

## CHILDHOOD NUTRITION REAUTHORIZATION

### **BACKGROUND: HEALTHY HUNGER-FREE KIDS ACT BECOMES LAW**

*The Healthy, Hunger-Free Kids Act (HHFK)* was signed by President Obama in December 2010 and became Public Law 111-296. It reauthorizes six major nutrition programs—including school breakfast and lunch—for five years. This coincides with the President’s goal to end childhood hunger in the U.S. by 2015.

NSBA urges the Administration to ensure that implementation of PL 111-296 is cost neutral to school districts, involves school boards and school governance representatives in the design and policy for implementation, and phases in provisions of the bill in a manner that reflects the academic, operational and financial circumstances of school districts. Key provisions of PL 111-296 and the status of implementation appear below.

### **LEGISLATION: THE REDUCING FEDERAL MANDATES ON SCHOOL LUNCH ACT (H.R. 3663) INTRODUCED**

H.R. 3663 was introduced December 5, 2013. NSBA worked closely with the sponsor, Rep. Kristi Noem (R-SD), on the legislation to restore local flexibility and authority to school districts struggling to comply with some provisions of the child nutrition reauthorization of 2010. The bill makes permanent the Department of Agriculture's temporary easing of meat and grain meal portion limits, which left many students feeling hungry during the school day.

In addition, H.R. 3663 would give administrators flexibility on some of the rules that result in increased costs to school districts, students and families: 1) competitive food standards, 2) school breakfast, and 3) paid meal prices. Rep. Noem's proposal specifies that if schools are unable to comply with new rules for the above because of costs, they would be subject to the standards in place before the newly implemented regulations (or prior to the 2012 school year). H.R. 3663 has been assigned to the House Education and Workforce Committee.

### **KEY PROVISIONS OF PL 111-296 IN EFFECT FOR THE 2013–2014 SCHOOL YEAR**

Implementation of the reauthorization is well under way by the U. S. Department of Agriculture. Four provisions of the bill already in effect for this school year include: 1) national standards for school meals, 2) Indirect Cost Guidance to schools and school food authorities (SFA), 3) paid meal pricing requirements, and 4) local school wellness policy implementation and expansion.

**National Standards for subsidized school meals** – New national standards for school meals were issued by the Department in January 2012 and are effective for the 2012 – 2013 school year. The Secretary of Agriculture is authorized to increase reimbursement by six cents per school lunch that complies with

updated standards. There is no reimbursement increase for school breakfasts that comply with the new standards. For many school districts the increase will not be sufficient to cover the actual cost of meeting the higher standards. Using the Department of Agriculture's conservative estimate, the reimbursement increase per free and reduced lunch provides less than half the cost of implementing the standards over the next five years. The Department's requirements to compensate for the federal funding shortfall fall squarely on the shoulders of school districts, students and their families through increasing meal prices or diverting funds from teachers and instruction. Compliance with the new standards is *voluntary*, although districts will be under pressure to raise their standards for subsidized school meals due to the mandatory standards for non-program (competitive) foods from the Department and described elsewhere in this brief.

In 2012, the Department of Agriculture temporarily lifted the maximum portion size for the meat/meat alternate and grain components. The Department received numerous complaints from schools, parents, food manufacturers, and state agencies that the maximum portion sizes were insufficient for many students and that children were hungry after eating. HR 3663 would make this temporary relief permanent.

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

**Paid meal pricing**—PL 111-296 regulates the price schools charge for unsubsidized (paid) meals. Effective July 2011, schools are required to charge students a price that is on average equal to the difference between free meal reimbursement and paid meal reimbursement. For example, reimbursement for a free lunch for the 2010-2011 school year was \$2.72 and reimbursement for a paid lunch was 26 cents, making the difference in reimbursement \$2.46. If the average price of a paid lunch is less than \$2.46 the district must either, 1) increase the price of paid meals, or 2) cover the difference with non-Federal funds. This provision also applies to non-program food (food and beverages purchased using funds from the SFA account other than a reimbursable meal).

The Department of Agriculture issued an Interim Rule in summer 2011, and Guidance in April 2013, to govern how districts calculate the cost and price of meals. For some districts, this is the third year in a row that they have had to increase the price of unsubsidized meals - typically between 10 and 25 cents per meal. The State Agency responsible for school meal programs is responsible for ensuring that all SFAs have made a good faith effort to comply with this provision.

The Department acknowledges that increasing the price of paid meals will decrease participation. The interim rule estimated that 1.6 million children come from families just over the income limit to

qualify for subsidized meals (185 percent–200 percent of poverty level) and are therefore most vulnerable to an increase in the price of paid meals. The Department anticipates that impacted children who do not pay the increased price will either, 1) bring food from home; 2) acquire food from other sources; or 3) “choose” not to eat during the school day.

**Local school wellness policies (LSWP)**—School districts are already required to have LSWPs that establish goals for nutrition education, physical activity, and other school-based activities that promote student wellness, as well as nutrition guidelines to promote student health and reduce childhood obesity. PL 111-296 expands requirements for development, implementation, assessment, and reporting on LSWPs and establishes new reporting requirements on the school nutrition environment generally. The Act also requires LEAs to designate one or more district or school officials, as appropriate, to ensure that each school complies with the local school wellness policy.

The Department has yet to issue regulations to implement LSWPs, but issued an Implementation Memo in July 2011 encouraging school districts to prepare now. State agencies are largely responsible for technical assistance and oversight of this provision.

## **ADDITIONAL PROVISIONS**

**Training and certification requirements**—School districts will have to comply with a new program of required education, training, and certification for all school food service directors. School districts will also have to meet new requirements established by the Secretary for training and certification for all school food service personnel. The Department conducted an advisory committee process in 2012 to solicit input from school nutrition professionals and some education associations on training, education, licensing, certificates and certification, professional development and other requirements for the state, district and individual school level. The Department plans to issue standards by July 2014.

## **OTHER FEDERAL ACTION**

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

The Department issued an Interim Final Rule in June 2013. NSBA called for an interim final rule to give school districts more time to assess the impact of the new standards and reporting requirements on their operations and revenue. NSBA also has called on the Department to delay implementation of standards on competitive foods until 2015. Unless the Department takes action on this recommendation, the standards go into effect July 1, 2014.

In addition to meeting new nutrition standards, school districts must comply with requirements for maintaining records and documenting compliance for food sold in areas that are outside the control of the school food service operation, and for ensuring that any organization designated as responsible for

food service does the same. States have the authority to waive the standards for infrequent fundraisers, the definition of which is also left to states.

**Congressional research request to the Government Accountability Office (GAO)** – In October 2012, the House Education and Workforce Committee requested a report from the GAO regarding the scope and consequences of *The Healthy, Hunger-Free Kids Act*. Topics in the report include flexibility and resources for schools, and the cumulative financial and operational impact of national standards for subsidized school meals and competitive food standards, in addition to other provisions such as the paid meal mandate and forthcoming training/certification requirements for school food service personnel. Preliminary recommendations from the GAO study in June 2013 include: remove the weekly meat/meat alternative/grain maximum requirements, and allow school districts more flexibility with the defined calorie ranges for grades 6 – 8 and 9 – 12 groups.

## **NSBA POSITION**

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

NSBA therefore supports H.R. 3663, *The Reducing Federal Mandates on School Lunch Act* to restore local flexibility and authority to school districts struggling to comply with some provisions of the child nutrition reauthorization of 2010.

Congress should support school districts, local communities, and states that are assuming greater responsibility for the health and nutrition of students through administrative and regulatory flexibility, adequately funded incentives, and grants that enable them to further expand their local commitment.

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