under section 17(c)(3); and

(B) served without charge.

(2) OTHER SCHOOL CHILDREN.—In the case of an eligible child who is participating in a program authorized under this section at a site that is not described in paragraph (1), for the purposes of this section, the national average payment rate for supplements shall be equal to those established under section 17(c)(3) (as adjusted pursuant to section 11(a)(3)).

(d) CONTENTS OF SUPPLEMENTS.—The requirements that apply to the content of meal supplements served under child care food programs operated with assistance under this Act shall apply to the content of meal supplements served under programs operated with assistance under this section.

**[SEC. 17B. <sup>17</sup> [42 U.S.C. 1766b] HOMELESS CHILDREN NUTRITION PROGRAM.]**

#### PILOT PROJECTS

SEC. 18. **[42 U.S.C. 1769] [(a)] <sup>18</sup>**

(b)(1) Upon request to the Secretary, any school district that on January 1, 1987, was receiving all cash payments or all commodity letters of credit in lieu of entitlement commodities for its school lunch program shall receive all cash payments or all commodity letters of credit in lieu of entitlement commodities for its school lunch program beginning July 1, 1987. The Secretary, directly or through contract, shall administer the project under this subsection.

(2) Any school district that elects under paragraph (1) to receive all cash payments or all commodity letters of credit in lieu of entitlement commodities for its school lunch program shall receive bonus commodities in the same manner as if such school district was receiving all entitlement commodities for its school lunch program.

(c)(1) The Secretary may conduct pilot projects to test alternative counting and claiming procedures.

(2) Each pilot program carried out under this subsection shall be evaluated by the Secretary after it has been in operation for 3 years.

**[(d)] <sup>19</sup> ]**

**[(e)] <sup>20</sup> ]**

**[(f)] <sup>21</sup> ]**

**(g) ACCESS TO LOCAL FOODS: FARM TO SCHOOL PROGRAM.—**

<sup>17</sup> Effective July 1, 1999, section 107(j)(2)(C)(i) of P.L. 105-336, 112 Stat. 3153, Oct. 31, 1998, repealed section 17B.

<sup>18</sup> Subsec. (a) struck by sec. 441(a)(9) of P.L. 111-296, 124 Stat. 3264, Dec. 13, 2010.

<sup>19</sup> Subsec. (d) struck by sec. 441(a)(11) of P.L. 111-296, 124 Stat. 3264, Dec. 13, 2010.

<sup>20</sup> Subsec. (e) struck by sec. 441(a)(12) of P.L. 111-296, 124 Stat. XXX, Dec. 13, 2010.

<sup>21</sup> Subsec. (f) struck by sec. 441(a)(13) of P.L. 111-296, 124 Stat. 3264, Dec. 13, 2010.

(1) **DEFINITION OF ELIGIBLE SCHOOL.**—In this subsection, the term “eligible school” means a school or institution that participates in a program under this Act or the school breakfast program established under section 4 of the Child Nutrition Act of 1966 (42 U.S.C. 1773).

(2) **PROGRAM.**—The Secretary shall carry out a program to assist eligible schools, State and local agencies, Indian tribal organizations, agricultural producers or groups of agricultural producers, and nonprofit entities through grants and technical assistance to implement farm to school programs that improve access to local foods in eligible schools.

(3) **GRANTS.**—

(A) **IN GENERAL.**—The Secretary shall award competitive grants under this subsection to be used for—

- (i) training;
- (ii) supporting operations;
- (iii) planning;
- (iv) purchasing equipment;
- (v) developing school gardens;
- (vi) developing partnerships; and
- (vii) implementing farm to school programs.

(B) **REGIONAL BALANCE.**—In making awards under this subsection, the Secretary shall, to the maximum extent practicable, ensure—

- (i) geographical diversity; and
- (ii) equitable treatment of urban, rural, and tribal communities.

(C) **MAXIMUM AMOUNT.**—The total amount provided to a grant recipient under this subsection shall not exceed \$100,000.

(4) **FEDERAL SHARE.**—

(A) **IN GENERAL.**—The Federal share of costs for a project funded through a grant awarded under this subsection shall not exceed 75 percent of the total cost of the project.

(B) **FEDERAL MATCHING.**—As a condition of receiving a grant under this subsection, a grant recipient shall provide matching support in the form of cash or in-kind contributions, including facilities, equipment, or services provided by State and local governments, nonprofit organizations, and private sources.

(5) **CRITERIA FOR SELECTION.**—To the maximum extent practicable, in providing assistance under this subsection, the Secretary shall give the highest priority to funding projects that, as determined by the Secretary—

(A) make local food products available on the menu of the eligible school;

(B) serve a high proportion of children who are eligible for free or reduced price lunches;

(C) incorporate experiential nutrition education activities in curriculum planning that encourage the participation of school children in farm and garden-based agricultural education activities;



- (D) demonstrate collaboration between eligible schools, nongovernmental and community-based organizations, agricultural producer groups, and other community partners;
- (E) include adequate and participatory evaluation plans;
- (F) demonstrate the potential for long-term program sustainability; and
- (G) meet any other criteria that the Secretary determines appropriate.

(6) **EVALUATION.**—As a condition of receiving a grant under this subsection, each grant recipient shall agree to cooperate in an evaluation by the Secretary of the program carried out using grant funds.

(7) **TECHNICAL ASSISTANCE.**—The Secretary shall provide technical assistance and information to assist eligible schools, State and local agencies, Indian tribal organizations, and non-profit entities—

- (A) to facilitate the coordination and sharing of information and resources in the Department that may be applicable to the farm to school program;

- (B) to collect and share information on best practices; and

- (C) to disseminate research and data on existing farm to school programs and the potential for programs in underserved areas.

(8) **FUNDING.**—

- (A) **IN GENERAL.**—On October 1, 2012, and each October 1 thereafter, out of any funds in the Treasury not otherwise appropriated, the Secretary of the Treasury shall transfer to the Secretary to carry out this subsection \$5,000,000, to remain available until expended.

- (B) **RECEIPT AND ACCEPTANCE.**—The Secretary shall be entitled to receive, shall accept, and shall use to carry out this subsection the funds transferred under subparagraph (A), without further appropriation.

(9) **AUTHORIZATION OF APPROPRIATIONS.**—In addition to the amounts made available under paragraph (8), there are authorized to be appropriated to carry out this subsection such sums as are necessary for each of fiscal years 2011 through 2015.

(h) **PILOT PROGRAM FOR HIGH-POVERTY SCHOOLS.**—

(1) **IN GENERAL.**—

(A) **DEFINITIONS.**—In this paragraph:

- (i) **ELIGIBLE PROGRAM.**—The term “eligible program” means—

- (I) a school-based program with hands-on vegetable gardening and nutrition education that is incorporated into the curriculum for 1 or more grades at 2 or more eligible schools; or

- (II) a community-based summer program with hands-on vegetable gardening and nutrition education that is part of, or coordinated with, a summer enrichment program at 2 or more eligible schools.

(ii) **ELIGIBLE SCHOOL.**—The term “eligible school” means a public school, at least 50 percent of the students of which are eligible for free or reduced price meals under this Act.

(B) **ESTABLISHMENT.**—The Secretary shall carry out a pilot program under which the Secretary shall provide to nonprofit organizations or public entities in not more than 5 States grants to develop and run, through eligible programs, community gardens at eligible schools in the States that would—

(i) be planted, cared for, and harvested by students at the eligible schools; and

(ii) teach the students participating in the community gardens about agriculture production practices and diet.

(C) **PRIORITY STATES.**—Of the States in which grantees under this paragraph are located—

(i) at least 1 State shall be among the 15 largest States, as determined by the Secretary;

(ii) at least 1 State shall be among the 16th to 30th largest States, as determined by the Secretary; and

(iii) at least 1 State shall be a State that is not described in clause (i) or (ii).

(D) **USE OF PRODUCE.**—Produce from a community garden provided a grant under this paragraph may be—

(i) used to supplement food provided at the eligible school;

(ii) distributed to students to bring home to the families of the students; or

(iii) donated to a local food bank or senior center nutrition program.

(E) **NO COST-SHARING REQUIREMENT.**—A nonprofit organization or public entity that receives a grant under this paragraph shall not be required to share the cost of carrying out the activities assisted under this paragraph.

(F) **EVALUATION.**—A nonprofit organization or public entity that receives a grant under this paragraph shall be required to cooperate in an evaluation carried out by the Secretary.

(2) **AUTHORIZATION OF APPROPRIATIONS.**—There are authorized to be appropriated such sums as are necessary to carry out this subsection for each of fiscal years 2004 through 2015.

(i) **YEAR-ROUND SERVICES FOR ELIGIBLE ENTITIES.**—

(1) **IN GENERAL.**—A service institution that is described in section 13(a)(6) (excluding a public school), or a private nonprofit organization described in section 13(a)(7), and that is located in the State of California may be reimbursed—

(A) for up to 2 meals during each day of operation served—

(i) during the months of May through September;

(ii) in the case of a service institution that operates a food service program for children on school va-

cation, at anytime under a continuous school calendar; and

(iii) in the case of a service institution that provides meal service at a nonschool site to children who are not in school for a period during the school year due to a natural disaster, building repair, court order, or similar case, at anytime during such a period; and

(B) for a snack served during each day of operation after school hours, weekends, and school holidays during the regular school calendar.

(2) PAYMENTS.—The service institution shall be reimbursed consistent with section 13(b)(1).

(3) ADMINISTRATION.—To receive reimbursement under this subsection, a service institution shall comply with section 13, other than subsections (b)(2) and (c)(1) of that section.

(4) EVALUATION.—Not later than September 30, 2007, the State agency shall submit to the Secretary a report on the effect of this subsection on participation in the summer food service program for children established under section 13.

(5) FUNDING.—The Secretary shall provide to the State of California such sums as are necessary to carry out this subsection for each of fiscal years 2011 through 2015.

(j) FREE LUNCH AND BREAKFAST ELIGIBILITY.—

(1) IN GENERAL.—Subject to the availability of funds under paragraph (4), the Secretary shall expand the service of free lunches and breakfasts provided at schools participating in the school lunch program under this Act or the school breakfast program under section 4 of the Child Nutrition Act of 1966 (42 U.S.C. 1773) in all or part of 5 States selected by the Secretary (of which at least 1 shall be a largely rural State with a significant Native American population).

(2) INCOME ELIGIBILITY.—The income guidelines for determining eligibility for free lunches or breakfasts under this subsection shall be 185 percent of the applicable family size income levels contained in the nonfarm income poverty guidelines prescribed by the Office of Management and Budget, as adjusted annually in accordance with section 9(b)(1)(B).

(3) EVALUATION.—

(A) IN GENERAL.—Not later than 3 years after the implementation of this subsection, the Secretary shall conduct an evaluation to assess the impact of the changed income eligibility guidelines by comparing the school food authorities operating under this subsection to school food authorities not operating under this subsection.

(B) IMPACT ASSESSMENT.—

(i) CHILDREN.—The evaluation shall assess the impact of this subsection separately on—

(I) children in households with incomes less than 130 percent of the applicable family income levels contained in the nonfarm poverty income guidelines prescribed by the Office of Management and Budget, as adjusted annually in accordance with section 9(b)(1)(B); and

(II) children in households with incomes greater than 130 percent and not greater than 185 percent of the applicable family income levels contained in the nonfarm poverty income guidelines prescribed by the Office of Management and Budget, as adjusted annually in accordance with section 9(b)(1)(B).

(ii) FACTORS.—The evaluation shall assess the impact of this subsection on—

(I) certification and participation rates in the school lunch and breakfast programs;

(II) rates of lunch- and breakfast-skipping;

(III) academic achievement;

(IV) the allocation of funds authorized in title I of the Elementary and Secondary Education Act (20 U.S.C. 6301) to local educational agencies and public schools; and

(V) other factors determined by the Secretary.

(C) COST ASSESSMENT.—The evaluation shall assess the increased costs associated with providing additional free, reduced price, or paid meals in the school food authorities operating under this subsection.

(D) REPORT.—On completion of the evaluation, the Secretary shall submit to the Committee on Education and the Workforce of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate a report describing the results of the evaluation under this paragraph.

(4) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated such sums as are necessary to carry out this subsection, to remain available until expended.

(k) ORGANIC FOOD PILOT PROGRAM.—

(1) ESTABLISHMENT.—The Secretary shall establish an organic food pilot program (referred to in this subsection as the “pilot program”) under which the Secretary shall provide grants on a competitive basis to school food authorities selected under paragraph (3).

(2) USE OF FUNDS.—

(A) IN GENERAL.—The Secretary shall use funds provided under this section—

(i) to enter into competitively awarded contracts or cooperative agreements with school food authorities selected under paragraph (3); or

(ii) to make grants to school food authority applicants selected under paragraph (3).

(B) SCHOOL FOOD AUTHORITY USES OF FUNDS.—A school food authority that receives a grant under this section shall use the grant funds to establish a pilot program that increases the quantity of organic foods provided to schoolchildren under the school lunch program established under this Act.

(3) APPLICATION.—

(A) IN GENERAL.—A school food authority seeking a contract, grant, or cooperative agreement under this sub-

section shall submit to the Secretary an application in such form, containing such information, and at such time as the Secretary shall prescribe.

(B) CRITERIA.—In selecting contract, grant, or cooperative agreement recipients, the Secretary shall consider—

(i) the poverty line (as defined in section 673(2) of the Community Services Block Grant Act (42 U.S.C. 9902(2), including any revision required by that section)) applicable to a family of the size involved of the households in the district served by the school food authority, giving preference to school food authority applicants in which not less than 50 percent of the households in the district are at or below the Federal poverty line;

(ii) the commitment of each school food authority applicant—

(I) to improve the nutritional value of school meals;

(II) to carry out innovative programs that improve the health and wellness of schoolchildren; and

(III) to evaluate the outcome of the pilot program; and

(iii) any other criteria the Secretary determines to be appropriate.

(4) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out this subsection \$10,000,000 for fiscal years 2011 through 2015.

**SEC. 19. [42 U.S.C. 1769a] FRESH FRUIT AND VEGETABLE PROGRAM.**<sup>22</sup>

(a) IN GENERAL.—For the school year beginning July 2008 and each subsequent school year, the Secretary shall provide grants to States to carry out a program to make free fresh fruits and vegetables available in elementary schools (referred to in this section as the “program”).

(b) PROGRAM.—A school participating in the program shall make free fresh fruits and vegetables available to students throughout the school day (or at such other times as are considered appropriate by the Secretary) in 1 or more areas designated by the school.

(c) FUNDING TO STATES.—

(1) MINIMUM GRANT.—Except as provided in subsection (i)(2), the Secretary shall provide to each of the 50 States and the District of Columbia an annual grant in an amount equal

<sup>22</sup>Sec. 4304(a)(2)(B) of the Food, Conservation, and Energy Act of 2008 (P.L. 110–246; 122 Stat. 1892) provided that: “To facilitate transition from the program authorized under section 18(f) of the Richard B. Russell National School Lunch Act (42 U.S.C. 1769(f)) (as in effect on the day before the date of enactment of this Act) to the program established under section 19 of that Act (as amended by paragraph (1))—

(i) for the school year beginning July 1, 2008, the Secretary may permit any school selected for participation under section 18(f) of that Act (42 U.S.C. 1769(f)) for that school year to continue to participate under section 19 of that Act until the end of that school year; and

(ii) funds made available under that Act for fiscal year 2009 may be used to support the participation of any schools selected to participate in the program authorized under section 18(f) of that Act (42 U.S.C. 1769(f)) (as in effect on the day before the date of enactment of this Act).”

to 1 percent of the funds made available for a year to carry out the program.

(2) **ADDITIONAL FUNDING.**—Of the funds remaining after grants are made under paragraph (1), the Secretary shall allocate additional funds to each State that is operating a school lunch program under section 4 based on the proportion that—

- (A) the population of the State; bears to
- (B) the population of the United States.

(d) **SELECTION OF SCHOOLS.**—

(1) **IN GENERAL.**—Except as provided in paragraph (2) of this subsection and section 4304(a)(2) of the Food, Conservation, and Energy Act of 2008, each year, in selecting schools to participate in the program, each State shall—

(A) ensure that each school chosen to participate in the program is a school—

(i) in which not less than 50 percent of the students are eligible for free or reduced price meals under this Act; and

(ii) that submits an application in accordance with subparagraph (D);

(B) to the maximum extent practicable, give the highest priority to schools with the highest proportion of children who are eligible for free or reduced price meals under this Act;

(C)<sup>23</sup> ensure that each school selected is an elementary school (as defined in section 9101 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 7801));

(D) solicit applications from interested schools that include—

(i) information pertaining to the percentage of students enrolled in the school submitting the application who are eligible for free or reduced price school lunches under this Act;

(ii) a certification of support for participation in the program signed by the school food manager, the school principal, and the district superintendent (or equivalent positions, as determined by the school);

(iii) a plan for implementation of the program, including efforts to integrate activities carried out under this section with other efforts to promote sound health and nutrition, reduce overweight and obesity, or promote physical activity; and

(iv) such other information as may be requested by the Secretary; and

(E) encourage applicants to submit a plan for implementation of the program that includes a partnership with 1 or more entities that will provide non-Federal resources (including entities representing the fruit and vegetable industry).

<sup>23</sup>Sec. 4304(a)(2)(A) of the Food, Conservation, and Energy Act of 2008 (P.L. 110-246; 122 Stat. 1892) provided that: “Section 19(d)(1)(C) of the Richard B. Russell National School Lunch Act (as amended by paragraph (1)) may be waived by a State until July 1, 2010, for each secondary school in the State that has been awarded funding under section 18(f) of that Act (42 U.S.C. 1769(f)) for the school year beginning July 1, 2008.”

(2) EXCEPTION.—Clause (i) of paragraph (1)(A) shall not apply to a State if all schools that meet the requirements of that clause have been selected and the State does not have a sufficient number of additional schools that meet the requirement of that clause.

(3) OUTREACH TO LOW-INCOME SCHOOLS.—

(A) IN GENERAL.—Prior to making decisions regarding school participation in the program, a State agency shall inform the schools within the State with the highest proportion of free and reduced price meal eligibility, including Native American schools, of the eligibility of the schools for the program with respect to priority granted to schools with the highest proportion of free and reduced price eligibility under paragraph (1)(B).

(B) REQUIREMENT.—In providing information to schools in accordance with subparagraph (A), a State agency shall inform the schools that would likely be chosen to participate in the program under paragraph (1)(B).

(e) NOTICE OF AVAILABILITY.—If selected to participate in the program, a school shall widely publicize within the school the availability of free fresh fruits and vegetables under the program.

(f) PER-STUDENT GRANT.—The per-student grant provided to a school under this section shall be—

(1) determined by a State agency; and

(2) not less than \$50, nor more than \$75.

(g) LIMITATION.—To the maximum extent practicable, each State agency shall ensure that in making the fruits and vegetables provided under this section available to students, schools offer the fruits and vegetables separately from meals otherwise provided at the school under this Act or the Child Nutrition Act of 1966 (42 U.S.C. 1771 et seq.).

(h) EVALUATION AND REPORTS.—

(1) IN GENERAL.—The Secretary shall conduct an evaluation of the program, including a determination as to whether children experienced, as a result of participating in the program—

(A) increased consumption of fruits and vegetables;

(B) other dietary changes, such as decreased consumption of less nutritious foods; and

(C) such other outcomes as are considered appropriate by the Secretary.

(2) REPORT.—Not later than September 30, 2011, the Secretary shall submit to the Committee on Education and Labor of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate a report that describes the results of the evaluation under paragraph (1).

(i) FUNDING.—

(1) IN GENERAL.—Out of the funds made available under subsection (b)(2)(A) of section 14222 of the Food, Conservation, and Energy Act of 2008, the Secretary shall use the following amounts to carry out this section:

(A) On October 1, 2008, \$40,000,000.

(B) On July 1, 2009, \$65,000,000.

(C) On July 1, 2010, \$101,000,000.

(D) On July 1, 2011, \$150,000,000.

(E) On July 1, 2012, and each July 1 thereafter, the amount made available for the preceding fiscal year, as adjusted to reflect changes for the 12-month period ending the preceding April 30 in the Consumer Price Index for All Urban Consumers published by the Bureau of Labor Statistics of the Department of Labor, for items other than food.

(2) MAINTENANCE OF EXISTING FUNDING.—In allocating funding made available under paragraph (1) among the States in accordance with subsection (c), the Secretary shall ensure that each State that received funding under section 18(f) on the day before the date of enactment of the Food, Conservation, and Energy Act of 2008 shall continue to receive sufficient funding under this section to maintain the caseload level of the State under that section as in effect on that date.

(3) EVALUATION FUNDING.—On October 1, 2008, out of any funds made available under subsection (b)(2)(A) of section 14222 of the Food, Conservation, and Energy Act of 2008, the Secretary shall use to carry out the evaluation required under subsection (h), \$3,000,000, to remain available for obligation until September 30, 2010.

(4) RECEIPT AND ACCEPTANCE.—The Secretary shall be entitled to receive, shall accept, and shall use to carry out this section any funds transferred for that purpose, without further appropriation.

(5) AUTHORIZATION OF APPROPRIATIONS.—In addition to any other amounts made available to carry out this section, there are authorized to be appropriated such sums as are necessary to expand the program established under this section.

(6) ADMINISTRATIVE COSTS.—

(A) IN GENERAL.—Of funds made available to carry out this section for a fiscal year, the Secretary may use not more than \$500,000 for the administrative costs of carrying out the program.

(B) RESERVATION OF FUNDS.—The Secretary shall allow each State to reserve such funding as the Secretary determines to be necessary to administer the program in the State (with adjustments for the size of the State and the grant amount), but not to exceed the amount required to pay the costs of 1 full-time coordinator for the program in the State.

(7) REALLOCATION.—

(A) AMONG STATES.—The Secretary may reallocate any amounts made available to carry out this section that are not obligated or expended by a date determined by the Secretary.

(B) WITHIN STATES.—A State that receives a grant under this section may reallocate any amounts made available under the grant that are not obligated or expended by a date determined by the Secretary.



## DEPARTMENT OF DEFENSE OVERSEAS DEPENDENTS' SCHOOLS

SEC. 20. [42 U.S.C. 1769b] (a) For the purpose of obtaining Federal payments and commodities in conjunction with the provision of lunches to students attending Department of Defense dependents' schools which are located outside the United States, its territories or possessions, the Secretary of Agriculture shall make available to the Department of Defense, from funds appropriated for such purpose, the same payments and commodities as are provided to States for schools participating in the National School Lunch Program in the United States.

(b) The Secretary of Defense shall administer lunch programs authorized by this section and shall determine eligibility for free and reduced price lunches under the criteria published by the Secretary of Agriculture, except that the Secretary of Defense shall prescribe regulations governing computation of income eligibility standards for families of students participating in the National School Lunch Program under this section.

(c) The Secretary of Defense shall be required to offer meals meeting nutritional standards prescribed by the Secretary of Agriculture; however, the Secretary of Defense may authorize deviations from Department of Agriculture prescribed meal patterns and fluid milk requirements when local conditions preclude strict compliance or when such compliance is impracticable.

(d) Funds are hereby authorized to be appropriated for any fiscal year in such amounts as may be necessary for the administrative expenses of the Department of Defense under this section.

(e) The Secretary of Agriculture shall provide the Secretary of Defense with the technical assistance in the administration of the school lunch programs authorized by this section.

**SEC. 21. [42 U.S.C. 1769b-1] TRAINING, TECHNICAL ASSISTANCE, AND FOOD SERVICE MANAGEMENT INSTITUTE.**

(a) GENERAL AUTHORITY.—The Secretary—

(1) subject to the availability of, and from, amounts appropriated pursuant to subsection (e)(1), shall conduct training activities and provide—

(A) training and technical assistance to improve the skills of individuals employed in—

(i) food service programs carried out with assistance under this Act and, to the maximum extent practicable, using individuals who administer exemplary local food service programs in the State;

(ii) school breakfast programs carried out with assistance under section 4 of the Child Nutrition Act of 1966 (42 U.S.C. 1773); and

(iii) as appropriate, other federally assisted feeding programs; and

(B) assistance, on a competitive basis, to State agencies for the purpose of aiding schools and school food authorities with at least 50 percent of enrolled children certified to receive free or reduced price meals (and, if there are any remaining funds, other schools and school food authorities) in meeting the cost of acquiring or upgrading technology and information management systems for use

in food service programs carried out under this Act and section 4 of the Child Nutrition Act of 1966 (42 U.S.C. 1773), if the school or school food authority submits to the State agency an infrastructure development plan that—

(i) addresses the cost savings and improvements in program integrity and operations that would result from the use of new or upgraded technology;

(ii) ensures that there is not any overt identification of any child by special tokens or tickets, announced or published list of names, or by any other means;

(iii) provides for processing and verifying applications for free and reduced price school meals;

(iv) integrates menu planning, production, and serving data to monitor compliance with section 9(f)(1); and

(v) establishes compatibility with statewide reporting systems;

(C) assistance, on a competitive basis, to State agencies with low proportions of schools or students that—

(i) participate in the school breakfast program under section 4 of the Child Nutrition Act of 1966 (42 U.S.C. 1773); and

(ii) demonstrate the greatest need, for the purpose of aiding schools in meeting costs associated with initiating or expanding a school breakfast program under section 4 of the Child Nutrition Act of 1966 (42 U.S.C. 1773), including outreach and informational activities; and

(2) from amounts appropriated pursuant to subsection (e)(2), is authorized to provide financial and other assistance to the University of Mississippi, in cooperation with the University of Southern Mississippi, to establish and maintain a food service management institute.

(b) **MINIMUM REQUIREMENTS.**—The activities conducted and assistance provided as required by subsection (a)(1) shall at least include activities and assistance with respect to—

(1) menu planning;

(2) implementation of regulations and appropriate guidelines; and

(3) compliance with program requirements and accountability for program operations.

(c) **DUTIES OF FOOD SERVICE MANAGEMENT INSTITUTE.**—

(1) **IN GENERAL.**—Any food service management institute established as authorized by subsection (a)(2) shall carry out activities to improve the general operation and quality of—

(A) food service programs assisted under this Act;

(B) school breakfast programs assisted under section 4 of the Child Nutrition Act of 1966; and

(C) as appropriate, other federally assisted feeding programs.

(2) **REQUIRED ACTIVITIES.**—Activities carried out under paragraph (1) shall include—

- (A) conducting research necessary to assist schools and other organizations that participate in such programs in providing high quality, nutritious, cost-effective meal service to the children served;
- (B) providing training and technical assistance with respect to—
- (i) efficient use of physical resources;
  - (ii) financial management;
  - (iii) efficient use of computers;
  - (iv) procurement;
  - (v) sanitation;
  - (vi) safety, including food handling, hazard analysis and critical control point plan implementation, emergency readiness, responding to a food recall, and food biosecurity training;
  - (vii) meal planning and related nutrition activities;
  - (viii) culinary skills; and
  - (ix) other appropriate activities;
- (C) establishing a national network of trained professionals to present training programs and workshops for food service personnel;
- (D) developing training materials for use in the programs and workshops described in subparagraph (C);
- (E) acting as a clearinghouse for research, studies, and findings concerning all aspects of the operation of food service programs;
- (F) training food service personnel to comply with the nutrition guidance and objectives established by the Secretary through a national network of instructors or other means;
- (G) preparing informational materials, such as video instruction tapes and menu planners, to promote healthier food preparation; and
- (H) assisting State educational agencies in providing additional nutrition and health instructions and instructors, including training personnel to comply with the nutrition guidance and objectives established by the Secretary.
- (d) COORDINATION.—
- (1) IN GENERAL.—The Secretary shall coordinate activities carried out and assistance provided as required by subsection (b) with activities carried out by any food service management institute established as authorized by subsection (a)(2).
- (2) USE OF INSTITUTE FOR DIETARY AND NUTRITION ACTIVITIES.—The Secretary shall use any food service management institute established under subsection (a)(2) to assist in carrying out dietary and nutrition activities of the Secretary.
- (e) FOOD SERVICE MANAGEMENT INSTITUTE.—
- (1) FUNDING.—
- (A) IN GENERAL.—In addition to any amounts otherwise made available for fiscal year 2011, on October 1, 2010, and each October 1 thereafter, out of any funds in the Treasury not otherwise appropriated, the Secretary of the Treasury shall transfer to the Secretary to carry out

subsection (a)(2) \$5,000,000, to remain available until expended.

(B) RECEIPT AND ACCEPTANCE.—The Secretary shall be entitled to receive, shall accept, and shall use to carry out subsection (a)(2) the funds transferred under subparagraph (A), without further appropriation.

(2) ADDITIONAL FUNDING.—In addition to amounts made available under paragraph (1), there are authorized to be appropriated to carry out subsection (a)(2) such sums as are necessary for fiscal year 1995 and each subsequent fiscal year. The Secretary shall carry out activities under subsection (a)(2), in addition to the activities funded under paragraph (1), to the extent provided for, and in such amounts as are provided for, in advance in appropriations Acts.

(3) FUNDING FOR EDUCATION, TRAINING, OR APPLIED RESEARCH OR STUDIES.—In addition to amounts made available under paragraphs (1) and (2), from amounts otherwise appropriated to the Secretary in discretionary appropriations, the Secretary may provide funds to any food service management institute established under subsection (a)(2) for projects specified by the Secretary that will contribute to implementing dietary or nutrition initiatives. Any additional funding under this subparagraph shall be provided noncompetitively in a separate cooperative agreement.

(f) ADMINISTRATIVE TRAINING AND TECHNICAL ASSISTANCE MATERIAL.—In collaboration with State educational agencies, local educational agencies, and school food authorities of varying sizes, the Secretary shall develop and distribute training and technical assistance material relating to the administration of school meals programs that are representative of the best management and administrative practices.

(g) FEDERAL ADMINISTRATIVE SUPPORT.—

(1) FUNDING.—

(A) IN GENERAL.—Out of any funds in the Treasury not otherwise appropriated, the Secretary of the Treasury shall transfer to the Secretary of Agriculture to carry out this subsection—

(i) on October 1, 2004, and October 1, 2005, \$3,000,000;

(ii) on October 1, 2006, October 1, 2007, October 1, 2008, and October 1, 2009, \$2,000,000; and

(iii) on October 1, 2010, and every October 1 thereafter, \$4,000,000.

(B) RECEIPT AND ACCEPTANCE.—The Secretary shall be entitled to receive, shall accept, and shall use to carry out this subsection the funds transferred under subparagraph (A), without further appropriation.

(C) AVAILABILITY OF FUNDS.—Funds transferred under subparagraph (A) shall remain available until expended.

(2) USE OF FUNDS.—The Secretary may use funds provided under this subsection—

(A) to provide training and technical assistance and material related to improving program integrity and administrative accuracy in school meals programs; and

(B) to assist State educational agencies in reviewing the administrative practices of local educational agencies, to the extent determined by the Secretary.

**SEC. 22. [42 U.S.C. 1769c] COMPLIANCE AND ACCOUNTABILITY.**

(a) **UNIFIED ACCOUNTABILITY SYSTEM.**—

(1) **IN GENERAL.**—There shall be a unified system prescribed and administered by the Secretary to ensure that local food service authorities participating in the school lunch program established under this Act and the school breakfast program established by section 4 of the Child Nutrition Act of 1966 (42 U.S.C. 1773) comply with those Acts, including compliance with—

(A) the nutritional requirements of section 9(f) of this Act for school lunches; and

(B) as applicable, the nutritional requirements for school breakfasts under section 4(e)(1) of the Child Nutrition Act of 1966 (42 U.S.C. 1773(e)(1)).

(b) **FUNCTIONS OF SYSTEM.**—

(1) **IN GENERAL.**—Under the system described in subsection (a), each State educational agency shall—

(A) require that local food service authorities comply with the nutritional requirements described in subparagraphs (A) and (B) of paragraph (1);

(B) to the maximum extent practicable, ensure compliance through reasonable audits and supervisory assistance reviews;

(C) in conducting audits and reviews for the purpose of determining compliance with this Act, including the nutritional requirements of section 9(f)—

(i) conduct audits and reviews during a 3-year cycle or other period prescribed by the Secretary;

(ii) select schools for review in each local educational agency using criteria established by the Secretary;

(iii) report the final results of the reviews to the public in the State in an accessible, easily understood manner in accordance with guidelines promulgated by the Secretary; and

(iv) submit to the Secretary each year a report containing the results of the reviews in accordance with procedures developed by the Secretary; and

(D) when any local food service authority is reviewed under this section, ensure that the final results of the review by the State educational agency are posted and otherwise made available to the public on request in an accessible, easily understood manner in accordance with guidelines promulgated by the Secretary.

(2) **MINIMIZATION OF ADDITIONAL DUTIES.**—Each State educational agency shall coordinate the compliance and accountability activities described in paragraph (1) in a manner that minimizes the imposition of additional duties on local food service authorities.

(3) ADDITIONAL REVIEW REQUIREMENT FOR SELECTED LOCAL EDUCATIONAL AGENCIES.—

(A) DEFINITION OF SELECTED LOCAL EDUCATIONAL AGENCIES.—In this paragraph, the term “selected local educational agency” means a local educational agency that has a demonstrated high level of, or a high risk for, administrative error, as determined by the Secretary.

(B) ADDITIONAL ADMINISTRATIVE REVIEW.—In addition to any review required by subsection (a) or paragraph (1), each State educational agency shall conduct an administrative review of each selected local educational agency during the review cycle established under subsection (a).

(C) SCOPE OF REVIEW.—In carrying out a review under subparagraph (B), a State educational agency shall only review the administrative processes of a selected local educational agency, including application, certification, verification, meal counting, and meal claiming procedures.

(D) RESULTS OF REVIEW.—If the State educational agency determines (on the basis of a review conducted under subparagraph (B)) that a selected local educational agency fails to meet performance criteria established by the Secretary, the State educational agency shall—

(i) require the selected local educational agency to develop and carry out an approved plan of corrective action;

(ii) except to the extent technical assistance is provided directly by the Secretary, provide technical assistance to assist the selected local educational agency in carrying out the corrective action plan; and

(iii) conduct a followup review of the selected local educational agency under standards established by the Secretary.

(4) RETAINING FUNDS AFTER ADMINISTRATIVE REVIEWS.—

(A) IN GENERAL.—Subject to subparagraphs (B) and (C), if the local educational agency fails to meet administrative performance criteria established by the Secretary in both an initial review and a followup review under paragraph (1) or (3) or subsection (a), the Secretary may require the State educational agency to retain funds that would otherwise be paid to the local educational agency for school meals programs under procedures prescribed by the Secretary.

(B) AMOUNT.—The amount of funds retained under subparagraph (A) shall equal the value of any overpayment made to the local educational agency or school food authority as a result of an erroneous claim during the time period described in subparagraph (C).

(C) TIME PERIOD.—The period for determining the value of any overpayment under subparagraph (B) shall be the period—

(i) beginning on the date the erroneous claim was made; and

(ii) ending on the earlier of the date the erroneous claim is corrected or—

(I) in the case of the first followup review conducted by the State educational agency of the local educational agency under this section after July 1, 2005, the date that is 60 days after the beginning of the period under clause (i); or

(II) in the case of any subsequent followup review conducted by the State educational agency of the local educational agency under this section, the date that is 90 days after the beginning of the period under clause (i).

(5) USE OF RETAINED FUNDS.—

(A) IN GENERAL.—Subject to subparagraph (B), funds retained under paragraph (4) shall—

(i) be returned to the Secretary, and may be used—

(I) to provide training and technical assistance related to administrative practices designed to improve program integrity and administrative accuracy in school meals programs to State educational agencies and, to the extent determined by the Secretary, to local educational agencies and school food authorities;

(II) to assist State educational agencies in reviewing the administrative practices of local educational agencies in carrying out school meals programs; and

(III) to carry out section 21(f); or

(ii) be credited to the child nutrition programs appropriation account.

(B) STATE SHARE.—A State educational agency may retain not more than 25 percent of an amount recovered under paragraph (4), to carry out school meals program integrity initiatives to assist local educational agencies and school food authorities that have repeatedly failed, as determined by the Secretary, to meet administrative performance criteria.

(C) REQUIREMENT.—To be eligible to retain funds under subparagraph (B), a State educational agency shall—

(i) submit to the Secretary a plan describing how the State educational agency will use the funds to improve school meals program integrity, including measures to give priority to local educational agencies from which funds were retained under paragraph (4);

(ii) consider using individuals who administer exemplary local food service programs in the provision of training and technical assistance; and

(iii) obtain the approval of the Secretary for the plan.

(6) ELIGIBILITY DETERMINATION REVIEW FOR SELECTED LOCAL EDUCATIONAL AGENCIES.—

(A) IN GENERAL.—A local educational agency that has demonstrated a high level of, or a high risk for, administrative error associated with certification, verification, and

other administrative processes, as determined by the Secretary, shall ensure that the initial eligibility determination for each application is reviewed for accuracy prior to notifying a household of the eligibility or ineligibility of the household for free or reduced price meals.

(B) **TIMELINESS.**—The review of initial eligibility determinations—

(i) shall be completed in a timely manner; and

(ii) shall not result in the delay of an eligibility determination for more than 10 operating days after the date on which the application is submitted.

(C) **ACCEPTABLE TYPES OF REVIEW.**—Subject to standards established by the Secretary, the system used to review eligibility determinations for accuracy shall be conducted by an individual or entity that did not make the initial eligibility determination.

(D) **NOTIFICATION OF HOUSEHOLD.**—Once the review of an eligibility determination has been completed under this paragraph, the household shall be notified immediately of the determination of eligibility or ineligibility for free or reduced price meals.

(E) **REPORTING.**—

(i) **LOCAL EDUCATIONAL AGENCIES.**—In accordance with procedures established by the Secretary, each local educational agency required to review initial eligibility determinations shall submit to the relevant State agency a report describing the results of the reviews, including—

(I) the number and percentage of reviewed applications for which the eligibility determination was changed and the type of change made; and

(II) such other information as the Secretary determines to be necessary.

(ii) **STATE AGENCIES.**—In accordance with procedures established by the Secretary, each State agency shall submit to the Secretary a report describing the results of the reviews of initial eligibility determinations, including—

(I) the number and percentage of reviewed applications for which the eligibility determination was changed and the type of change made; and

(II) such other information as the Secretary determines to be necessary.

(iii) **TRANSPARENCY.**—The Secretary shall publish annually the results of the reviews of initial eligibility determinations by State, number, percentage, and type of error.

(c) **ROLE OF SECRETARY.**—In carrying out this section, the Secretary shall—

(1) assist the State educational agency in the monitoring of programs conducted by local food service authorities; and

(2) through management evaluations, review the compliance of the State educational agency and the local school food service authorities with regulations issued under this Act.



(d) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated for purposes of carrying out the compliance and accountability activities referred to in subsection (c) \$10,000,000 for each of fiscal years 2011 through 2015.

(e) FINES FOR VIOLATING PROGRAM REQUIREMENTS.—

(1) SCHOOL FOOD AUTHORITIES AND SCHOOLS.—

(A) IN GENERAL.—The Secretary shall establish criteria by which the Secretary or a State agency may impose a fine against any school food authority or school administering a program authorized under this Act or the Child Nutrition Act of 1966 (42 U.S.C. 1771 et seq.) if the Secretary or the State agency determines that the school food authority or school has—

(i) failed to correct severe mismanagement of the program;

(ii) disregarded a program requirement of which the school food authority or school had been informed; or

(iii) failed to correct repeated violations of program requirements.

(B) LIMITS.—

(i) IN GENERAL.—In calculating the fine for a school food authority or school, the Secretary shall base the amount of the fine on the reimbursement earned by school food authority or school for the program in which the violation occurred.

(ii) AMOUNT.—The amount under clause (i) shall not exceed—

(I) 1 percent of the amount of meal reimbursements earned for the fiscal year for the first finding of 1 or more program violations under subparagraph (A);

(II) 5 percent of the amount of meal reimbursements earned for the fiscal year for the second finding of 1 or more program violations under subparagraph (A); and

(III) 10 percent of the amount of meal reimbursements earned for the fiscal year for the third or subsequent finding of 1 or more program violations under subparagraph (A).

(2) STATE AGENCIES.—

(A) IN GENERAL.—The Secretary shall establish criteria by which the Secretary may impose a fine against any State agency administering a program authorized under this Act or the Child Nutrition Act of 1966 (42 U.S.C. 1771 et seq.) if the Secretary determines that the State agency has—

(i) failed to correct severe mismanagement of the program;

(ii) disregarded a program requirement of which the State had been informed; or

(iii) failed to correct repeated violations of program requirements.

- (B) LIMITS.—In the case of a State agency, the amount of a fine under subparagraph (A) shall not exceed—
- (i) 1 percent of funds made available under section 7(a) of the Child Nutrition Act of 1966 (42 U.S.C. 1776(a)) for State administrative expenses during a fiscal year for the first finding of 1 or more program violations under subparagraph (A);
  - (ii) 5 percent of funds made available under section 7(a) of the Child Nutrition Act of 1966 (42 U.S.C. 1776(a)) for State administrative expenses during a fiscal year for the second finding of 1 or more program violations under subparagraph (A); and
  - (iii) 10 percent of funds made available under section 7(a) of the Child Nutrition Act of 1966 (42 U.S.C. 1776(a)) for State administrative expenses during a fiscal year for the third or subsequent finding of 1 or more program violations under subparagraph (A).
- (3) SOURCE OF FUNDING.—Funds to pay a fine imposed under paragraph (1) or (2) shall be derived from non-Federal sources.

**SEC. 23. [42 U.S.C. 1769d] CHILDHOOD HUNGER RESEARCH.**

(a) RESEARCH ON CAUSES AND CONSEQUENCES OF CHILDHOOD HUNGER.—

- (1) IN GENERAL.—The Secretary shall conduct research on—
- (A) the causes of childhood hunger and food insecurity;
  - (B) the characteristics of households with childhood hunger and food insecurity; and
  - (C) the consequences of childhood hunger and food insecurity.
- (2) AUTHORITY.—In carrying out research under paragraph (1), the Secretary may—
- (A) enter into competitively awarded contracts or cooperative agreements; or
  - (B) provide grants to States or public or private agencies or organizations, as determined by the Secretary.
- (3) APPLICATION.—To be eligible to enter into a contract or cooperative agreement or receive a grant under this subsection, a State or public or private agency or organization shall submit to the Secretary an application at such time, in such manner, and containing such information as the Secretary shall require.
- (4) AREAS OF INQUIRY.—The Secretary shall design the research program to advance knowledge and understanding of information on the issues described in paragraph (1), such as—
- (A) economic, health, social, cultural, demographic, and other factors that contribute to childhood hunger or food insecurity;
  - (B) the geographic distribution of childhood hunger and food insecurity;
  - (C) the extent to which—
    - (i) existing Federal assistance programs, including the Internal Revenue Code of 1986, reduce childhood hunger and food insecurity; and

(ii) childhood hunger and food insecurity persist due to—

- (I) gaps in program coverage;
- (II) the inability of potential participants to access programs; or
- (III) the insufficiency of program benefits or services;

(D) the public health and medical costs of childhood hunger and food insecurity;

(E) an estimate of the degree to which the Census Bureau measure of food insecurity underestimates childhood hunger and food insecurity because the Census Bureau excludes certain households, such as homeless, or other factors;

(F) the effects of childhood hunger on child development, well-being, and educational attainment; and

(G) such other critical outcomes as are determined by the Secretary.

(5) FUNDING.—

(A) IN GENERAL.—On October 1, 2012, out of any funds in the Treasury not otherwise appropriated, the Secretary of the Treasury shall transfer to the Secretary to carry out this subsection \$10,000,000, to remain available until expended.

(B) RECEIPT AND ACCEPTANCE.—The Secretary shall be entitled to receive, shall accept, and shall use to carry out this subsection the funds transferred under subparagraph (A), without further appropriation.

(b) DEMONSTRATION PROJECTS TO END CHILDHOOD HUNGER.—

(1) DEFINITIONS.—In this subsection:

(A) CHILD.—The term “child” means a person under the age of 18.

(B) SUPPLEMENTAL NUTRITION ASSISTANCE PROGRAM.—The term “supplemental nutrition assistance program” means the supplemental nutrition assistance program established under the Food and Nutrition Act of 2008 (7 U.S.C. 2011 et seq.).

(2) PURPOSE.—Under such terms and conditions as are established by the Secretary, the Secretary shall carry out demonstration projects that test innovative strategies to end childhood hunger, including alternative models for service delivery and benefit levels that promote the reduction or elimination of childhood hunger and food insecurity.

(3) PROJECTS.—Demonstration projects carried out under this subsection may include projects that—

(A) enhance benefits provided under the supplemental nutrition assistance program for eligible households with children;

(B) enhance benefits or provide for innovative program delivery models in the school meals, afterschool snack, and child and adult care food programs under this Act and the Child Nutrition Act of 1966 (42 U.S.C. 1771 et seq.); and

(C) target Federal, State, or local assistance, including emergency housing or family preservation services, at

households with children who are experiencing hunger or food insecurity, to the extent permitted by the legal authority establishing those assistance programs and services.

(4) GRANTS.—

(A) DEMONSTRATION PROJECTS.—

(i) IN GENERAL.—In carrying out this subsection, the Secretary may enter into competitively awarded contracts or cooperative agreements with, or provide grants to, public or private organizations or agencies (as determined by the Secretary), for use in accordance with demonstration projects that meet the purposes of this subsection.

(ii) REQUIREMENT.—At least 1 demonstration project funded under this subsection shall be carried out on an Indian reservation in a rural area with a service population with a prevalence of diabetes that exceeds 15 percent, as determined by the Director of the Indian Health Service.

(B) APPLICATION.—To be eligible to receive a contract, cooperative agreement, or grant under this subsection, an organization or agency shall submit to the Secretary an application at such time, in such manner, and containing such information as the Secretary may require.

(C) SELECTION CRITERIA.—Demonstration projects shall be selected based on publicly disseminated criteria that may include—

(i) an identification of a low-income target group that reflects individuals experiencing hunger or food insecurity;

(ii) a commitment to a demonstration project that allows for a rigorous outcome evaluation as described in paragraph (6);

(iii) a focus on innovative strategies to reduce the risk of childhood hunger or provide a significant improvement to the food security status of households with children; and

(iv) such other criteria as are determined by the Secretary.

(5) CONSULTATION.—In determining the range of projects and defining selection criteria under this subsection, the Secretary shall consult with—

(A) the Secretary of Health and Human Services;

(B) the Secretary of Labor; and

(C) the Secretary of Housing and Urban Development.

(6) EVALUATION AND REPORTING.—

(A) INDEPENDENT EVALUATION.—The Secretary shall provide for an independent evaluation of each demonstration project carried out under this subsection that—

(i) measures the impact of each demonstration project on appropriate participation, food security, nutrition, and associated behavioral outcomes among participating households; and

(ii) uses rigorous experimental designs and methodologies, particularly random assignment or other methods that are capable of producing scientifically valid information regarding which activities are effective in reducing the prevalence or preventing the incidence of food insecurity and hunger in the community, especially among children.

(B) REPORTING.—Not later than December 31, 2013 and each December 31 thereafter until the date on which the last evaluation under subparagraph (A) is completed, the Secretary shall—

(i) submit to the Committee on Agriculture and the Committee on Education and Labor of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate a report that includes a description of—

(I) the status of each demonstration project; and

(II) the results of any evaluations of the demonstration projects completed during the previous fiscal year; and

(ii) ensure that the evaluation results are shared broadly to inform policy makers, service providers, other partners, and the public in order to promote the wide use of successful strategies.

(7) FUNDING.—

(A) IN GENERAL.—On October 1, 2012, out of any funds in the Treasury not otherwise appropriated, the Secretary of the Treasury shall transfer to the Secretary to carry out this subsection \$40,000,000, to remain available until September 30, 2017.

(B) RECEIPT AND ACCEPTANCE.—The Secretary shall be entitled to receive, shall accept, and shall use to carry out this subsection the funds transferred under subparagraph (A), without further appropriation.

(C) USE OF FUNDS.—

(i) IN GENERAL.—Funds made available under subparagraph (A) may be used to carry out this subsection, including to pay Federal costs associated with developing, soliciting, awarding, monitoring, evaluating, and disseminating the results of each demonstration project under this subsection.

(ii) INDIAN RESERVATIONS.—Of amounts made available under subparagraph (A), the Secretary shall use a portion of the amounts to carry out research relating to hunger, obesity and type 2 diabetes on Indian reservations, including research to determine the manner in which Federal nutrition programs can help to overcome those problems.

(iii) REPORT.—Not later than 1 year after the date of enactment of this section, the Secretary shall submit to the Committee on Agriculture of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate a report that—

(I) describes the manner in which Federal nutrition programs can help to overcome child hunger nutrition problems on Indian reservations; and

(II) contains proposed administrative and legislative recommendations to strengthen and streamline all relevant Department of Agriculture nutrition programs to reduce childhood hunger, obesity, and type 2 diabetes on Indian reservations.

(D) LIMITATIONS.—

(i) DURATION.—No project may be funded under this subsection for more than 5 years.

(ii) PROJECT REQUIREMENTS.—No project that makes use of, alters, or coordinates with the supplemental nutrition assistance program may be funded under this subsection unless the project is fully consistent with the project requirements described in section 17(b)(1)(B) of the Food and Nutrition Act of 2008 (7 U.S.C. 2026(b)(1)(B)).

(iii) HUNGER-FREE COMMUNITIES.—No project may be funded under this subsection that receives funding under section 4405 of the Food, Conservation, and Energy Act of 2008 (7 U.S.C. 7517).

(iv) OTHER BENEFITS.—Funds made available under this subsection may not be used for any project in a manner that is inconsistent with—

(I) this Act;

(II) the Child Nutrition Act of 1966 (42 U.S.C. 1771 et seq.);

(III) the Food and Nutrition Act of 2008 (7 U.S.C. 2011 et seq.); or

(IV) the Emergency Food Assistance Act of 1983 (7 U.S.C. 7501 et seq.).

**SEC. 24. [42 U.S.C. 1769e] STATE CHILDHOOD HUNGER CHALLENGE GRANTS.**

(a) DEFINITIONS.—In this section:

(1) CHILD.—The term “child” means a person under the age of 18.

(2) SUPPLEMENTAL NUTRITION ASSISTANCE PROGRAM.—The term “supplemental nutrition assistance program” means the supplemental nutrition assistance program established under the Food and Nutrition Act of 2008 (7 U.S.C. 2011 et seq.).

(b) PURPOSE.—Under such terms and conditions as are established by the Secretary, funds made available under this section may be used to competitively award grants to or enter into cooperative agreements with Governors to carry out comprehensive and innovative strategies to end childhood hunger, including alternative models for service delivery and benefit levels that promote the reduction or elimination of childhood hunger by 2015.

(c) PROJECTS.—State demonstration projects carried out under this section may include projects that—

(1) enhance benefits provided under the supplemental nutrition assistance program for eligible households with children;

(2) enhance benefits or provide for innovative program delivery models in the school meals, afterschool snack, and child and adult care food programs under this Act and the Child Nutrition Act of 1966 (42 U.S.C. 1771 et seq.);

(3) target Federal, State, or local assistance, including emergency housing, family preservation services, child care, or temporary assistance at households with children who are experiencing hunger or food insecurity, to the extent permitted by the legal authority establishing those assistance programs and services;

(4) enhance outreach to increase access and participation in Federal nutrition assistance programs; and

(5) improve the coordination of Federal, State, and community resources and services aimed at preventing food insecurity and hunger, including through the establishment and expansion of State food policy councils.

(d) GRANTS.—

(1) IN GENERAL.—In carrying out this section, the Secretary may competitively award grants or enter into competitively awarded cooperative agreements with Governors for use in accordance with demonstration projects that meet the purposes of this section.

(2) APPLICATION.—To be eligible to receive a grant or cooperative agreement under this section, a Governor shall submit to the Secretary an application at such time, in such manner, and containing such information as the Secretary may require.

(3) SELECTION CRITERIA.—The Secretary shall evaluate proposals based on publicly disseminated criteria that may include—

(A) an identification of a low-income target group that reflects individuals experiencing hunger or food insecurity;

(B) a commitment to approaches that allow for a rigorous outcome evaluation as described in subsection (f);

(C) a comprehensive and innovative strategy to reduce the risk of childhood hunger or provide a significant improvement to the food security status of households with children; and

(D) such other criteria as are determined by the Secretary.

(4) REQUIREMENTS.—Any project funded under this section shall provide for—

(A) a baseline assessment, and subsequent annual assessments, of the prevalence and severity of very low food security among children in the State, based on a methodology prescribed by the Secretary;

(B) a collaborative planning process including key stakeholders in the State that results in a comprehensive agenda to eliminate childhood hunger that is—

(i) described in a detailed project plan; and

(ii) provided to the Secretary for approval;

(C) an annual budget;

- (D) specific performance goals, including the goal to sharply reduce or eliminate food insecurity among children in the State by 2015, as determined through a methodology prescribed by the Secretary and carried out by the Governor; and
- (E) an independent outcome evaluation of not less than 1 major strategy of the project that measures—
- (i) the specific impact of the strategy on food insecurity among children in the State; and
  - (ii) if applicable, the nutrition assistance participation rate among children in the State.
- (e) CONSULTATION.—In determining the range of projects and defining selection criteria under this section, the Secretary shall consult with—
- (1) the Secretary of Health and Human Services;
  - (2) the Secretary of Labor;
  - (3) the Secretary of Education; and
  - (4) the Secretary of Housing and Urban Development.
- (f) EVALUATION AND REPORTING.—
- (1) GENERAL PERFORMANCE ASSESSMENT.—Each project authorized under this section shall require an independent assessment that—
- (A) measures the impact of any activities carried out under the project on the level of food insecurity in the State that—
    - (i) focuses particularly on the level of food insecurity among children in the State; and
    - (ii) includes a preimplementation baseline and annual measurements taken during the project of the level of food insecurity in the State; and
  - (B) is carried out using a methodology prescribed by the Secretary.
- (2) INDEPENDENT EVALUATION.—Each project authorized under this section shall provide for an independent evaluation of not less than 1 major strategy that—
- (A) measures the impact of the strategy on appropriate participation, food security, nutrition, and associated behavioral outcomes among participating households; and
  - (B) uses rigorous experimental designs and methodologies, particularly random assignment or other methods that are capable of producing scientifically valid information regarding which activities are effective in reducing the prevalence or preventing the incidence of food insecurity and hunger in the community, especially among children.
- (3) REPORTING.—Not later than December 31, 2011 and each December 31 thereafter until the date on which the last evaluation under paragraph (1) is completed, the Secretary shall—
- (A) submit to the Committee on Agriculture and the Committee on Education and Labor of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate a report that includes a description of—



(i) the status of each State demonstration project; and

(ii) the results of any evaluations of the demonstration projects completed during the previous fiscal year; and

(B) ensure that the evaluation results are shared broadly to inform policy makers, service providers, other partners, and the public in order to promote the wide use of successful strategies.

(g) AUTHORIZATION OF APPROPRIATIONS.—

(1) IN GENERAL.—There are authorized to be appropriated to carry out this section such sums as are necessary for each of fiscal years 2011 through 2014, to remain available until expended.

(2) USE OF FUNDS.—Funds made available under paragraph (1) may be used to carry out this section, including to pay Federal costs associated with developing, soliciting, awarding, monitoring, evaluating, and disseminating the results of each demonstration project under this section.

(3) LIMITATIONS.—

(A) DURATION.—No project may be funded under this section for more than 5 years.

(B) PERFORMANCE BASIS.—Funds provided under this section shall be made available to each Governor on an annual basis, with the amount of funds provided for each year contingent on the satisfactory implementation of the project plan and progress towards the performance goals defined in the project year plan.

(C) ALTERING NUTRITION ASSISTANCE PROGRAM REQUIREMENTS.—No project that makes use of, alters, or coordinates with the supplemental nutrition assistance program may be funded under this section unless the project is fully consistent with the project requirements described in section 17(b)(1)(B) of the Food and Nutrition Act of 2008 (7 U.S.C. 2026(b)(1)(B)).

(D) OTHER BENEFITS.—Funds made available under this section may not be used for any project in a manner that is inconsistent with—

(i) this Act;

(ii) the Child Nutrition Act of 1966 (42 U.S.C. 1771 et seq.);

(iii) the Food and Nutrition Act of 2008 (7 U.S.C. 2011 et seq.); or

(iv) the Emergency Food Assistance Act of 1983 (7 U.S.C. 7501 et seq.).

**SEC. 25. [42 U.S.C. 1769f] DUTIES OF THE SECRETARY RELATING TO NONPROCUREMENT DEBARMENT.**

(a) PURPOSES.—The purposes of this section are to promote the prevention and deterrence of instances of fraud, bid rigging, and other anticompetitive activities encountered in the procurement of products for child nutrition programs by—

(1) establishing guidelines and a timetable for the Secretary to initiate debarment proceedings, as well as establishing mandatory debarment periods; and

(2) providing training, technical advice, and guidance in identifying and preventing the activities.

(b) DEFINITIONS.—As used in this section:

(1) CHILD NUTRITION PROGRAM.—The term “child nutrition program” means—

(A) the school lunch program established under this Act;

(B) the summer food service program for children established under section 13;

(C) the child and adult care food program established under section 17;

(D) the special milk program established under section 3 of the Child Nutrition Act of 1966 (42 U.S.C. 1772);

(E) the school breakfast program established under section 4 of such Act (42 U.S.C. 1773); and

(F) the special supplemental nutrition program for women, infants, and children authorized under section 17 of such Act (42 U.S.C. 1786).

(2) CONTRACTOR.—The term “contractor” means a person that contracts with a State, an agency of a State, or a local agency to provide goods or services in relation to the participation of a local agency in a child nutrition program.

(3) LOCAL AGENCY.—The term “local agency” means a school, school food authority, child care center, sponsoring organization, or other entity authorized to operate a child nutrition program at the local level.

(4) NONPROCUREMENT DEBARMENT.—The term “nonprocurement debarment” means an action to bar a person from programs and activities involving Federal financial and nonfinancial assistance, but not including Federal procurement programs and activities.

(5) PERSON.—The term “person” means any individual, corporation, partnership, association, cooperative, or other legal entity, however organized.

(c) ASSISTANCE TO IDENTIFY AND PREVENT FRAUD AND ANTI-COMPETITIVE ACTIVITIES.—The Secretary shall—

(1) in cooperation with any other appropriate individual, organization, or agency, provide advice, training, technical assistance, and guidance (which may include awareness training, training films, and troubleshooting advice) to representatives of States and local agencies regarding means of identifying and preventing fraud and anticompetitive activities relating to the provision of goods or services in conjunction with the participation of a local agency in a child nutrition program; and

(2) provide information to, and fully cooperate with, the Attorney General and State attorneys general regarding investigations of fraud and anticompetitive activities relating to the provision of goods or services in conjunction with the participation of a local agency in a child nutrition program.

(d) NONPROCUREMENT DEBARMENT.—

(1) IN GENERAL.—Except as provided in paragraph (3) and subsection (e), not later than 180 days after notification of the occurrence of a cause for debarment described in paragraph (2), the Secretary shall initiate nonprocurement debarment

proceedings against the contractor who has committed the cause for debarment.

(2) CAUSES FOR DEBARMENT.—Actions requiring initiation of nonprocurement debarment pursuant to paragraph (1) shall include a situation in which a contractor is found guilty in any criminal proceeding, or found liable in any civil or administrative proceeding, in connection with the supplying, providing, or selling of goods or services to any local agency in connection with a child nutrition program, of—

- (A) an anticompetitive activity, including bid-rigging, price-fixing, the allocation of customers between competitors, or other violation of Federal or State antitrust laws;
- (B) fraud, bribery, theft, forgery, or embezzlement;
- (C) knowingly receiving stolen property;
- (D) making a false claim or statement; or
- (E) any other obstruction of justice.

(3) EXCEPTION.—If the Secretary determines that a decision on initiating nonprocurement debarment proceedings cannot be made within 180 days after notification of the occurrence of a cause for debarment described in paragraph (2) because of the need to further investigate matters relating to the possible debarment, the Secretary may have such additional time as the Secretary considers necessary to make a decision, but not to exceed an additional 180 days.

(4) MANDATORY CHILD NUTRITION PROGRAM DEBARMENT PERIODS.—

(A) IN GENERAL.—Subject to the other provisions of this paragraph and notwithstanding any other provision of law except subsection (e), if, after deciding to initiate nonprocurement debarment proceedings pursuant to paragraph (1), the Secretary decides to debar a contractor, the debarment shall be for a period of not less than 3 years.

(B) PREVIOUS DEBARMENT.—If the contractor has been previously debarred pursuant to nonprocurement debarment proceedings initiated pursuant to paragraph (1), and the cause for debarment is described in paragraph (2) based on activities that occurred subsequent to the initial debarment, the debarment shall be for a period of not less than 5 years.

(C) SCOPE.—At a minimum, a debarment under this subsection shall serve to bar the contractor for the specified period from contracting to provide goods or services in conjunction with the participation of a local agency in a child nutrition program.

(D) REVERSAL, REDUCTION, OR EXCEPTION.—Nothing in this section shall restrict the ability of the Secretary to—

- (i) reverse a debarment decision;
- (ii) reduce the period or scope of a debarment;
- (iii) grant an exception permitting a debarred contractor to participate in a particular contract to provide goods or services; or
- (iv) otherwise settle a debarment action at any time;

in conjunction with the participation of a local agency in a child nutrition program, if the Secretary determines there is good cause for the action, after taking into account factors set forth in paragraphs (1) through (6) of subsection (e).

(5) INFORMATION.—On request, the Secretary shall present to the Committee on Education and Labor, and the Committee on Agriculture, of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate information regarding the decisions required by this subsection.

(6) RELATIONSHIP TO OTHER AUTHORITIES.—A debarment imposed under this section shall not reduce or diminish the authority of a Federal, State, or local government agency or court to penalize, imprison, fine, suspend, debar, or take other adverse action against a person in a civil, criminal, or administrative proceeding.

(7) REGULATIONS.—The Secretary shall issue such regulations as are necessary to carry out this subsection.

(e) MANDATORY DEBARMENT.—Notwithstanding any other provision of this section, the Secretary shall initiate nonprocurement debarment proceedings against the contractor (including any cooperative) who has committed the cause for debarment (as determined under subsection (d)(2)), unless the action—

(1) is likely to have a significant adverse effect on competition or prices in the relevant market or nationally;

(2) will interfere with the ability of a local agency to procure a needed product for a child nutrition program;

(3) is unfair to a person, subsidiary corporation, affiliate, parent company, or local division of a corporation that is not involved in the improper activity that would otherwise result in the debarment;

(4) is likely to have significant adverse economic impacts on the local economy in a manner that is unfair to innocent parties;

(5) is not justified in light of the penalties already imposed on the contractor for violations relevant to the proposed debarment, including any suspension or debarment arising out of the same matter that is imposed by any Federal or State agency; or

(6) is not in the public interest, or otherwise is not in the interests of justice, as determined by the Secretary.

(f) EXHAUSTION OF ADMINISTRATIVE REMEDIES.—Prior to seeking judicial review in a court of competent jurisdiction, a contractor against whom a nonprocurement debarment proceeding has been initiated shall—

(1) exhaust all administrative procedures prescribed by the Secretary; and

(2) receive notice of the final determination of the Secretary.

(g) INFORMATION RELATING TO PREVENTION AND CONTROL OF ANTICOMPETITIVE ACTIVITIES.—On request, the Secretary shall present to the Committee on Education and Labor, and the Committee on Agriculture, of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate

information regarding the activities of the Secretary relating to anticompetitive activities, fraud, nonprocurement debarment, and any waiver granted by the Secretary under this section.

**SEC. 26. [42 U.S.C. 1769g] INFORMATION CLEARINGHOUSE.**

(a) **IN GENERAL.**—The Secretary shall enter into a contract with a nongovernmental organization described in subsection (b) to establish and maintain a clearinghouse to provide information to nongovernmental groups located throughout the United States that assist low-income individuals or communities regarding food assistance, self-help activities to aid individuals in becoming self-reliant, and other activities that empower low-income individuals or communities to improve the lives of low-income individuals and reduce reliance on Federal, State, or local governmental agencies for food or other assistance.

(b) **NONGOVERNMENTAL ORGANIZATION.**—The nongovernmental organization referred to in subsection (a) shall be selected on a competitive basis and shall—

(1) be experienced in the gathering of first-hand information in all the States through onsite visits to grassroots organizations in each State that fight hunger and poverty or that assist individuals in becoming self-reliant;

(2) be experienced in the establishment of a clearinghouse similar to the clearinghouse described in subsection (a);

(3) agree to contribute in-kind resources towards the establishment and maintenance of the clearinghouse and agree to provide clearinghouse information, free of charge, to the Secretary, States, counties, cities, antihunger groups, and grassroots organizations that assist individuals in becoming self-sufficient and self-reliant;

(4) be sponsored by an organization, or be an organization, that—

(A) has helped combat hunger for at least 10 years;

(B) is committed to reinvesting in the United States;

and

(C) is knowledgeable regarding Federal nutrition programs;

(5) be experienced in communicating the purpose of the clearinghouse through the media, including the radio and print media, and be able to provide access to the clearinghouse information through computer or telecommunications technology, as well as through the mails; and

(6) be able to provide examples, advice, and guidance to States, counties, cities, communities, antihunger groups, and local organizations regarding means of assisting individuals and communities to reduce reliance on government programs, reduce hunger, improve nutrition, and otherwise assist low-income individuals and communities become more self-sufficient.

(c) **AUDITS.**—The Secretary shall establish fair and reasonable auditing procedures regarding the expenditures of funds to carry out this section.

(d) **FUNDING.**—Out of any moneys in the Treasury not otherwise appropriated, the Secretary of the Treasury shall pay to the Secretary to provide to the organization selected under this section,

to establish and maintain the information clearinghouse, \$200,000 for each of fiscal years 1995 and 1996, \$150,000 for fiscal year 1997, \$100,000 for fiscal year 1998, \$166,000 for each of fiscal years 1999 through 2004, and \$250,000 for each of fiscal years 2010 through 2019. The Secretary shall be entitled to receive the funds and shall accept the funds, without further appropriation.

**[SEC. 27.<sup>24</sup> [42 U.S.C. 1769h] ACCOMMODATION OF THE SPECIAL DIETARY NEEDS OF INDIVIDUALS WITH DISABILITIES.]**

**SEC. 28. [42 U.S.C. 1769i] PROGRAM EVALUATION.**

(a) **PERFORMANCE ASSESSMENTS.**—

(1) **IN GENERAL.**—Subject to the availability of funds made available under paragraph (3), the Secretary, acting through the Administrator of the Food and Nutrition Service, may conduct annual national performance assessments of the meal programs under this Act and the Child Nutrition Act of 1966 (42 U.S.C. 1771 et seq.).

(2) **COMPONENTS.**—In conducting an assessment, the Secretary may assess—

(A) the cost of producing meals and meal supplements under the programs described in paragraph (1); and

(B) the nutrient profile of meals, and status of menu planning practices, under the programs.

(3) **AUTHORIZATION OF APPROPRIATIONS.**—There is authorized to be appropriated to carry out this subsection \$5,000,000 for fiscal year 2004 and each subsequent fiscal year.

(b) **CERTIFICATION IMPROVEMENTS.**—

(1) **IN GENERAL.**—Subject to the availability of funds made available under paragraph (5), the Secretary, acting through the Administrator of the Food and Nutrition Service, shall conduct a study of the feasibility of improving the certification process used for the school lunch program established under this Act.

(2) **PILOT PROJECTS.**—In carrying out this subsection, the Secretary may conduct pilot projects to improve the certification process used for the school lunch program.

(3) **COMPONENTS.**—In carrying out this subsection, the Secretary shall examine the use of—

(A) other income reporting systems;

(B) an integrated benefit eligibility determination process managed by a single agency;

(C) income or program participation data gathered by State or local agencies; and

(D) other options determined by the Secretary.

(4) **WAIVERS.**—

(A) **IN GENERAL.**—Subject to subparagraph (B), the Secretary may waive such provisions of this Act and the Child Nutrition Act of 1966 (42 U.S.C. 1771 et seq.) as are necessary to carry out this subsection.

(B) **PROVISIONS.**—The protections of section 9(b)(6) shall apply to any study or pilot project carried out under this subsection.

<sup>24</sup>Sec. 27 repealed by sec. 441(a)(14) of P.L. 111–296, 124 Stat. 3264, Dec. 13, 2010.

(5) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to carry out this subsection such sums as are necessary.

(c) COOPERATION WITH PROGRAM RESEARCH AND EVALUATION.—States, State educational agencies, local educational agencies, schools, institutions, facilities, and contractors participating in programs authorized under this Act and the Child Nutrition Act of 1966 (42 U.S.C. 1771 et seq.) shall cooperate with officials and contractors acting on behalf of the Secretary, in the conduct of evaluations and studies under those Acts.

**SEC. 29. [42 U.S.C. 1769j] ENSURING SAFETY OF SCHOOL MEALS.**

(a) FOOD AND NUTRITION SERVICE.—Not later than 1 year after the date of enactment of the Healthy, Hunger-Free Kids Act of 2010, the Secretary, acting through the Administrator of the Food and Nutrition Service, shall—

(1) in consultation with the Administrator of the Agricultural Marketing Service and the Administrator of the Farm Service Agency, develop guidelines to determine the circumstances under which it is appropriate for the Secretary to institute an administrative hold on suspect foods purchased by the Secretary that are being used in school meal programs under this Act and the Child Nutrition Act of 1966 (42 U.S.C. 1771 et seq.);

(2) work with States to explore ways for the States to increase the timeliness of notification of food recalls to schools and school food authorities;

(3) improve the timeliness and completeness of direct communication between the Food and Nutrition Service and States about holds and recalls, such as through the commodity alert system of the Food and Nutrition Service; and

(4) establish a timeframe to improve the commodity hold and recall procedures of the Department of Agriculture to address the role of processors and determine the involvement of distributors with processed products that may contain recalled ingredients, to facilitate the provision of more timely and complete information to schools.

(b) FOOD SAFETY AND INSPECTION SERVICE.—Not later than 1 year after the date of enactment of the Healthy, Hunger-Free Kids Act of 2010, the Secretary, acting through the Administrator of the Food Safety and Inspection Service, shall revise the procedures of the Food Safety and Inspection Service to ensure that schools are included in effectiveness checks.