

Attachment A. Child Nutrition Act: Section 7 [42 U.S.C. 1776] – State Administrative Expenses Authorization and Section 10 [42 U.S.C. 1779]

CHILD NUTRITION ACT

SECTION 7. [42 U.S.C. 1776] – STATE ADMINISTRATIVE EXPENSES AUTHORIZATION

(a) AMOUNT AND ALLOCATION OF FUNDS.—

(1) AMOUNT AVAILABLE.—

(A) IN GENERAL.—Each fiscal year, the Secretary shall make available to the States for their administrative costs an amount equal to not less than 1 ½ percent of the Federal funds expended under sections 4, 11, and 17 of the Richard B. Russell National School Lunch Act [(42 U.S.C. 1753, 1759a, and 1766)] and sections 3 and 4 of this Act during the second preceding fiscal year.

(B) ALLOCATION.—The Secretary shall allocate the funds so provided in accordance with paragraphs (2), (3), and (4) of this subsection.

(2) EXPENSE GRANTS.—

(A) IN GENERAL.—Subject to subparagraph (B), the Secretary shall allocate to each State for administrative costs incurred in any fiscal year in connection with the programs authorized under the Richard B. Russell National School Lunch Act [(42 U.S.C. 1751 et seq.)] or under this Act, except for the programs authorized under section 13 or 17 of the Richard B. Russell National School Lunch Act [(42 U.S.C. 1761 or 1766)] or under section 17 of this Act, an amount equal to not less than 1 percent and not more than 1 ½ percent of the funds expended by each State under sections 4 and 11 of the Richard B. Russell National School Lunch Act [(42 U.S.C. 1753 and 1759a)] and sections 3 and 4 of this Act during the second preceding fiscal year.

(B) MINIMUM AMOUNT.—

(i) IN GENERAL.—In no case shall the grant available to any State under this paragraph be less than the amount such State was allocated in the fiscal year ending September 30, 1981, or \$200,000 (as adjusted under clause (ii)),¹ whichever is larger.

(ii) ADJUSTMENT.—On October 1, 2008, and each October 1 thereafter, the minimum dollar amount for a fiscal year specified in clause (i) shall be adjusted to reflect the percentage change between—

(I) the value of the index for State and local government purchases, as published by the Bureau of Economic Analysis of the Department of Commerce, for the 12-month period ending June 30 of the second preceding fiscal year; and

¹ Effective October 1, 2004, section 202(a)(2)(B)(ii)(III) of P.L. 108–265, 118 Stat. 769, June 30, 2004, amended this subparagraph by striking “\$100,000” and inserting “\$200,000 (as adjusted under clause (ii))”. So in original. Probably should be an additional closed parenthesis.

(II) the value of that index for the 12-month period ending June 30 of the preceding fiscal year.

(3) The Secretary shall allocate to each State for its administrative costs incurred under the program authorized by section 17 of the Richard B. Russell National School Lunch Act [(42 U.S.C. 1766)] in any fiscal year an amount, based upon funds expended under that program in the second preceding fiscal year, equal to

- (A) 20 percent of the first \$50,000,
- (B) 10 percent of the next \$100,000,
- (C) 5 percent of the next \$250,000, and
- (D) $2\frac{1}{2}$ percent of any remaining funds.

If an agency in the State other than the State educational agency administers such program, the State shall ensure that an amount equal to no less than the funds due the State under this paragraph is provided to such agency for costs incurred by such agency in administering the program, except as provided in paragraph (5). The Secretary may adjust any State's allocation to reflect changes in the size of its program.

(4) The remaining funds appropriated under this section shall be allocated among the States by the Secretary in amounts the Secretary determines necessary for the improvement in the States of the administration of the programs authorized under the Richard B. Russell National School Lunch Act [(42 U.S.C. 1751 et seq.)] and this Act, except for section 17 of this Act, including, but not limited to, improved program integrity and the quality of meals served to children.

(5)

(A) Not more than 25 percent of the amounts made available to each State under this section for the fiscal year 1991 and 20 percent of the amounts made available to each State under this section for the fiscal year 1992 and for each succeeding fiscal year may remain available for obligation or expenditure in the fiscal year succeeding the fiscal year for which such amounts were appropriated.

(B) REALLOCATION OF FUNDS.—

(i) RETURN TO SECRETARY.—For each fiscal year, any amounts appropriated that are not obligated or expended during the fiscal year and are not carried over for the succeeding fiscal year under subparagraph (A) shall be returned to the Secretary.

(ii) REALLOCATION BY SECRETARY.—The Secretary shall allocate, for purposes of administrative costs, any remaining amounts among States that demonstrate a need for the amounts.

(6) USE OF ADMINISTRATIVE FUNDS.—Funds available to a State under this subsection and under section 13(k)(1) of the Richard B. Russell National School Lunch Act (42 U.S.C. 1761(k)(1)) may be used by the State for the costs of administration of the programs authorized under this Act (except for the programs authorized under sections 17 and 21) and the Richard B. Russell National School

Lunch Act (42 U.S.C. 1751 et seq.) without regard to the basis on which the funds were earned and allocated.

(7) Where the Secretary is responsible for the administration of programs under this Act or the Richard B. Russell National School Lunch Act [(42 U.S.C. 1751 et seq.)], the amount of funds that would be allocated to the State agency under this section and under section 13(k)(1) of the Richard B. Russell National School Lunch Act [(42 U.S.C. 1761(k)(1))] shall be retained by the Secretary for the Secretary's use in the administration of such programs.

(8) In the fiscal year 1991 and each succeeding fiscal year, in accordance with regulations issued by the Secretary, each State shall ensure that the State agency administering the distribution of commodities under programs authorized under this Act and under the Richard B. Russell National School Lunch Act is provided, from funds made available to the State under this subsection, an appropriate amount of funds for administrative costs incurred in distributing such commodities. In developing such regulations, the Secretary may consider the value of commodities provided to the State under this Act and under the Richard B. Russell National School Lunch Act.

(9)

(A) If the Secretary determines that the administration of any program by a State under this Act (other than section 17) or under the Richard B. Russell National School Lunch Act (42 U.S.C. 1751 et seq.) (including any requirement to provide sufficient training, technical assistance, and monitoring of the child and adult care food program under section 17 of that Act (42 U.S.C. 1766)), or compliance with a regulation issued pursuant to either of such Acts, is seriously deficient, and the State fails to correct the deficiency within a specified period of time, the Secretary may withhold from the State some or all of the funds allocated to the State under this section or under section 13(k)(1) or 17 of the Richard B. Russell National School Lunch Act (42 U.S.C. 1761(k)(1) or 1766).

(B) On a subsequent determination by the Secretary that the administration of any program referred to in subparagraph (A), or compliance with the regulations issued to carry out the program, is no longer seriously deficient and is operated in an acceptable manner, the Secretary may allocate some or all of the funds withheld under such subparagraph.

(b) Funds paid to a State under subsection (a) of this section may be used to pay salaries, including employee benefits and travel expenses, for administrative and supervisory personnel; for support services; for office equipment; and for staff development.

(c) If any State agency agrees to assume responsibility for the administration of food service programs in nonprofit private schools or child care institutions that were previously administered by the Secretary, an appropriate adjustment shall be made in the administrative funds paid under this section to the State not later than the succeeding fiscal year.

(d) Notwithstanding any other provision of law, funds made available to each State under this section shall remain available for obligation and expenditure by that State during the fiscal year immediately following the fiscal year for which such funds were made available. For each fiscal year the Secretary shall establish a date by which each State shall submit to the Secretary a plan for the disbursement of

funds provided under this section for each such year, and the Secretary shall reallocate any unused funds, as evidenced by such plans, to other States as the Secretary considers appropriate.

(e) PLANS FOR USE OF ADMINISTRATIVE EXPENSE FUNDS.—

(1) IN GENERAL.—Each State shall submit to the Secretary for approval by October 1 of the initial fiscal year a plan for the use of State administrative expense funds, including a staff formula for State personnel, system level supervisory and operating personnel, and school level personnel.

(2) UPDATES AND INFORMATION MANAGEMENT SYSTEMS.—

(A) IN GENERAL.—After submitting the initial plan, a State shall be required to submit to the Secretary for approval only a substantive change in the plan.

(B) PLAN CONTENTS.—Each State plan shall, at a minimum, include a description of how technology and information management systems will be used to improve program integrity by —

(i) monitoring the nutrient content of meals served;

(ii) training local educational agencies, school food authorities, and schools in how to use technology and information management systems (including verifying eligibility for free or reduced price meals using program participation or income data gathered by State or local agencies); and

(iii) using electronic data to establish benchmarks to compare and monitor program integrity, program participation, and financial data.

(3) TRAINING AND TECHNICAL ASSISTANCE.—Each State shall submit to the Secretary for approval a plan describing the manner in which the State intends to implement subsection (g) and section 22(b)(3) of the Richard B. Russell National School Lunch Act.

(f) Payments of funds under this section shall be made only to States that agree to maintain a level of funding out of State revenues, for administrative costs in connection with programs under this Act (except section 17 of this Act) and the Richard B. Russell National School Lunch Act [(42 U.S.C. 1751 et seq.)] (except section 13 of that Act [(42 U.S.C. 1761)]), not less than the amount expended or obligated in fiscal year 1977, and that agree to participate fully in any studies authorized by the Secretary.

(g) PROFESSIONAL STANDARDS FOR SCHOOL FOOD SERVICE.—

(1) CRITERIA FOR SCHOOL FOOD SERVICE AND STATE AGENCY DIRECTORS.—

(A) SCHOOL FOOD SERVICE DIRECTORS.—

(i) IN GENERAL.—The Secretary shall establish a program of required education, training, and certification for all school food service directors responsible for the management of a school food authority.

(ii) REQUIREMENTS.—The program shall include—

(I) minimum educational requirements necessary to successfully manage the school lunch program established under the Richard B. Russell National School Lunch Act (42 U.S.C. 1751 et seq.) and the school breakfast program established by section 4 of this Act;

(II) minimum program training and certification criteria for school food service directors; and (III) minimum periodic training criteria to maintain school food service director certification.

(B) SCHOOL NUTRITION STATE AGENCY DIRECTORS.—The Secretary shall establish criteria and standards for States to use in the selection of State agency directors with responsibility for the school lunch program established under the Richard B. Russell National School Lunch Act (42 U.S.C. 1751 et seq.) and the school breakfast program established by section 4 of this Act.

(C) TRAINING PROGRAM PARTNERSHIP.—The Secretary may provide financial and other assistance to 1 or more professional food service management organizations—

(i) to establish and manage the program under this paragraph; and

(ii) to develop voluntary training and certification programs for other school food service workers.

(D) REQUIRED DATE OF COMPLIANCE.—

(i) SCHOOL FOOD SERVICE DIRECTORS.—The Secretary shall establish a date by which all school food service directors whose local educational agencies are participating in the school lunch program established under the Richard B. Russell National School Lunch Act (42 U.S.C. 1751 et seq.) and the school breakfast program established by section 4 of this Act shall be required to comply with the education, training, and certification criteria established in accordance with subparagraph (A).

(ii) SCHOOL NUTRITION STATE AGENCY DIRECTORS.— The Secretary shall establish a date by which all State agencies shall be required to comply with criteria and standards established in accordance with subparagraph (B) for the selection of State agency directors with responsibility for the school lunch program established under the Richard B. Russell National School Lunch Act (42 U.S.C. 1751 et seq.) and the school breakfast program established by section 4 of this Act.

(2) TRAINING AND CERTIFICATION OF FOOD SERVICE PERSONNEL.—

(A) TRAINING FOR INDIVIDUALS CONDUCTING OR OVERSEEING ADMINISTRATIVE PROCEDURES.

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(i) IN GENERAL.—At least annually, each State shall provide training in administrative practices (including training in application, certification, verification, meal counting, and meal claiming procedures) to local educational agency and school food authority personnel and other appropriate personnel.

(ii) FEDERAL ROLE.—The Secretary shall—

- (I) provide training and technical assistance described in clause (i) to the State; or
- (II) at the option of the Secretary, directly provide training and technical assistance described in clause (i).

(iii) REQUIRED PARTICIPATION.—In accordance with procedures established by the Secretary, each local educational agency or school food authority shall ensure that an individual conducting or overseeing administrative procedures described in clause (i) receives training at least annually, unless determined otherwise by the Secretary.

(B) TRAINING AND CERTIFICATION OF ALL LOCAL FOOD SERVICE PERSONNEL.—

(i) IN GENERAL.—The Secretary shall provide training designed to improve—

- (I) the accuracy of approvals for free and reduced price meals; and
- (II) the identification of reimbursable meals at the point of service.

(ii) CERTIFICATION OF LOCAL PERSONNEL.—In accordance with criteria established by the Secretary, local food service personnel shall complete annual training and receive annual certification—

- (I) to ensure program compliance and integrity; and
- (II) to demonstrate competence in the training provided under clause (i).

(iii) TRAINING MODULES.—In addition to the topics described in clause (i), a training program carried out under this subparagraph shall include training modules on—

- (I) nutrition;
- (II) health and food safety standards and methodologies; and
- (III) any other appropriate topics, as determined by the Secretary.

(3) FUNDING.—

(A) IN GENERAL.—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, to remain available until expended—

- (i) on October 1, 2010, \$5,000,000; and
- (ii) on each October 1 thereafter, \$1,000,000.

(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.

(h) FUNDING FOR TRAINING AND ADMINISTRATIVE REVIEWS.—

(1) FUNDING.—

(A) IN GENERAL.—On October 1, 2004, and on each October 1 thereafter, 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 \$4,000,000, 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.

(2) USE OF FUNDS.—

(A) IN GENERAL.—Except as provided in subparagraph (B), the Secretary shall use funds provided under this subsection to assist States in carrying out subsection (g) and administrative reviews of selected local educational agencies carried out under section 22 of the Richard B. Russell National School Lunch Act (42 U.S.C. 1769c).

(B) EXCEPTION.—The Secretary may retain a portion of the amount provided to cover costs of activities carried out by the Secretary in lieu of the State.

(3) ALLOCATION.—The Secretary shall allocate funds provided under this subsection to States based on the number of local educational agencies that have demonstrated a high level of, or a high risk for, administrative error, as determined by the Secretary, taking into account the requirements established by the Child Nutrition and WIC Reauthorization Act of 2004 and the amendments made by that Act.

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

(i) TECHNOLOGY INFRASTRUCTURE IMPROVEMENT.—

(1) IN GENERAL.—Each State shall submit to the Secretary, for approval by the Secretary, an amendment to the plan required by subsection (e) that describes the manner in which funds provided under this section will be used for technology and information management systems.

(2) REQUIREMENTS.—The amendment shall, at a minimum, describe the manner in which the State will improve program integrity by—

(A) monitoring the nutrient content of meals served;

(B) providing training to local educational agencies, school food authorities, and schools on the use of technology and information management systems for activities including—

(i) menu planning;

(ii) collection of point-of-sale data; and

(iii) the processing of applications for free and reduced price meals; and

(C) using electronic data to establish benchmarks to compare and monitor program integrity, program participation, and financial data across schools and school food authorities.

(3) TECHNOLOGY INFRASTRUCTURE GRANTS.—

(A) IN GENERAL.—Subject to the availability of funds made available under paragraph (4) to carry out this paragraph, the Secretary shall, on a competitive basis, provide funds to States to be used to provide grants to local educational agencies, school food authorities, and schools to defray the cost of purchasing or upgrading technology and information management systems for use in programs authorized by this Act (other than section 17) and the Richard B. Russell National School Lunch Act (42 U.S.C. 1751 et seq.).

(B) INFRASTRUCTURE DEVELOPMENT PLAN.—To be eligible to receive a grant under this paragraph, a school or school food authority shall submit to the State a plan to purchase or upgrade technology and information management systems that addresses potential cost savings and methods to improve program integrity, including—

- (i) processing and verification of applications for free and reduced price meals;
- (ii) integration of menu planning, production, and serving data to monitor compliance with section 9(f)(1) of the Richard B. Russell National School Lunch Act (42 U.S.C. 1758(f)(1)); and
- (iii) compatibility with statewide reporting system

(4) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out this subsection such sums as are necessary for each of fiscal years 2010 through 2015, to remain available until expended.

(j) For the fiscal year beginning October 1, 1977, and each succeeding fiscal year ending before October 1, 2015, there are hereby authorized to be appropriated such sums as may be necessary for the purposes of this section.

SECTION 3. [42 U.S.C. 1772] - SPECIAL MILK PROGRAM AUTHORIZATION

(a)

(1) There is hereby authorized to be appropriated for the fiscal year ending June 30, 1970, and for each succeeding fiscal year such sums as may be necessary to enable the Secretary of Agriculture, under such rules and regulations as the Secretary may deem in the public interest, to encourage consumption of fluid milk by children in the United States in (A) non-profit schools of high school grade and under, except as provided in paragraph (2), which do not participate in a meal service program authorized under this Act or the Richard B. Russell National School Lunch Act [(42 U.S.C. 1751 et seq.)], and (B) nonprofit nursery schools, child-care centers, settlement houses, summer camps, and similar nonprofit institutions devoted to the care and training of children, which do not participate in a meal service program authorized under this Act or the Richard B. Russell National School Lunch Act.

(2) The limitation imposed under paragraph (1)(A) for participation of nonprofit schools in the special milk program shall not apply to split-session kindergarten programs conducted in schools in which children do not have access to the meal service program operating in schools the children attend as authorized under this Act or the Richard B. Russell National School Lunch Act.

(3) For the purposes of this section “United States” means the fifty States, Guam, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, the Commonwealth of the Northern Mariana Islands, and the District of Columbia.

(4) The Secretary shall administer the special milk program provided for by this section to the maximum extent practicable in the same manner as the Secretary administered the special milk program provided for by Public Law 89–642, as amended, [(80 Stat. 885)] during the fiscal year ending June 30, 1969

(5) Any school or nonprofit child care institution which does not participate in a meal service program authorized under this Act or the Richard B. Russell National School Lunch Act shall receive the special milk program upon its request.

(6) Children who qualify for free lunches under guidelines established by the Secretary shall, at the option of the school involved (or of the local educational agency involved in the case of a public school) be eligible for free milk upon their request.

(7) For the fiscal year ending June 30, 1975, and for subsequent school years, the minimum rate of reimbursement for a half-pint of milk served in schools and other eligible institutions shall not be less than 5 cents per half-pint served to eligible children, and such minimum rate of reimbursement shall be adjusted on an annual basis each school year to reflect changes in the Producer Price Index for Fresh Processed Milk published by the Bureau of Labor Statistics of the Department of Labor.

(8) Such adjustment shall be computed to the nearest one-fourth cent.

(9) Notwithstanding any other provision of this section, in no event shall the minimum rate of reimbursement exceed the cost to the school or institution of milk served to children.

(10) The State educational agency shall disburse funds paid to the State during any fiscal year for purposes of carrying out the program under this section in accordance with such agreements approved by the Secretary as may be entered into by such State agency and the schools in the State. The agreements described in the preceding sentence shall be permanent agreements that may be amended as necessary. Nothing in the preceding sentence shall be construed to limit the ability of the State educational agency to suspend or terminate any such agreement in accordance with regulations prescribed by the Secretary.

(b) Commodity only schools shall not be eligible to participate in the special milk program under this section. For the purposes of the preceding sentence, the term “commodity only schools” means schools that do not participate in the school lunch program under the Richard B. Russell National School Lunch Act [(42 U.S.C. 1751 et seq.)], but which receive commodities made available by the Secretary for use by such schools in nonprofit lunch programs.

SECTION 10. [42 U.S.C. 1779] - REGULATIONS

(a) IN GENERAL.—The Secretary shall prescribe such regulations as the Secretary may deem necessary to carry out this Act and the Richard B. Russell National School Lunch Act [(42 U.S.C. 1751 et seq.)], including regulations relating to the service of food in participating schools and service institutions in

competition with the programs authorized under this Act and the Richard B. Russell National School Lunch Act.

(b) NATIONAL SCHOOL NUTRITION STANDARDS.—

(1) PROPOSED REGULATIONS.—

(A) IN GENERAL.—The Secretary shall—

- (i) establish science-based nutrition standards for foods sold in schools other than foods provided under this Act and the Richard B. Russell National School Lunch Act (42 U.S.C. 1751 et seq.); and
- (ii) not later than 1 year after the date of enactment of this paragraph, promulgate proposed regulations to carry out clause (i).

(B) APPLICATION.—The nutrition standards shall apply to all foods sold—

- (i) outside the school meal programs;
- (ii) on the school campus; and
- (iii) at any time during the school day.

(C) REQUIREMENTS.—In establishing nutrition standards under this paragraph, the Secretary shall—

- (i) establish standards that are 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), including the food groups to encourage and nutrients of concern identified in the Dietary Guidelines; and
- (ii) consider —
 - (I) authoritative scientific recommendations for nutrition standards;
 - (II) existing school nutrition standards, including voluntary standards for beverages and snack foods and State and local standards;
 - (III) the practical application of the nutrition standards; and
 - (IV) special exemptions for school-sponsored fundraisers (other than fundraising through vending machines, school stores, snack bars, a la carte sales, and any other exclusions determined by the Secretary), if the fundraisers are approved by the school and are infrequent within the school.

(D) UPDATING STANDARDS.—As soon as practicable after the date of publication by the Department of Agriculture and the Department of Health and Human Services of a new edition of the Dietary Guidelines for Americans under section 301 of the National Nutrition Monitoring and Related Research Act of 1990 (7 U.S.C. 5341), the Secretary shall review and update as necessary the school nutrition standards and requirements established under this subsection.

(2) IMPLEMENTATION.—

(A) EFFECTIVE DATE.—The interim or final regulations under this subsection shall take effect at the beginning of the school year that is not earlier than 1 year and not later than 2 years following the date on which the regulations are finalized.

(B) REPORTING.—The Secretary shall submit to the Committee on Agriculture, Nutrition, and Forestry of the Senate and the Committee on Education and Labor of the House of Representatives a quarterly report that describes progress made toward promulgating final regulations under this subsection.

(c) In such regulations the Secretary may provide for the transfer of funds by any State between the programs authorized under this Act and the Richard B. Russell National School Lunch Act on the basis of an approved State plan of operation for the use of the funds and may provide for the reserve of up to 1 per centum of the funds available for apportionment to any State to carry out special developmental projects.