

117TH CONGRESS }  
2d Session

HOUSE OF REPRESENTATIVES

{ REPORT  
117-548

# HEALTHY MEALS, HEALTHY KIDS ACT

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## R E P O R T

OF THE

## COMMITTEE ON EDUCATION AND LABOR

TO ACCOMPANY

H.R. 8450

together with

## MINORITY VIEWS



NOVEMBER 7, 2022.—Committed to the Committee of the Whole House  
on the State of the Union and ordered to be printed

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HEALTHY MEALS, HEALTHY KIDS ACT

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Mr. SCOTT of Virginia, from the Committee on Education and Labor, submitted the following

R E P O R T

together with

MINORITY VIEWS

[To accompany H.R. 8450]

The Committee on Education and Labor, to whom was referred the bill (H.R. 8450) to reauthorize child nutrition programs, and for other purposes, having considered the same, reports favorably thereon with an amendment and recommends that the bill as amended do pass.

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The amendment is as follows:

Strike all after the enacting clause and insert the following:

**SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

(a) **SHORT TITLE.**—This Act may be cited as the “Healthy Meals, Healthy Kids Act”.

(b) **TABLE OF CONTENTS.**—The table of contents of this Act is as follows:

- Sec. 1. Short title; table of contents.
- Sec. 2. Definition of Secretary.

**TITLE I—EXPANDING ACCESS TO SCHOOL MEALS**

- Sec. 101. Emergency waivers or modifications.
- Sec. 102. Direct certification for children receiving Medicaid benefits.
- Sec. 103. Expanding community eligibility.

**TITLE II—ENSURING THE LONG-TERM VIABILITY OF SCHOOL MEAL PROGRAMS**

**Subtitle A—Programs Under the Richard B. Russell National School Lunch Act**

- Sec. 201. Increasing reimbursement rate of school meals.
- Sec. 202. Statewide technology solutions included as State administrative costs.
- Sec. 203. Annual reimbursement rate and commodity improvements.
- Sec. 204. Food service management.
- Sec. 205. Kitchen improvement and personnel training.
- Sec. 206. Statewide online household applications.

**Subtitle B—Programs Under the Child Nutrition Act of 1966**

- Sec. 211. Professional development and training.
- Sec. 212. Technology and infrastructure improvement.
- Sec. 213. State administrative expenses.

**TITLE III—MODERNIZING THE SPECIAL SUPPLEMENTAL NUTRITION PROGRAM FOR WOMEN, INFANTS, AND CHILDREN (WIC)**

- Sec. 301. Adjunctive eligibility.
- Sec. 302. WIC eligibility and certification periods.
- Sec. 303. Certification and recertification determinations and nutritional risk evaluations.
- Sec. 304. Paperwork reduction.
- Sec. 305. Nutrition education materials related to food allergies.
- Sec. 306. Breastfeeding supply coverage.
- Sec. 307. Water benefits during disasters.
- Sec. 308. Infant formula procurement online source of information.
- Sec. 309. Breastfeeding peer counselor program.
- Sec. 310. Product pricing.
- Sec. 311. WIC A50 stores.
- Sec. 312. WIC EBT Modernization.
- Sec. 313. Spend forward authorities.
- Sec. 314. Administrative simplification.
- Sec. 315. Authorization of appropriations.
- Sec. 316. WIC farmers’ market nutrition program.
- Sec. 317. Supporting Healthy Mothers and Infants.

**TITLE IV—MODERNIZING THE CHILD AND ADULT CARE FOOD PROGRAM**

- Sec. 401. Eligibility certification criteria for proprietary child care centers.
- Sec. 402. Automatic eligibility for children in supplemental nutrition assistance households.
- Sec. 403. Review of serious deficiency process.
- Sec. 404. Authorization of reimbursements for additional meal or snack.
- Sec. 405. Adjustments.
- Sec. 406. Age limits in homeless shelters and emergency shelters.
- Sec. 407. Advisory committee on paperwork reduction.

**TITLE V—ADDRESSING CHILD FOOD INSECURITY DURING THE SUMMER**

- Sec. 501. Summer food service program for children.
- Sec. 502. Summer electronic benefits transfer for children program.

**TITLE VI—IMPROVING CAPACITY AND PROMOTING SUSTAINABILITY**

- Sec. 601. Values-aligned procurement.
- Sec. 602. Procurement training.
- Sec. 603. Buy American.
- Sec. 604. Plant-based foods in schools.
- Sec. 605. Food waste and nutrition education.
- Sec. 606. Farm to school grant program.

**TITLE VII—SUPPORTING TRIBES AND FREELY ASSOCIATED STATES**

- Sec. 701. Tribally operated meal and snack pilot project.
- Sec. 702. Island areas eligibility feasibility study under the Richard B. Russell National School Lunch Act.

**TITLE VIII—ADDRESSING LUNCH SHAMING AND UNPAID MEAL DEBT**

- Sec. 801. Unpaid meal debt.
- Sec. 802. National advisory council on unpaid meal debt in child nutrition programs.

**TITLE IX—STRENGTHENING EVIDENCE-BASED NUTRITION STANDARDS**

- Sec. 901. Updating nutrition standards for meal patterns.
- Sec. 902. Non-nutritive sweeteners, synthetic dyes, and other potentially harmful substances in school meals.

**TITLE X—OTHER MATTERS**

**Subtitle A—Programs Under the Richard B. Russell National School Lunch Act**

- Sec. 1001. Accommodating dietary requirements.

Sec. 1002. Data protections for household applications.  
 Sec. 1003. Eating disorder prevention.  
 Sec. 1004. Compliance and accountability.  
 Sec. 1005. National hunger hotline and clearinghouse.  
 Sec. 1006. Ensuring adequate meal time.

Subtitle B—Programs Under the Child Nutrition Act of 1966

Sec. 1011. Enhancing nutrition education.

Subtitle C—Improving Food Donations

Sec. 1021. Food donation in schools.  
 Sec. 1022. Bill Emerson Good Samaritan Food Donation Act.  
 Sec. 1023. Regulations.

Subtitle D—Miscellaneous

Sec. 1031. Technical Amendments.

**SEC. 2. DEFINITION OF SECRETARY.**

In this Act, the term “Secretary” means the Secretary of Agriculture.

## **TITLE I—EXPANDING ACCESS TO SCHOOL MEALS**

**SEC. 101. EMERGENCY WAIVERS OR MODIFICATIONS.**

Section 12 of the Richard B. Russell National School Lunch Act (42 U.S.C. 1760) is amended—

(1) by inserting the following after subsection (j):

“(k) EMERGENCY WAIVERS OR MODIFICATIONS.—

“(1) IN GENERAL.—Except as provided in paragraph (4), during an emergency period, the Secretary may waive (including by modifying) 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 States or eligible service providers on a multi-State, State, or eligible service provider basis if—

“(A) the requirement cannot reasonably be implemented under the conditions which prompted the emergency period in the affected area;

“(B) a State or eligible service provider requests a waiver in a format prescribed by the Secretary;

“(C) in the case of a request by an eligible service provider under subparagraph (B), the State in which such eligible service provider is located includes a statement of support or opposition with respect to the request; and

“(D) the Secretary determines that the waiver would—

“(i) facilitate the ability of such States or eligible service providers to carry out the purpose of such Acts; and

“(ii) not decrease access to, or eligibility for, any program under such Acts.

“(2) NATIONWIDE, REGIONAL, AND STATE-WIDE BASIS.—Except as provided in paragraph (3), during an emergency period, the Secretary may waive (including by modifying) 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, on a nationwide, regional, or State-wide basis if the Secretary determines that the waiver would facilitate the ability of States or eligible service providers to carry out the purpose of such Acts.

“(3) DURATION.—A waiver established under this subsection may be available for a period of not greater than the emergency period and the 90 days after the end of the emergency period.

“(4) LIMITATIONS.—A waiver under this subsection is subject to the limitations in subsection (l)(4).

“(5) DEFINITIONS.—In this subsection:

“(A) ELIGIBLE SERVICE PROVIDER.—The term ‘eligible service provider’ has the meaning given the term in subsection (l).

“(B) EMERGENCY PERIOD.—The term ‘emergency period’ means a period during which there exists—

“(i) a major disaster declared by the President under section 401 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5170);

“(ii) an emergency declared by the President under section 501 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5191);

- “(iii) a public health emergency declared by the Secretary of Health and Human Services under section 319 of the Public Health Service Act (42 U.S.C. 247d); or
- “(iv) any renewal of such a public health emergency pursuant to such section 319.”; and
- (2) in subsection (1)—
  - (A) in paragraph (1)(A)—
    - (i) by striking “Except as” and all that follows through “requests a waiver” and inserting “Except as provided in paragraph (4), the Secretary may waive (including by modifying) 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, on a nationwide, State, multi-State, or eligible service provider basis”;
    - (ii) by redesignating clauses (i) through (iii) as clauses (ii) through (iv), respectively; and
    - (iii) by inserting before clause (ii), as so redesignated, the following new clause (i):
      - “(i) a State or eligible service provider requests the waiver.”;
  - (B) by striking paragraph (2)(B) and inserting the following:
    - “(B) An application described in subparagraph (A) shall—
    - “(i) be submitted in a format prescribed by the Secretary;
    - “(ii) be completed by the State or eligible service provider;
    - “(iii) be submitted to the Secretary by—
      - “(I) the State; or
      - “(II) an eligible service provider through the State; and
    - “(iv) if submitted as described in clause (iii)(II), include a statement of support or opposition from the State.”;
  - (C) in paragraph (4)(A), by striking “content of meals served” and inserting “standards”; and
  - (D) in paragraph (7), by striking subparagraphs (A) through (C) and inserting the following:
    - “(A) a local school food service authority, local educational agency, or school;
    - “(B) a service institution or private nonprofit organization described in section 13; or
    - “(C) institutions described in section 17.”.

**SEC. 102. DIRECT CERTIFICATION FOR CHILDREN RECEIVING MEDICAID BENEFITS.**

Section 9 of the Richard B. Russell National School Lunch Act (42 U.S.C. 1758(b)) is amended—

- (1) in subsection (b)—
  - (A) by amending paragraph (5) to read as follows:
    - “(5) DISCRETIONARY CERTIFICATION.—
    - “(A) FREE LUNCHES OR BREAKFASTS.—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—
      - “(i) 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.);
      - “(ii) 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)));
      - “(iii) served by the runaway and homeless youth grant program established under the Runaway and Homeless Youth Act (42 U.S.C. 5701 et seq.);
      - “(iv) a migratory child (as defined in section 1309 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 6399));
      - “(v) an eligible child (as defined in paragraph (15)(A)); or
      - “(vi)(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) REDUCED PRICE LUNCHES OR BREAKFASTS.—Subject to paragraph (6), any local educational agency may certify any child who is not eligible for free lunches or breakfasts as eligible for reduced price 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 child eligible for reduced price meals (as defined in paragraph (15)(A)).”;

(B) in paragraph (6)(A), by striking “or (5)” both places it appears and inserting “(5), or (15)”;

(C) in paragraph (15)—

(i) in subparagraph (A)—

(I) by amending clause (i) to read as follows:

“(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 that does not exceed 133 percent of the poverty line (as determined under the poverty guidelines updated periodically in the Federal Register by the Department of Health and Human Services under the authority of 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;

“(II) who is eligible for the Medicaid program because such child receives supplemental security income benefits under title XVI of the Social Security Act (42 U.S.C. 1381–1385) or State supplementary benefits of the type referred to in section 1616(a) of such Act (or payments of the type described in section 212(a) of Public Law 93–66);

“(III) who is eligible for the Medicaid program because such child receives an adoption assistance payment made under section 473(a) of the Social Security Act (42 U.S.C. 673(a)) or under a similar State-funded or State-operated program, as determined by the Secretary;

“(IV) who is eligible for the Medicaid program because such child receives a kinship guardianship assistance payment made under section 473(d) of the Social Security Act (42 U.S.C. 673(d)) or under a similar State-funded or State-operated program, as determined by the Secretary, without regard to whether such child was previously in foster care; or

“(V) 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), (III), or (IV).”;

(II) by adding at the end the following:

“(iii) CHILD ELIGIBLE FOR REDUCED PRICE MEALS.—The term ‘child eligible for reduced price meals’ 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 that is greater than 133 percent but does not exceed 185 percent of the poverty line (as determined under the poverty guidelines updated periodically in the Federal Register by the Department of Health and Human Services under the authority of 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) by striking subparagraphs (B), (C), (D), (E), (G), and (H);

(iii) in subparagraph (F)—

(I) in the enumerator, by striking “(F)” and inserting “(D)”;

(II) by striking “conducting the demonstration project under this paragraph” and inserting “carrying out this paragraph”; and

(iv) by inserting after subparagraph (A) the following:

“(B) AGREEMENTS TO CARRY OUT CERTIFICATION.—To certify a child under subparagraph (A)(v) or (B) of paragraph (5), a State agency shall enter into an agreement with 1 or more State agencies conducting eligibility determinations for the Medicaid program.

“(C) PROCEDURES.—Subject to paragraph (6), an agreement under subparagraph (B) shall establish procedures under which—

“(i) an eligible child may 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)); and

“(ii) a child eligible for reduced price meals may be certified for reduced price lunches under this Act and reduced price 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)).”;

(2) by amending subparagraph (E) of subsection (b)(4) to read as follows:

“(E) PERFORMANCE IMPROVEMENT GRANTS.—

“(i) IN GENERAL.—For each school year beginning after July 1, 2023, the Secretary shall offer performance improvement grants and technical assistance to State agencies or Tribal organizations (as defined in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 5304)) to increase the percentage of children eligible for direct certification under this paragraph or paragraph (5) who are certified in accordance with this paragraph or paragraph (5).

“(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);

“(II) make performance improvement grants to States and Tribal organizations to increase the percentage of children eligible for direct certification under this paragraph or paragraph (5) who are certified in accordance with this paragraph or paragraph (5); and

“(III) provide technical assistance to the recipients of grants under this subparagraph, and other eligible entities, as appropriate, in improving the rates of direct certification.

“(iii) USE OF FUNDS.—An eligible entity that receives a grant under clause (i) shall use the grant funds to pay costs relating to improving the rate of direct certification in the State or Indian Tribe, as applicable, including the cost of—

“(I) improving technology relating to direct certification;

“(II) providing technical assistance to local educational agencies;

“(III) implementing or improving a direct certification system or process in the State (including at local educational agencies in the State) or Indian Tribe, including the cost of equipment;

“(IV) establishing or improving the rate of direct certification of children that are members of households receiving assistance under the food distribution program on Indian reservations under section 4(b) of the Food and Nutrition Act of 2008 (7 U.S.C. 2013(b)); and

“(V) coordinating with multiple public benefits programs to increase the rate of direct certification, including by conducting feasibility studies and demonstration projects under section 18(c) of this Act.

“(iv) FUNDING.—On October 1, 2022, and each subsequent October 1, out of any funds in the Treasury not otherwise appropriated, the Secretary of the Treasury shall transfer to the Secretary—

“(I) \$15,000,000 to carry out clause (ii)(II); and

“(II) \$500,000 to carry out clause (ii)(III).”; and

(3) in subsection (d)(2)(G), by inserting “or child eligible for reduced price meals” after “eligible child”.

#### SEC. 103. EXPANDING COMMUNITY ELIGIBILITY.

(a) MULTIPLIER AND THRESHOLD ADJUSTED.—

(1) MULTIPLIER.—Clause (vii) of section 11(a)(1)(F) of the Richard B. Russell National School Lunch Act (42 U.S.C. 1759a(a)(1)(F)) is amended to read as follows:

“(vii) MULTIPLIER.—For each school year beginning on or after July 1, 2023, the Secretary shall use a multiplier of 2.5.”.

(2) THRESHOLD.—Clause (viii) of section 11(a)(1)(F) of the Richard B. Russell National School Lunch Act (42 U.S.C. 1759a(a)(1)(F)) is amended to read as follows:

“(viii) THRESHOLD.—For each school year beginning on or after July 1, 2023, the threshold shall be not more than 25 percent.”.

(3) APPLICABILITY.—The amendments made by this subsection shall apply to a local educational agency with respect to a school year beginning on or after

July 1, 2023, for which such local educational agency elects to receive special assistance payments under subparagraph (F) of section 11(a)(1) of the Richard B. Russell National School Lunch Act (42 U.S.C. 1759a(a)(1)).

(b) STATEWIDE COMMUNITY ELIGIBILITY.—Section 11(a)(1)(F) of the Richard B. Russell National School Lunch Act (42 U.S.C. 1759a(a)(1)(F)) is amended by adding at the end the following:

“(xiv) STATEWIDE COMMUNITY ELIGIBILITY.—For each school year beginning on or after July 1, 2023, the Secretary shall establish an option for States to utilize a statewide community eligibility program under which, in the case of a State agency that agrees to provide funding from sources other than Federal funds to ensure that local educational agencies in the State receive the free reimbursement rate for 100 percent of the meals served at applicable schools—

“(I) the multiplier described in clause (vii) shall apply;

“(II) the threshold described in clause (viii) shall be applied by substituting ‘zero’ for ‘25’; and

“(III) the percentage of enrolled students who were identified students shall be calculated across all applicable schools in the State regardless of local educational agency.”.

## **TITLE II—ENSURING THE LONG-TERM VIABILITY OF SCHOOL MEAL PROGRAMS**

### **Subtitle A—Programs Under the Richard B. Russell National School Lunch Act**

#### **SEC. 201. INCREASING REIMBURSEMENT RATE OF SCHOOL MEALS.**

Section 4(b)(2) of the Richard B. Russell National School Lunch Act (42 U.S.C. 1753(b)(2)) is amended by striking “10.5 cents” and inserting “20.5 cents”.

#### **SEC. 202. STATEWIDE TECHNOLOGY SOLUTIONS INCLUDED AS STATE ADMINISTRATIVE COSTS.**

Section 4(b)(3)(F)(i) of the Richard B. Russell National School Lunch Act (42 U.S.C. 1753(b)(3)(F)(i)) is amended by inserting “statewide technology solutions,” after “certification,”.

#### **SEC. 203. ANNUAL REIMBURSEMENT RATE AND COMMODITY IMPROVEMENTS.**

(a) DIRECT FEDERAL EXPENDITURES.—Section 6 of the Richard B. Russell National School Lunch Act (42 U.S.C. 1755(c)(1)) is amended—

(1) by amending subsection (b) to read as follows:

“(b) The Secretary shall deliver, to each State participating in the school lunch program under this Act and the school breakfast program under section 4 of the Child Nutrition Act of 1966 (42 U.S.C. 1773), commodities valued at the total level of assistance authorized under subsections (c) and (d) for each school year for the school lunch and school breakfast programs in the State, not later than September 30 of the following school year.”;

(2) in subsection (c), by striking “(c)” and all that follows through the end of paragraph (1) and inserting the following:

“(c) NATIONAL SCHOOL LUNCH COMMODITY ASSISTANCE.—

“(1)(A) Not later than January 15 of each year after the date of the enactment of the Healthy Meals, Healthy Kids Act, the Secretary shall—

“(i) calculate the national average value of donated foods for school lunch, or cash payments in lieu thereof, in accordance with subparagraph (B); and

“(ii) adjust the amount calculated under clause (i) by the annual percentage change in the 3-month average value of the Producer Price Index for Foods Used in Schools and Institutions—

“(I) for the preceding August, September, and October, computed to the nearest  $\frac{1}{4}$  cent;

“(II) using 5 major food components in the Producer Price Index of the Bureau of Labor Statistics, which are—

“(aa) cereal and bakery products;

“(bb) meats, poultry, and fish;

“(cc) dairy products;

“(dd) processed fruits and vegetables; and

“(ee) fats and oils; and

“(III) weighing each such component using the same relative weight as determined by the Bureau of Labor Statistics.

“(B) The national average value of donated foods, or cash payments in lieu thereof, shall be equal to 12 percent of the quotient obtained by dividing—

“(i) the total assistance provided in the preceding school year under section 4, this section, and section 11; by

“(ii) the number of lunches served in the preceding school year.

“(C) Not later than January 15 of each year after the date of the enactment of the Healthy Meals, Healthy Kids Act, the Secretary shall calculate the total commodity assistance or cash payments in lieu thereof available to a State for the upcoming school year by multiplying the number of lunches served in the most recent school year for which data are available by the rate established in subparagraph (A). The Secretary shall also annually reconcile the amount of commodity assistance or cash payments in lieu thereof made available under this subparagraph with the amount of assistance used by each State and increase or reduce subsequent commodity assistance or cash payments in lieu thereof 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.”.

(b) SPECIAL ASSISTANCE.—Section 11(a)(3)(B) of the Richard B. Russell National School Lunch Act (42 U.S.C. 1759a(a)(3)(B)) is amended—

(1) in clause (ii)—

(A) by striking “most recent”; and

(B) by inserting “ending on the preceding April 30” after “12-month period”; and

(2) in clause (iii), by inserting “ending on April 30” after “12-month period”.

#### SEC. 204. FOOD SERVICE MANAGEMENT.

(a) REQUEST FOR INFORMATION.—Not later than 1 year after the date of the enactment of this Act, the Secretary shall issue a request for information and data collection from State agencies and school food authorities regarding the role of food service management companies in carrying out the programs under the Richard B. National School Lunch Act (42 U.S.C. 1751 et seq.) and the Child Nutrition Act of 1966 (42 U.S.C. 1771 et seq.), including information on—

(1) participation of small, women- and minority-owned businesses as food service management companies;

(2) food service management contract practices;

(3) trends in compensation and benefits of school food personnel and impact of food service management contracts on such compensation and benefits; and

(4) use of funds by food service management companies to assist, promote, or deter organizing by a labor organization, including any action to enter into contracts in order to avoid, undermine, or violate any collective bargaining or a requirement to meet and confer.

(b) RULEMAKING.—Not later than 1 year after the date of issuance of the request for information described in subsection (a), the Secretary shall issue a rule regarding the role of food service management companies in carrying out the programs under the Richard B. National School Lunch Act (42 U.S.C. 1751 et seq.) and the Child Nutrition Act of 1966 (42 U.S.C. 1771 et seq.).

#### SEC. 205. KITCHEN IMPROVEMENT AND PERSONNEL TRAINING.

(a) SCRATCH COOKING DEFINED.—Section 12(d) of the Richard B. Russell National School Lunch Act (42 U.S.C. 1760(d)) is amended by—

(1) redesignating paragraphs (7) through (9) as paragraphs (8) through (10), respectively; and

(2) by adding after paragraph (6) the following:

“(7) SCRATCH COOKING.—The term ‘scratch cooking’ means the preparation of food using ingredients that are unprocessed or minimally processed.”.

(b) TRAINING AND TECHNICAL ASSISTANCE FOR SCHOOL FOOD SERVICE PERSONNEL.—The Richard B. Russell National School Lunch Act is amended by inserting after section 21 (42 U.S.C. 1769b–1) the following:

##### “SEC. 21A. GRANTS TO SUPPORT SCRATCH COOKING.

“(a) ESTABLISHMENT.—Not later than 180 days after the date of the enactment of this section, the Secretary shall establish a program to award grants, on a competitive basis, to school food authorities to promote scratch cooking.

“(b) APPLICATION.—To be eligible for a grant under this section, a school food authority shall submit to the Secretary an application at such time, in such manner, and containing such information as the Secretary may require.

“(c) GRANT AMOUNTS AND DURATION.—

“(1) GRANT AMOUNT.—The Secretary shall award a grant of not more than \$100,000 to each school food authority with an application selected under this subsection.

“(2) GRANT PERIOD.—A grant awarded under this section shall be for a period of not more than 2 years.

“(d) GRANT USES.—A school food authority that receives a grant under this section shall use such grant funds to promote scratch cooking, including by—

“(1) offering professional development and training related to preparing, procuring, advertising, serving, and creating menus of meals made with scratch cooking;

“(2) investing in software and technology systems for procurement to support scratch cooking;

“(3) compensating employees for additional food preparation required for scratch cooking;

“(4) providing technical assistance, student engagement, and education with respect to scratch cooking, including taste tests, recipe development, and culinary education; or

“(5) carrying out any additional activities to promote scratch cooking that will help school food authorities meet or exceed the 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).

“(e) PRIORITY.—In awarding grants under this section, the Secretary shall give priority to school food authorities—

“(1) that serve the greatest proportion of students eligible for free or reduced price lunch under this Act; and

“(2) that—

“(A) are self-operated; or

“(B) provide an assurance to the Secretary that the school food authority will be self-operated on or before the date that is 1 year before the last day of the grant period.

“(f) TECHNICAL ASSISTANCE CENTER.—

“(1) IN GENERAL.—The Secretary shall enter into an agreement with one or more eligible third-party institutions to establish and carry out a single technical assistance and resource center to provide technical assistance for school food service personnel.

“(2) COLLABORATION REQUIREMENT.—As soon as practicable after receiving a grant under this section, a school food authority shall collaborate with the technical assistance and resource center established under paragraph (1) to—

“(A) conduct a scratch cooking needs assessment to evaluate, with respect to such school food authority—

“(i) equipment needs;

“(ii) equipment utilization;

“(iii) procurement processes; and

“(iv) workforce capabilities; and

“(B) establish a strategic plan based on such needs assessment to carry out the activities under subsection (d).

“(3) ELIGIBLE THIRD-PARTY INSTITUTIONS.—

“(A) ELIGIBLE THIRD-PARTY INSTITUTION DEFINED.—For purposes of this subsection, the term ‘eligible third-party institution’ means—

“(i) a nonprofit organization with demonstrated experience in food or nutrition services training and technical assistance;

“(ii) an institution of higher education as defined in section 101 or 102(a)(1)(B) of the Higher Education Act of 1965 (20 U.S.C. 1001; 1002(a)(1)(B));

“(iii) an area career and technical education school as defined in section 3 of the Carl D. Perkins Career and Technical Education Act of 2006 (20 U.S.C. 2302); or

“(iv) a consortium of entities described in subclauses (I) through (III).

“(B) CRITERIA FOR ELIGIBLE THIRD-PARTY INSTITUTIONS.—The Secretary shall establish specific criteria that eligible third-party training institutions must meet to qualify to enter into an agreement under paragraph (1), which shall include—

“(i) prior successful experience in providing or engaging in training and technical assistance programming or applied research activities involving eligible entities, school food service administrators, or school food service directors;

“(ii) prior successful experience in developing relevant educational training tools or course materials or curricula on topics addressing child and school nutrition or the updated nutrition standards under section 4(b)(3); and

“(iii) the ability to deliver effective and cost-efficient training and technical assistance programming to school food service personnel—

“(I) at training sites that are located within a proximate geographic distance to schools, central kitchens, or other worksites; or

“(II) through an online training and assistance program on topics that do not require in-person attendance.

“(4) FUNDING.—Of the amounts made available under subsection (h) to carry out this section, not more than 10 percent may be used to carry out this subsection.

“(g) REPORT.—Not later than 180 days after the conclusion of the grant period described in subsection (c)(2), each school food authority that receives a grant under this section shall submit to the Secretary a report that includes, with respect to such school food authority, the change at the end of the grant period, as compared with the school year immediately preceding the beginning of the grant period, in—

“(1) the percentage of whole ingredients, raw ingredients, or both, used in school meals; and

“(2) the percentage of menu items prepared with scratch cooking.

“(h) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated \$20,000,000 to carry out this section for each of fiscal years 2024 through 2028.”

(c) GRANTS TO FINANCE CERTAIN IMPROVEMENTS TO SCHOOL LUNCH FACILITIES.—The Richard B. Russell National School Lunch Act is amended by inserting after section 26 (42 U.S.C. 1769g) the following:

**“SEC. 27. GRANTS TO FINANCE CERTAIN IMPROVEMENTS TO SCHOOL LUNCH FACILITIES.**

“(a) IN GENERAL.—Beginning fiscal year 2024, the Secretary shall award grants to State agencies to carry out the activities described in subsection (b).

“(b) SUBGRANTS.—

“(1) IN GENERAL.—A State agency receiving a grant under this section shall use such grant funds to award subgrants, on a competitive basis, to school food authorities.

“(2) APPLICATION.—A school food authority seeking a subgrant under this subsection shall submit to the State agency an application at such time, in such manner, and containing such information as the State agency may require.

“(3) PRIORITY.—In awarding a subgrant under this subsection, the State agency shall give priority to a school food authority that serves, as determined by the State agency, schools with substantial or disproportionate—

“(A) need for infrastructure improvement; or

“(B) durable equipment need or impairment.

“(4) SUBGRANT USES.—A school food authority receiving a subgrant under this subsection shall use such subgrant funds to support the establishment, maintenance, and expansion of 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) at schools served by the school food authority, including by—

“(A) purchasing equipment, including software and technology systems, needed to serve healthy meals, improve food safety, promote scratch cooking, facilitate the use of salad bars; or

“(B) improving or adapting equipment needed to serve healthy meals, including by retrofitting such equipment.

“(c) AUTHORIZATION OF APPROPRIATIONS.—

“(1) IN GENERAL.—There are authorized to be appropriated \$35,000,000 for each of fiscal years 2024 through 2028 to carry out this section.

“(2) TECHNICAL ASSISTANCE.—The Secretary may use not more than 5 percent of the amounts made available to carry out this section for each fiscal year to provide technical assistance to applicants and prospective applicants in preparing applications.”

**SEC. 206. STATEWIDE ONLINE HOUSEHOLD APPLICATIONS.**

(a) IN GENERAL.—Section 9(b) of the Richard B. Russell National School Lunch Act (42 U.S.C. 1758(b)) is amended by adding at the end the following:

“(16) STATEWIDE ONLINE HOUSEHOLD APPLICATIONS.—

“(A) IN GENERAL.—Subject to subparagraphs (B) and (C), beginning in the first school year that begins after the date of the enactment of this paragraph, a State agency may elect to establish a Statewide online application to determine the eligibility of children in households in that State to receive free or reduced price meals.

“(B) STATE AGENCY REQUIREMENTS.—

“(i) HOUSEHOLD APPLICATION.—A Statewide online school meal application under this paragraph shall comply with the requirements of—

“(I) this subsection; and

“(II) paragraphs (1) through (5) of section 245.6(a)(1) of title 7, Code of Federal Regulations (or a successor regulation).

“(ii) PROCESSING TIMELINE.—A State agency electing the option under this paragraph shall—

“(I) determine the eligibility of a household applying for free or reduced price meals; and

“(II) communicate that determination to the local educational agency and the household, within 10 operating days of the date on which the household submitted the application to the State agency.

“(iii) VERIFICATION.—A State agency electing the option under this paragraph shall—

“(I) select at random for verification 3 percent of all household applications approved by the State agency for the school year, as of October 1 of the school year;

“(II) directly verify the selected household applications under subclause (I) in a manner consistent with paragraph (3)(F); and

“(III) prior to October 10 of the school year, communicate to the local educational agency which household applications have been selected for verification and the outcome of the direct verification conducted under paragraph (3)(F).

“(C) LOCAL EDUCATIONAL AGENCY REQUIREMENTS.—

“(i) ELIGIBILITY DETERMINATION.—A local educational agency in a State with a Statewide online household application established under this paragraph shall accept the eligibility determination made by the State agency for a household and provide an eligible child with free or reduced price meals beginning on the first day of the current school year.

“(ii) TRANSFERRING STUDENTS.—When a student transfers to a new local educational agency, the new local educational agency shall obtain and accept the eligibility determination made by the State agency.

“(iii) USE OF STATE SCHOOL MEAL APPLICATION.—A local educational agency in a State with a Statewide online household application established under this paragraph shall not use an alternative online household application unless the State agency has approved its use.

“(iv) PAPER APPLICATION.—A local educational agency in a State with a Statewide online household application established under this paragraph shall—

“(I) provide households with the option to submit a paper application to the local educational agency;

“(II) communicate to households the availability of this option and the Statewide online household application; and

“(III) make an eligibility determination for any paper application submitted.

“(v) VERIFICATION.—A local educational agency shall verify the household applications selected by the State agency under subparagraph (B)(iii) that were not directly verified by the State agency under paragraph (3)(F) in a manner consistent with subparagraphs (G) through (J) of paragraph (3).”

(b) TRANSFERRING ELIGIBILITY STATUS.—Section 9(b)(3)(B) of the Richard B. Russell National School Lunch Act (42 U.S.C. 1758(b)) is amended by adding at the end:

“(iv) TRANSFERRING ELIGIBILITY STATUS.—

“(I) TRANSFERS TO A NEW LOCAL EDUCATIONAL AGENCY.—When a child transfers to a new local educational agency, the new local educational agency shall obtain and accept the eligibility determination from the State or the child’s former local educational agency.

“(II) TRANSFERS OUT OF A LOCAL EDUCATIONAL AGENCY.—When a child transfers out of a local educational agency, the local educational agency shall provide the child’s eligibility determination to the new local educational agency.

“(III) COST OF MEALS.—When the former local educational agency is claiming meals under a special provision described in section 11, and the child does not have an individual eligibility determination, the new local educational agency shall serve the child meals at no cost and claim the child’s meals at the free rate for up to 30 oper-

ating days, or until a new eligibility determination is made, whichever comes first.”.

(c) CONFORMING AMENDMENT.—Section 9(b)(3)(J) of the Richard B. Russell National School Lunch Act (42 U.S.C. 1758(b)(3)(J)) is amended by inserting “or paragraph (16)(B)(iii)” after “subparagraph (D)”.

## **Subtitle B—Programs Under the Child Nutrition Act of 1966**

### **SEC. 211. PROFESSIONAL DEVELOPMENT AND TRAINING.**

Section 7(g)(2)(B) of the Child Nutrition Act of 1966 (42 U.S.C. 1776(g)(2)(B)) is amended by adding at the end the following:

“(iv) AVAILABILITY AND APPROPRIATENESS OF TRAINING.—Training carried out under this subparagraph shall be—

“(I) scheduled primarily during regular, paid working hours;

“(II) if such training is scheduled outside of such regular, paid working hours—

“(aa) efforts shall be made to inform food service personnel of the reasons requiring the training to be scheduled outside of such hours;

“(bb) time spent participating in such training shall be considered compensable time and each individual who participates shall be paid no less than the individual’s regular rate of pay; and

“(cc) food service personnel shall not be discharged or in any other manner discriminated against for not being able to attend such training; and

“(III) offered in-person and incorporate hands-on training techniques, when appropriate.

“(v) RELATIONSHIP TO OTHER LAWS.—Nothing in this subparagraph may be construed to supersede or otherwise modify any Federal, State, or local law or legal obligation governing the relationship between an employee and employer.”.

### **SEC. 212. TECHNOLOGY AND INFRASTRUCTURE IMPROVEMENT.**

Section 7(i)(4) of the Child Nutrition Act of 1966 (42 U.S.C. 1776(i)(4)) is amended by striking “2010 through 2015” and inserting “2023 through 2028”.

### **SEC. 213. STATE ADMINISTRATIVE EXPENSES.**

Section 7 of the Child Nutrition Act of 1966 (42 U.S.C. 1776) is amended—

(1) in subsection (a)(5)(A), by striking “or expenditure”;

(2) in subsection (d), by striking “and expenditure”; and

(3) in subsection (j), by striking “October 1, 2015” and inserting “October 1, 2028”.

## **TITLE III—MODERNIZING THE SPECIAL SUPPLEMENTAL NUTRITION PROGRAM FOR WOMEN, INFANTS, AND CHILDREN (WIC)**

### **SEC. 301. ADJUNCTIVE ELIGIBILITY.**

(a) IN GENERAL.—Section 17(d)(2)(A) of the Child Nutrition Act of 1966 (42 U.S.C. 1786(d)(2)(A)) is amended—

(1) in clause (ii)—

(A) in subclause (I), by inserting “resides in a household (as such term is defined in section 3 of the Food and Nutrition Act of 2008 (7 U.S.C. 2012)) that includes an individual who” before “receives”; and

(B) in subclause (II), by striking “; or” and inserting a semicolon;

(2) by amending clause (iii) to read as follows:

“(iii)(I) receives medical assistance under title XIX of the Social Security Act (42 U.S.C. 1396 et seq.) or child health assistance under title XXI of such Act (42 U.S.C. 1397aa et seq.); or

“(II) is a member of a family in which a pregnant woman, postpartum woman, infant, or child receives assistance or is enrolled as described in subclause (I);”;

and

(3) by adding at the end the following:



“(iv) is enrolled as a participant in a Head Start program authorized under the Head Start Act (42 U.S.C. 9831 et seq.) or resides in a household in which one or more children is enrolled as a participant in such a Head Start program;

“(v) resides in a household that includes an individual who receives assistance under 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)); or

“(vi) resides in a household that includes an individual who receives assistance from a nutrition assistance program funded by the consolidated block grants for Puerto Rico and the American Samoa under section 19 of the Food and Nutrition Act of 2008 (7 U.S.C. 2028) or funded by a block grant for the Commonwealth of the Northern Mariana Islands pursuant to section 601 of Public Law 96–597 (48 U.S.C. 1469d(c)).”.

(b) ADJUNCT DOCUMENTATION.—Section 17(d)(3)(E) of the Child Nutrition Act of 1966 (42 U.S.C. 1786(d)(3)(E)) is amended to read as follows:

“(E) ADJUNCT DOCUMENTATION.—In order to participate in the program under this section pursuant to clause (ii) through (vi) of paragraph (2)(A), not earlier than 90 days prior to the date on which the certification or recertification for participation in the program is made—

“(i) an individual shall provide documentation of receipt of assistance described in such clause; or

“(ii) a State agency shall use available documentation to show receipt of such assistance.”.

#### SEC. 302. WIC ELIGIBILITY AND CERTIFICATION PERIODS.

(a) PROCEDURES.—

(1) AGE OF ELIGIBILITY FOR CHILDREN UNDER THE SPECIAL SUPPLEMENTAL NUTRITION PROGRAM.—

(A) DEFINITION OF CHILD.—Section 17 of the Child Nutrition Act of 1966 (42 U.S.C. 1786) is amended—

(i) in subsection (b), by amending paragraph (2) to read as follows:

“(2) CHILD.—The term ‘child’ means—

“(A) before October 1, 2026, an individual who—

“(i) has attained a first birthday but has not yet attained a fifth birthday; or

“(ii)(I) has attained a fifth birthday but has not yet attained a sixth birthday;

“(II) does not attend full-day kindergarten; and

“(III) is certified before such date by a State agency under subsection (d)(3)(A)(iii)(II); and

“(B) on and after October 1, 2026, an individual who—

“(i) has attained a first birthday but has not yet attained a sixth birthday; and

“(ii) does not attend full day kindergarten.”;

(ii) in subsection (e)(4)(A), by striking “up to age 5”; and

(iii) in subsection (f)(7)(D)(i), by striking “under the age of 5”.

(B) CERTIFICATION.—Section 17(d)(3)(A)(iii) of the Child Nutrition Act of 1966 (42 U.S.C. 1786(d)(3)(A)(iii)) is amended to read as follows:

“(iii) CHILDREN.—

“(I) CHILDREN UNDER 5.—With respect to a participant child who has not had a fifth birthday—

“(aa) before October 1, 2026, a State may elect to certify a participant child for a period of 2 years, if the State electing the option provided under this clause ensures that a participant child receives the required health and nutrition assessments; and

“(bb) on and after October 1, 2026 a State shall—

“(AA) certify a participant child for a period of 2 years; and

“(BB) ensure that a participant child receives the required health and nutrition assessments, as determined by the Secretary under clause (ix).

“(II) 5-YEAR-OLD CHILDREN.—

“(aa) IN GENERAL.—Beginning not later than October 1, 2026, a State shall certify a participant child who has had a fifth birthday but has not yet attained a sixth birthday, for the period that ends on the earlier of—

“(AA) the sixth birthday of the participant child; and

“(BB) the first date on which the participant child attends full-day kindergarten.

“(bb) REQUIREMENTS.—Each State that certifies a participant child under item (aa) shall—

“(AA) ensure that such participant child receives required health and nutrition assessments, as determined by the Secretary under clause (ix); and

“(BB) establish a method to determine the first date on which such participant child attends full-day kindergarten.”.

(C) CONFORMING AMENDMENT.—Section 1902(a)(53)(A) of the Social Security Act (42 U.S.C. 1396a(a)(53)(A)) is amended by striking “below the age of 5” and inserting “(as defined in such section)”.

(2) CERTIFICATION OF INFANTS.—Section 17(d)(3)(A) of the Child Nutrition Act of 1966 (42 U.S.C. 1786(d)(3)(A)) is amended by adding at the end the following:

“(iv) INFANTS.—

“(I) IN GENERAL.—With respect to an infant, a State—

“(aa) before October 1, 2026, may elect to certify an infant for participation in the program for a period of 2 years; and

“(bb) on and after October 1, 2026, shall certify an infant for participation in the program for a period of 2 years.

“(II) ASSESSMENTS.—In certifying an infant under subclause (I), a State shall ensure that the infant receives required health and nutrition assessments, as determined by the Secretary under clause (ix).

“(III) INFANTS BORN TO PARTICIPANT MOTHERS.—For purposes of subclause (I), an infant born to a pregnant woman who is participating in the program shall be certified for participation without further application.

“(IV) CLARIFICATION RELATING TO AGE.—An infant may be certified for participation in the program for a period of 2 years, regardless of whether such infant will become a child during such period.”.

(3) EXTENSION OF POSTPARTUM PERIOD.—

(A) BREASTFEEDING WOMEN.—

(i) DEFINITION OF BREASTFEEDING WOMAN.—Paragraph (1) of section 17(b) of the Child Nutrition Act of 1966 (42 U.S.C. 1786(b)) is amended to read as follows:

“(1) BREASTFEEDING WOMAN.—The term ‘breastfeeding woman’ means—

“(A) before October 1, 2026, an individual up to one year postpartum who is breastfeeding the infant of the individual; and

“(B) on and after October 1, 2026, an individual who is not more than 2 years postpartum and is breastfeeding the infant of the individual.”.

(ii) CERTIFICATION.—Section 17(d)(3)(A)(ii) of the Child Nutrition Act of 1966 (42 U.S.C. 1786(d)(3)(A)(ii)) is amended to read as follows:

“(ii) BREASTFEEDING WOMEN.—With respect to a breastfeeding woman, a State—

“(I) before October 1, 2026, may elect to certify such breastfeeding woman for a period of 2 years postpartum; and

“(II) on and after October 1, 2026, a State shall certify a postpartum woman for a period of 2 years postpartum.”.

(B) POSTPARTUM WOMEN.—

(i) DEFINITION OF POSTPARTUM WOMAN.—Paragraph (10) of section 17(b) of the Child Nutrition Act of 1966 (42 U.S.C. 1786(b)) is amended to read as follows:

“(10) POSTPARTUM WOMAN.—The term ‘postpartum woman’ means—

“(A) before October 1, 2026, an individual up to six months after termination of pregnancy; and

“(B) on and after October 1, 2026, an individual up to 2 years after termination of pregnancy.”.

(ii) CERTIFICATION.—Section 17(d)(3)(A) of the Child Nutrition Act of 1966 (42 U.S.C. 1786(d)(3)(A)) is further amended by adding at the end the following:

“(v) POSTPARTUM WOMEN.—With respect to a postpartum woman, a State—

“(I) before October 1, 2026, may elect to certify such postpartum woman for a period of 2 years after the termination of the pregnancy of the postpartum woman; and

“(II) on and after October 1, 2026, a State shall certify a postpartum woman for a period of 2 years after the termination of pregnancy of the postpartum woman.”.

(4) PREGNANT WOMEN.—

(A) DEFINITION.—Section 17(b)(11) of the Child Nutrition Act of 1966 (42 U.S.C. 1786(b)(11)) is amended to read as follows:

“(11) PREGNANT WOMAN.—The term ‘pregnant woman’ means an individual determined to have one or more fetuses in utero.”.

(B) CERTIFICATION.—Section 17(d)(3)(A) of the Child Nutrition Act of 1966 (42 U.S.C. 1786)(d)(3)(A)) is further amended by adding at the end the following:

“(vi) PREGNANT WOMEN.—With respect to a pregnant woman, a State—

“(I) before October 1, 2026, may elect to certify a pregnant woman for the duration of the pregnancy and for the 90 days after the termination of pregnancy; and

“(II) on and after October 1, 2026, shall certify a pregnant woman for the duration of the pregnancy and for the 90 days after the termination of pregnancy.”.

(5) CERTIFICATION WITHIN ONE HOUSEHOLD FAMILY.—Section 17(d)(3)(A) of the Child Nutrition Act of 1966 (42 U.S.C. 1786(d)(3)(A)) is further amended—

(A) in clause (i)—

(i) by striking “clause (ii)” and inserting “clauses (ii) through (viii); and

(ii) by inserting “or recertified” after “certified”;

(B) by adding at the end the following:

“(vii) CERTIFICATION WITHIN ONE HOUSEHOLD FAMILY.—In order to align certification periods or recertification appointments, when a State or local agency certifies an individual based on income documentation under subparagraph (D) or adjunct documentation under subparagraph (E), a new certification period that otherwise meets the requirements of the program may be initiated for eligible family members of such individual.”.

(6) RECERTIFICATION.—Section 17(d)(3)(A) of the Child Nutrition Act of 1966 (42 U.S.C. 1786)(d)(3)(A)) is further amended by adding at the end the following:

“(viii) RECERTIFICATION.—Before requesting new income documentation for purposes of recertifying an individual under the program, a State shall—

“(I) determine whether such individual is eligible for recertification under subparagraph (E); and

“(II) if such individual is so eligible—

“(aa) recertify such individual; and

“(bb) notify such individual of such recertification.”.

(7) NUTRITION RISK.—Section 17(d)(3)(A) of the Child Nutrition Act of 1966 (42 U.S.C. 1786)(d)(3)(A)) is further amended by adding at the end the following:

“(ix) NUTRITION RISK.—

“(I) IN GENERAL.—The Secretary may require nutrition risk evaluations within a single certification period for the purposes of identifying specific risk factors.

“(II) INFORMATION PROVIDED BY A HEALTH CARE PROVIDER.—Information provided by a health care provider shall be sufficient to establish nutrition risk for the purposes of program eligibility under this section.

“(III) DETERMINATION.—If it is determined that the individual does not meet any nutritional risk criteria, the certification of the individual shall terminate on the date of determination.”.

(b) INTERIM ELIGIBILITY.—Section 17(d)(3)(B) of the Child Nutrition Act of 1966 (42 U.S.C. 1786)(d)(3)(B)) is amended to read as follows:

“(B) INTERIM ELIGIBILITY.—

“(i) TEMPORARY CERTIFICATION.—

“(I) IN GENERAL.—In the case of a pregnant woman, breastfeeding woman, postpartum woman, infant, or child who is not otherwise determined eligible under this section to participate in the program due to lack of documentation at the time of application, a State agency shall consider such a pregnant woman, breastfeeding woman, postpartum woman, infant, or child to be

temporarily eligible to participate in the program based on a signed statement by the applicant.

“(II) 30-DAY PERIOD.—With respect to an individual that is temporarily eligible under subclause (I), the State agency shall—

“(aa) provide food instruments for a single 30-day period; and

“(bb) require that documentation for purposes of certifying such individual in accordance with this paragraph be provided not later than 30 days after the first day such individual is deemed temporarily eligible under subclause (I).

“(III) DOCUMENTATION DEMONSTRATING ELIGIBILITY.—If an individual provides documentation in accordance with subclause (II) that demonstrates eligibility for the program, the individual shall be certified in accordance with this paragraph beginning on the first day the individual was deemed temporarily eligible under subclause (I).

“(IV) DOCUMENTATION FAILING TO DEMONSTRATE ELIGIBILITY.—If an individual does not provide documentation in accordance with subclause (II), or provides documentation that does not demonstrate eligibility for the program—

“(aa) the individual shall be determined ineligible to participate in the program; and

“(bb) the temporary eligibility with respect to such individual shall terminate at the end of the single 30-day period described in subclause (II)(aa).

“(ii) NUTRITIONAL RISK.—A State may consider a pregnant woman, breastfeeding woman, postpartum woman, infant, or child applicant who meets the income eligibility standards to be temporarily eligible on an interim basis to participate in the program and may certify any such individual for participation immediately, without delaying certification until an evaluation is made concerning nutritional risk. A nutritional risk evaluation of such an individual shall be completed not later than 90 days after the individual is certified for participation. If it is subsequently determined that the individual does not meet nutritional risk criteria, the certification of the individual shall terminate on the date of the determination.”

(c) ELIGIBILITY FOR CHILDREN IN KINSHIP FAMILIES.—Section 17(f)(1)(C)(ix) of the Child Nutrition Act of 1966 (42 U.S.C. 1786(f)(1)(C)(ix)) is amended by inserting “a kinship family,” after “under the care of”.

**SEC. 303. CERTIFICATION AND RECERTIFICATION DETERMINATIONS AND NUTRITIONAL RISK EVALUATIONS.**

(a) IN GENERAL.—

(1) PRESENCE WITH RESPECT TO CERTAIN DETERMINATIONS AND EVALUATIONS.—Section 17(d)(3)(C) of the Child Nutrition Act of 1966 (42 U.S.C. 1786(d)(3)(C)) is amended to read as follows:

“(C) PRESENCE WITH RESPECT TO CERTAIN DETERMINATIONS AND EVALUATIONS.—

“(i) IN GENERAL.—Each individual seeking certification, recertification, or a nutritional risk evaluation for participation in the program shall be offered an appointment—

“(I) in-person, through video technology permitting 2-way, real-time interactive communications, by telephone, and in such other format as the Secretary determines appropriate in order to determine eligibility under the program, provided that such format permits 2-way, real-time interactive communications; and

“(II) that occurs in a format, setting, or platform that is accessible to the individual in accordance with the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et seq.) and section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794).

“(ii) ANTHROPOMETRIC DATA FOR REMOTE CERTIFICATION.—If an individual meets the certification presence requirement through technology permitting 2-way, real-time interactive communications or other methods described in clause (i)(I), the anthropometric data with respect to such individual shall be obtained within 90 days.”

(2) TECHNICAL AMENDMENT.—Section 17(d)(3) of the Child Nutrition Act of 1966 (42 U.S.C. 1786(d)(3)) is amended by conforming the margin of subparagraph (B) to the margin of subparagraph (C).

(b) REMOTE BENEFIT ISSUANCE.—Section 17(f)(6)(B) of the Child Nutrition Act of 1966 (42 U.S.C. 1786(f)(6)(B)) is amended—

- (1) in the second sentence—
    - (A) by striking “vouchers by mail in its plan” and inserting “food instruments by mail, remote issuance, or other means in the State plan”; and
    - (B) by striking “The State” and inserting the following:
      - “(ii) STATE PLAN.—The State”;
  - (2) in the third sentence—
    - (A) by striking “vouchers by mail” and inserting “food instruments by mail, remote issuance, or other means”; and
    - (B) by striking “The Secretary” and inserting the following:
      - “(iii) DISAPPROVAL OF STATE PLAN.—The Secretary”; and
  - (3) by striking “(B) State agencies” and all that follows through “to obtain vouchers.” and inserting the following:
    - “(B) DELIVERY OF FOOD INSTRUMENTS.—
      - “(i) IN GENERAL.—State agencies may provide for the delivery of food instruments, including electronic benefit transfer cards, to any participant through means that do not require the participant to travel to the local agency to obtain food instruments, such as through mailing or remote issuance.”.
- (c) ANNUAL INVESTMENT IN WIC TECHNOLOGIES.—Section 17(h) of the Child Nutrition Act of 1966 (42 U.S.C. 1786(h)) is amended—
- (1) in paragraph (2)(B)—
    - (A) by striking clause (ii); and
    - (B) by striking “(I) Except as provided in clause (ii) and” and inserting “Except as provided in”;
  - (2) in paragraph (10)—
    - (A) in subparagraph (A), by striking “2010 through 2015” and inserting “2023 through 2028”;
    - (B) in subparagraph (B), by striking clause (ii) and inserting the following:
      - “(ii)(I) \$90,000,000 shall be used to—
        - “(aa) establish, develop, improve, replace, or administer technology platforms, including management information systems, that enhance the services of, access to, or redemption of benefits under the program;
        - “(bb) establish, develop, improve, replace, or administer a system that allows for secure communication of information between health care providers and program clinics in order to facilitate sharing of information necessary for certification, establishing nutrition risk, or for the provision of health care services; and
        - “(cc) carry out paragraph (15); and
      - “(II) of which up to \$8,000,000 may be used for Federal administrative costs; and”;
  - (3) by adding at the end the following:
    - “(15) STATE EFFORTS TO ENHANCE CROSS-ENROLLMENT WITH MEDICAID AND THE SUPPLEMENTAL NUTRITION ASSISTANCE PROGRAM.—
      - “(A) PARTICIPATION DATA.—The Secretary shall annually collect data from State agencies and make publicly available on the website of the Department State-level estimates of the percentage of pregnant women, postpartum women, infants, and children under age five—
        - “(i) who are enrolled in the program under this section and the supplemental nutrition assistance program under the Food and Nutrition Act of 2008 (7 U.S.C. 2011 et seq.); and
        - “(ii) who are—
          - “(I) enrolled in the program under this section and the Medicaid program established under title XIX of the Social Security Act (42 U.S.C. 1396 et seq.); and
          - “(II) a member of a family described in subsection (d)(2)(A)(i).
      - “(B) BEST PRACTICES.—The Secretary shall—
        - “(i) in addition to the information made available under subparagraph (A), also publish on the website of the Department best practices for increasing the percentages described in such subparagraph; and
        - “(ii) evaluate the number and types of referrals to the program under this section made by—
          - “(I) administrators of the supplemental nutrition assistance program under the Food and Nutrition Act of 2008 (7 U.S.C. 2011 et seq.); and
          - “(II) administrators of the Medicaid program established under title XIX of the Social Security Act (42 U.S.C. 1396 et seq.).

“(C) CROSS-ENROLLMENT PLAN.—Not later than 1 year after the date of the enactment of this paragraph and annually thereafter, each State shall—

“(i) submit to the Secretary an annual cross-enrollment plan that—

“(I) is developed across the programs described in subparagraph (A) that includes goals, specific measures, and a timeline for increasing the percentages described in such subparagraph; and

“(II) includes policies to refer to the program under this section participants in the programs described in such subparagraph who are not certified for the program under this section; and

“(ii) if such plan is approved by the Secretary, implement such plan.

“(D) GRANT PROGRAM.—The Secretary shall provide technical assistance and award competitive grants to State agencies to—

“(i) increase the percentages described in subparagraph (A); and

“(ii) implement measures pursuant to an annual cross-enrollment plan under subparagraph (C), including—

“(I) improving technology;

“(II) establishing more robust referral systems;

“(III) conducting targeted outreach to potential participants in the program under this section;

“(IV) enhancing State capacity to share and analyze data across the programs described in subparagraph (A); and

“(V) providing training or technical assistance to local agencies.

“(E) LIMITATION ON DATA.—Any data collected under this paragraph shall be—

“(i) used only for the purposes of certifying eligible persons for the program under this section; and

“(ii) subject to the confidentiality provisions described in section 246.26(d) of title 7, Code of Federal Regulations (or successor regulations).”.

(d) REPORT TO CONGRESS.—

(1) IN GENERAL.—Not later than 1 year after the date of enactment of this Act, 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 report on the use of remote technologies under 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) (referred to in this section as the “program”).

(2) CONTENT OF REPORT.—The report submitted under paragraph (1) shall include a description of—

(A) the use of remote technologies and other digital tools, including video, telephone, and online platforms—

(i) to certify and recertify eligible individuals for program services; and

(ii) to provide nutrition education and breastfeeding support to program participants;

(B) the impact of remote technologies, including video, telephone, and online platforms, on certifications, recertifications, appointments, and participant satisfaction under the program; and

(C) best practices to—

(i) certify and recertify program participants for program services using remote technologies;

(ii) incorporate the use of digital tools into the program certification process;

(iii) integrate nutrition education and breastfeeding support services for program participants into remote technologies and platforms; and

(iv) securely manage program participant data.

#### SEC. 304. PAPERWORK REDUCTION.

Section 17(d)(3) of the Child Nutrition Act of 1966 (42 U.S.C. 1786(d)(3)) is amended by adding at the end the following:

“(G) PAPERWORK REDUCTION.—

“(i) IN GENERAL.—A State agency shall accept a single document that provides all of the information required under this paragraph unless the State agency determines there is a sufficient reason to doubt the authenticity of such document.

“(ii) ELECTRONIC FORM.—A State agency shall accept documentation under this paragraph in support of a household’s application in electronic form or provided electronically unless the State agency deter-

mines there is a sufficient reason to doubt the authenticity of such electronically provided document.”.

**SEC. 305. NUTRITION EDUCATION MATERIALS RELATED TO FOOD ALLERGIES.**

Section 17(e)(3) of the Child Nutrition Act of 1966 (42 USC 1786(e)(3)) is amended by adding at the end the following:

“(C) NUTRITION EDUCATION MATERIALS RELATED TO FOOD ALLERGIES.—The nutrition education materials issued under subparagraph (A) shall include nutrition education materials with respect to—

- “(i) individuals with food allergies during pregnancy and in the postpartum period;
- “(ii) infants impacted by prenatal food allergy exposure;
- “(iii) introducing potential food allergens to infants; and
- “(iv) children with food allergies.”.

**SEC. 306. BREASTFEEDING SUPPLY COVERAGE.**

Section 17(h)(1)(C)(ii) of the Child Nutrition Act of 1966 (42 U.S.C. 1786(h)(1)(C)(ii)) is amended—

- (1) in the heading, by inserting “AND BREASTFEEDING SUPPLIES” after “BREAST PUMPS”; and
- (2) by inserting “and additional breastfeeding supplies” before the period at the end.

**SEC. 307. WATER BENEFITS DURING DISASTERS.**

Section 17(h)(1)(C) of the Child Nutrition Act of 1966 (42 U.S.C. 1786(h)(1)(C)) is amended by adding at the end the following:

“(iii) WATER BENEFITS DURING DISASTERS.—

“(I) IN GENERAL.—During an emergency period for which the Secretary determines that, with respect to a State, access to safe drinking water is impacted and provision of safe drinking water is reasonably necessary to ensure safe preparation of infant formula, a State or local agency may use amounts made available under clause (i) to purchase and distribute safe drinking water to program participants.

“(II) EMERGENCY PERIOD DEFINED.—In this clause, the term ‘emergency period’ means a period during which there exists—

- “(aa) a major disaster declared by the President under section 401 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5170);
- “(bb) an emergency declared by the President under section 501 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5191);
- “(cc) a public health emergency declared by the Secretary of Health and Human Services pursuant to section 319 of the Public Health Service Act (42 U.S.C. 247d); or
- “(dd) any renewal of such a public health emergency pursuant to such section 319.”.

**SEC. 308. INFANT FORMULA PROCUREMENT ONLINE SOURCE OF INFORMATION.**

Section 17(h)(8)(A) of the Child Nutrition Act of 1966 (42 U.S.C. 1786(h)(8)(A)) is amended by adding at the end the following:

“(xi) INFANT FORMULA PROCUREMENT ONLINE SOURCE OF INFORMATION.—

“(I) IN GENERAL.—Not later than 180 days after the date of enactment of this clause, the Secretary shall make available to the public on a website of the Department of Agriculture the information described in items (aa) through (dd) of subclause (II) relating to bid solicitations of State agencies for infant formula under the program.

“(II) STATE AGENCIES.—In soliciting bids for infant formula under the program, a State agency shall submit to the Secretary, not later than 5 business days after the date of the bid solicitation, a description of the bid solicitation, including—

- “(aa) the title of the bid solicitation and the State agency administering the bid solicitation;
- “(bb) the website hyperlink and other information needed for the purpose of submitting a bid in response to the bid solicitation;
- “(cc) the contact information and website hyperlink for the State agency administering the bid solicitation, for the purpose

of gathering additional information relating to the bid solicitation; and

“(dd) the period during which bids are accepted or the due date for bids, as applicable, under the bid solicitation.

“(III) PUBLICATION.—Not later than 5 business days after receiving a description of a bid solicitation under subclause (II), the Secretary shall publish the information described in subclause (I).”

#### **SEC. 309. BREASTFEEDING PEER COUNSELOR PROGRAM.**

(a) DEFINITION OF BREASTFEEDING PEER COUNSELOR.—Section 17(b) of the Child Nutrition Act of 1966 (42 U.S.C. 1786(b)) is amended by adding at the end the following:

“(25) BREASTFEEDING PEER COUNSELOR.—The term ‘breastfeeding peer counselor’ means an individual who is recruited and hired from the adult population described in subsection (d)(1) who has—

“(A) previous experience with breastfeeding, including experience having breastfed at least one infant; and

“(B) provides mother-to-mother support to prenatal and postpartum women under the program.”

(b) SPECIAL NUTRITION EDUCATION.—Section 17(h)(10) of the Child Nutrition Act of 1966 (42 U.S.C. 1786(h)(10)) is amended—

(1) in subparagraph (A), by striking “\$139,000,000” and inserting “\$324,000,000”; and

(2) by amending subparagraph (B)(iii) to read as follows:

“(iii) \$180,000,000 shall be used to—

“(I) establish State agency Breastfeeding Peer Counseling programs, which shall be administered as determined by the Secretary;

“(II) provide performance bonus payments under paragraph (4)(C); and

“(III) establish State and local partnerships to provide such education at locations—

“(aa) outside of the clinic, such as hospitals or physicians’ offices; or

“(bb) in partnership with eligible entities that deliver services under early childhood home visitation programs pursuant to a grant under section 511 of the Social Security Act (42 U.S.C. 711).”

#### **SEC. 310. PRODUCT PRICING.**

Section 17(h)(11)(B)(i)(II)(aa) of the Child Nutrition Act of 1966 (42 U.S.C. 1786(h)(11)(B)(i)(II)(aa)) is amended by striking “the shelf prices of the vendor for all buyers” and inserting “the prices the vendor charges other customers”.

#### **SEC. 311. WIC A50 STORES.**

Section 17(h) of the Child Nutrition Act of 1966 (42 U.S.C. 1786(h)) is amended—

(1) in paragraph (11)(E), by inserting “more than 5 percent” before “higher than average”; and

(2) in paragraph (14), by striking “food or merchandise” and inserting “food, merchandise, or food delivery”.

#### **SEC. 312. WIC EBT MODERNIZATION.**

(a) ONLINE PAYMENT AND MOBILE PAYMENT OPTIONS.—

(1) DATE OF COMPLETION.—Section 17(h)(12) of the Child Nutrition Act of 1966 (42 U.S.C. 1786(h)(12)) is amended—

(A) in subparagraph (A)(i), by striking “food delivery system that provides benefits using a card or other access device” and inserting “benefit delivery method”; and

(B) in subparagraph (B)—

(i) in clause (i), by striking “subparagraph (C)” and inserting “subparagraph (C)(i)”; and

(ii) by adding at the end the following:

“(iii) VENDOR REQUIREMENTS.—Except in the case of an exemption granted with respect to a State agency under subparagraph (C)(iii), not later than October 1, 2025, each State agency shall authorize at least three vendors to process online payments under the electronic benefit systems in the State.”; and

(C) in subparagraph (C), by adding at the end the following:

“(iii) VENDOR REQUIREMENTS EXEMPTION.—To be eligible for an exemption from the vendor requirements of subparagraph (B)(iii), a State agency shall demonstrate to the satisfaction of the Secretary that the



State agency is facing unusual barriers to implementing additional changes to the electronic benefit transfer system.”.

(2) **REPORT TO CONGRESS.**—Not later than January 1, 2026, the Secretary shall submit a report to the Committee on Agriculture, Nutrition, and Forestry of the Senate and the Committee on Education and Labor of the House of Representatives that—

(A) details the steps taken to establish and implement online payment models through authorized vendors participating in the special supplemental nutrition program for women, infants, and children under section 17 of the Child Nutrition Act of 1966 (42 U.S.C. 1786);

(B) identifies measures to ensure that additional authorized vendors may establish and implement such online payment models;

(C) outlines steps to implement additional modern transaction models, including mobile payments, through such authorized vendors;

(D) provides an explanation for each exemption provided to a State agency under clause (iii) of section 17(h)(12)(C) of the Child Nutrition Act of 1966 (42 U.S.C. 1786(h)(12)(C));

(E) includes a description of State and local agency efforts to enhance collaboration with such vendors, including the use of shopper helpers or vendor liaison programs; and

(F) includes an analysis of measures that could be taken at the Federal and State levels to streamline the authorization process of such vendors under such program and coordinate vendor authorizations with the supplemental nutrition assistance program.

(b) **SMALLER VENDORS.**—Section 17(h)(10)(B) of the Child Nutrition Act of 1966 (42 U.S.C. 1786(h)(10)(B)) is amended by adding at the end the following:

“(iv) \$40,000,000 shall be used by State or local agencies to enhance vendor partnerships and streamline the shopping experience of participants, including by establishing and administering vendor liaison programs to support participants and vendor staff at retail grocery locations.”.

(c) **EQUITABLE ACCESS FOR WIC SHOPPERS.**—Section 17(h)(12) of the Child Nutrition Act of 1966 (42 U.S.C. 1786(h)(12)) is further amended by adding at the end the following:

“(H) **EQUITABLE ACCESS FOR WIC SHOPPERS.**—To facilitate the use of online payments under an electronic benefit transfer system, a State agency shall—

“(i) with respect to such electronic benefit transfer system, allow—

“(I) transactions to be conducted without the presence of a cashier;

“(II) additional methods of authentication other than signature or entry of a personal identification number to be used; and

“(III) participants to receive supplemental foods after an electronic benefit transfer transaction has been processed;

“(ii) ensure that no interchange or related transaction fees are collected from vendors;

“(iii) issue program benefits remotely without receiving a participant signature;

“(iv) authorize vendors that do not have a single, fixed location; and

“(v) authorize vendors for a period not to exceed 5 years.”.

(d) **REPEAL.**—Paragraph (13) of section 17(h) of the Child Nutrition Act of 1966 (42 U.S.C. 1786(h)) is repealed.

#### **SEC. 313. SPEND FORWARD AUTHORITIES.**

Section 17(i)(3) of the Child Nutrition Act of 1966 (42 U.S.C. 1786(i)(3)) is amended—

(1) in subparagraph (A)—

(A) in clause (i)—

(i) in subclause (I), by striking “1 percent (except as provided in subparagraph (C))” and inserting “10 percent”; and

(ii) in subclause (II), by striking “1 percent” and inserting “10 percent”; and

(B) in clause (ii)—

(i) in subclause (I)—

(I) by striking “3 percent” and inserting “10 percent”; and

(II) by inserting “for nutrition services and administration” before “under this section”; and

(ii) in subclause (II)—

(I) by striking “for nutrition services and administration” and inserting “to carry out this section”;

(II) by striking “not more than ½ of 1 percent” and inserting “not more than 3 percent”; and

(III) by striking “the development of a management information system, including an electronic benefit transfer system” and inserting “purposes related to food delivery, including breastfeeding services and supplies, electronic benefit transfer systems, and other technologies”; and

(2) by repealing subparagraph (C).

**SEC. 314. ADMINISTRATIVE SIMPLIFICATION.**

Section 17 of the Child Nutrition Act of 1966 (42 U.S.C. 1786) is amended—

(1) in subsection (f)(1), by amending subparagraph (A) to read as follows: (A) Each State agency shall submit to the Secretary a plan of operation and administration. A State shall be required to submit to the Secretary for approval any substantive change in the plan and annual requirements as specified by the Secretary.”; and

(2) by repealing subsection (k).

**SEC. 315. AUTHORIZATION OF APPROPRIATIONS.**

Section 17(g)(1)(A) of the Child Nutrition Act of 1966 (42 U.S.C. 1786(g)(1)(A)) is amended by striking “2010 through 2015” and inserting “2023 through 2028”; and

**SEC. 316. WIC FARMERS’ MARKET NUTRITION PROGRAM.**

Section 17(m) of the Child Nutrition Act of 1966 (7 U.S.C. 1431) is amended—

(1) in paragraph (1), by inserting “and community supported agriculture programs” after “roadside stands”;

(2) by striking paragraph (3) and redesignating paragraphs (4) through (10) as paragraphs (3) through (9), respectively;

(3) in paragraph (3), as so redesignated, by striking “paragraph (6)” both places it appears and inserting “paragraph (5)”;

(4) in paragraph (4), as so redesignated—

(A) in subparagraph (B), by striking “using funds” and all the follows through “paragraph (3).” and inserting “using funds provided under the grant.”;

(B) in subparagraph (C), by striking “may not be” and all that follows through “per year.” and inserting “may not be less than \$20 per year or more than \$100 per year.”;

(C) by amending subparagraph (E) to read as follows:

“(E) The coupon redemption process under the program shall be designed to ensure that the coupon may be redeemed—

“(i) either—

“(I) by producers authorized by the State to participate in the program; or

“(II) through a central point of sale at a farmers’ market authorized by the State to participate in the program; and

“(ii) only to purchase fresh nutritious unprepared food for human consumption.”;

(D) in subparagraph (F)—

(i) in clause (i), by striking “clauses (ii) and (iii)” and inserting “clause (ii)”;

(ii) in clause (ii)—

(I) by striking “2 percent” and inserting “3 percent”; and

(II) by inserting “such market development or technical assistance will advance State efforts to develop efficient and appropriate electronic benefits systems or” before “the State intends”; and

(iii) by striking clause (iii);

(5) in paragraph (5), as so redesignated—

(A) in subparagraph (A), by striking “subparagraph (G)” and inserting “paragraph (8)”;

(B) in subparagraph (B)—

(i) in clause (i), by striking “if a State provides the amount of matching funds required under paragraph (3).”;

(ii) in clause (ii)—

(I) by striking “paragraph (10)” and inserting “paragraph (8)”;

and

(II) by striking “paragraph (6)” and inserting “paragraph (5)”;

(C) in subparagraph (C), by striking “subparagraph (G)(i)” both places it appears and inserting “paragraph (8)”;

- (D) in subparagraph (D)(ii)(II), by striking “paragraph (5)” and inserting “paragraph (4)”; and
- (E) in subparagraph (F)(iii), by striking “paragraph (10)(B)(ii)” and inserting “paragraph (8)(B)(ii)”;
- (6) in paragraph (7), as so redesignated—
  - (A) by striking subparagraph (D); and
  - (B) by redesignating subparagraphs (E) and (F) as subparagraphs (D) and (E), respectively;
- (7) in paragraph (8), as so redesignated—
  - (A) in subparagraph (A), by striking “2010 through 2015” and inserting “2023 through 2028”; and
  - (B) in subparagraph (B)(i)(II), by striking “5 percent” and inserting “10 percent”;
- (8) in paragraph (9)(A), as so redesignated, by striking “or other negotiable financial instrument” and inserting “token, electronic benefit transfer card, mobile benefit delivery system, or other forms or technologies as determined by the Secretary”.

**SEC. 317. SUPPORTING HEALTHY MOTHERS AND INFANTS.**

Section 17 of the Child Nutrition Act of 1966 (42 U.S.C. 1786) is amended—

- (1) in subsection (a), by striking “drug abuse” and inserting “substance use disorder”;
- (2) in subsection (b)—
  - (A) in paragraph (8), by striking “drug abuse” and inserting “substance use disorder”; and
  - (B) in paragraph (16)—
    - (i) in the matter preceding subparagraph (A), by striking “Drug abuse education” and inserting “Substance use disorder education”;
    - (ii) in subparagraph (A), by striking “dangers of drug abuse” and inserting “harm of substance use on pregnancy and lactation”; and
    - (iii) in subparagraph (B)—
      - (I) by striking “are suspected drug abusers” and inserting “may have a substance use disorder”;
      - (II) by striking “drug abuse clinics,”; and
      - (III) by striking “drug abuse professionals” and inserting “resources”;
- (3) in subsection (e)—
  - (A) in paragraph (1)—
    - (i) by striking “drug abuse” each place it appears and inserting “substance use disorder”; and
    - (ii) by striking “effects of drug and alcohol use by” and inserting “effects of a substance use disorder of”; and
  - (B) in paragraph (5), by striking “substance abuse” and inserting “substance use disorder”;
- (4) in subsection (f)—
  - (A) in paragraph (1)(C)(ix), by striking “drugs” and inserting “illicit or other harmful substances”; and
  - (B) in paragraph (13), by striking “drug abuse education” and inserting “substance use disorder education”; and
- (5) by adding at the end the following:
 

“(t) **ACTIVITIES TO SUPPORT WIC–ELIGIBLE INDIVIDUALS IMPACTED BY SUBSTANCE USE DISORDER.**—

  - “(1) **IN GENERAL.**—The Secretary shall—
    - “(A) develop and disseminate nutrition education materials for individuals eligible for the program; and
    - “(B) conduct outreach to individuals who are potentially eligible for the program and who are impacted by a substance use disorder.
  - “(2) **PURPOSE.**—The purpose of this subsection is to ensure that individuals participating in the program who are impacted by a substance use disorder receive accurate nutrition education from trained staff in an effective and unbiased manner.
  - “(3) **NUTRITION EDUCATION MATERIALS.**—The Secretary shall collaborate with the Secretary of Health and Human Services to develop appropriate evidence-based nutrition education materials for individuals impacted by a substance use disorder, including—
    - “(A) nutrition education materials for individuals with substance use disorder during pregnancy and in the postpartum period; and
    - “(B) nutrition education materials for infants impacted by prenatal substance exposure and neonatal abstinence syndrome.

“(4) NUTRITION EDUCATION CLEARINGHOUSE.—The Secretary shall make available to all State agencies through an online clearinghouse any nutrition education and training materials related to nutrition for individuals impacted by a substance use disorder or neonatal abstinence syndrome that have been produced by the Secretary or the Secretary of Health and Human Services (or produced by a State agency and approved by the Secretary), including educational materials developed under paragraph (15) of section 515(b) of the Public Health Service Act (42 U.S.C. 290bb–21(b)) and guidance issued under section 1005 of the SUPPORT for Patients and Communities Act (42 U.S.C. 1396a note).

“(5) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out this subsection \$1,000,000 for fiscal year 2024, to remain available until expended.”.

## **TITLE IV—MODERNIZING THE CHILD AND ADULT CARE FOOD PROGRAM**

### **SEC. 401. ELIGIBILITY CERTIFICATION CRITERIA FOR PROPRIETARY CHILD CARE CENTERS.**

Section 17(a)(6) of the Richard B. Russell National School Lunch Act (42 U.S.C. 1766(a)(6)) is amended—

(1) in the matter preceding subparagraph (A), by striking “criteria.” and inserting “criteria—”;

(2) in subparagraph (E), by striking “and” at the end;

(3) in subparagraph (F), by striking the period at the end and inserting “; and”; and

(4) by adding at the end the following:

“(G) in the case of an institution described in paragraph (2)(B), the eligibility of such institution shall be determined on an annual basis in accordance with this section.”.

### **SEC. 402. AUTOMATIC ELIGIBILITY FOR CHILDREN IN SUPPLEMENTAL NUTRITION ASSISTANCE HOUSEHOLDS.**

Section 17(c) of the Richard B. Russell National School Lunch Act (42 U.S.C. 1766(c)) is amended by adding at the end the following:

“(7) AUTOMATIC ELIGIBILITY FOR CHILDREN IN SUPPLEMENTAL NUTRITION ASSISTANCE HOUSEHOLDS.—A child shall be considered automatically eligible for benefits under this section without further application or eligibility determination if the child is a member of a household receiving assistance under the supplemental nutrition assistance program established under the Food and Nutrition Act of 2008 (7 U.S.C. 2011 et seq.).”.

### **SEC. 403. REVIEW OF SERIOUS DEFICIENCY PROCESS.**

Section 17(d)(5) of the Richard B. Russell National School Lunch Act (42 U.S.C. 1766(d)(5)) is amended by adding at the end the following:

“(F) SERIOUS DEFICIENCY PROCESS.—

“(i) IN GENERAL.—Not later than 1 year after the date of the enactment of this subparagraph, the Secretary shall review and issue guidance and, as appropriate, regulations regarding the serious deficiency process for the program under this section.

“(ii) REVIEW.—In carrying out clause (i), the Secretary shall review, at a minimum, the processes involved in—

“(I) determining when there is a serious deficiency with respect to an institution, facility, or a family or group day care home by a State agency, including—

“(aa) what measures automatically result in a finding of serious deficiency; and

“(bb) how to differentiate between—

“(AA) a reasonable margin of human error and systematic or intentional noncompliance; and

“(BB) State-specific requirements and Federal regulations;

“(II) appealing and mediating a finding of serious deficiency with respect to an institution or a family or group day care home, including—

“(aa) findings related to requirements and Federal regulations; and

“(bb) processes for ensuring officials involved in appeals and mediation are fair and impartial;

“(III) determining the circumstances under which a corrective action plan is acceptable;

“(IV) termination and disqualification, including maintenance of the list under subparagraph (E); and

“(V) determining opportunities for strengthening the processes intended to reduce additional State agency program requirements on institutions or family or group day care homes that are in addition to those required under Federal law, including—

“(aa) State evaluation of practices used at the time of review;

“(bb) regional approval of such additional State agency requirements; and

“(cc) oversight through the management evaluation process.

“(iii) GUIDANCE AND REGULATIONS.—

“(I) IN GENERAL.—Not later than 1 year after conducting the review under clause (ii), the Secretary shall make findings from the information collected and issue guidance and, as appropriate, regulations from such findings that will—

“(aa) streamline and modernize the program; and

“(bb) assist sponsoring organizations, State agencies, and the Food and Nutrition Service in ensuring a fair, uniform, and effective administration of the serious deficiency process, while retaining program integrity.

“(II) SCOPE.—The guidance or, as appropriate, regulations made or issued under subclause (I) shall include—

“(aa) clarity on the required measures for noncompliance, including—

“(AA) an allowance for a reasonable margin of human error; and

“(BB) a distinction between a reasonable margin of human error and systematic or intentional noncompliance;

“(bb) a formal appeals and mediation process that—

“(AA) is conducted by a trained official who is independent from and not affiliated with any person or agency involved in the determination being appealed or mediated;

“(BB) provides an opportunity for a fair hearing for any institution or family or group day care home determined to have a serious deficiency finding or inadequate corrective action plan; and

“(CC) provides for the evaluation and resolution of disputes over State agency program requirements on institutions or family or group day care homes that are in addition to those required under Federal law;

“(cc) timeframes for acceptable corrective action plans for group or family day care homes that are consistent with corrective action timeframes for child care centers; and

“(dd) a process to dismiss a serious deficiency upon correction of such deficiency.”.

#### SEC. 404. AUTHORIZATION OF REIMBURSEMENTS FOR ADDITIONAL MEAL OR SNACK.

Section 17(f)(2) of the Richard B. Russell National School Lunch Act (42 U.S.C. 1766(f)(2)) is amended—

(1) by striking “(2)(A) Subject to subparagraph (B) of this paragraph” and inserting the following:

“(2) DISBURSEMENTS.—

“(A) IN GENERAL.—Subject to subparagraph (B)”; and

(2) by amending subparagraph (B) to read as follows:

“(B) LIMITATION.—No reimbursement may be made to any institution under this paragraph, or to family or group day care home sponsoring organizations under paragraph (3), for more than—

“(i) 2 meals and 1 supplement or 1 meal and 2 supplements per day per child; or

“(ii) 3 meals and 1 supplement or 2 meals and 2 supplements per day per child, in the case of child care during which there are 8 or more hours between the beginning of the first meal service period and the beginning of the fourth meal service period.”.

#### SEC. 405. ADJUSTMENTS.

Section 17(f)(3) of the Richard B. Russell National School Lunch Act (42 U.S.C. 1766(f)(3)) is amended—

(1) in subparagraph (A)—

(A) by amending clause (ii)(IV) to read as follows:

“(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 away from home for the 12-month period ending on the preceding April 30. The reimbursement factors under this subparagraph shall be rounded to the nearest lower cent increment and based on the unrounded adjustment in effect on April 30 of the preceding school year.”; and

(B) by amending clause (iii)(I)(bb) to read as follows:

“(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 away from home for the 12-month period ending on the preceding April 30. The reimbursement factors under this item shall be rounded down to the nearest lower cent increment and based on the unrounded adjustment in effect on April 30 of the preceding 12-month period.”; and

(2) by amending subparagraph (B)(ii) to read as follows:

“(ii) ANNUAL ADJUSTMENT.—The administrative reimbursement levels specified in clause (i) shall be adjusted July 1 of each year to reflect changes in the 12-month period ending on 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.”.

#### SEC. 406. AGE LIMITS IN HOMELESS SHELTERS AND EMERGENCY SHELTERS.

Section 17(t)(5)(A)(i) of the Richard B. Russell National School Lunch Act (42 U.S.C. 1766(t)(5)(A)(i)) is amended—

(1) in the matter before subclause (I), by inserting “or individuals” after “children” both places it appears; and

(2) in subclause (I), by striking “18 years of age” and inserting “25 years of age”.

#### SEC. 407. ADVISORY COMMITTEE ON PAPERWORK REDUCTION.

Section 17 of the Richard B. Russell National School Lunch Act (42 U.S.C. 1766) is amended by adding at the end the following:

“(v) ADVISORY COMMITTEE ON PAPERWORK REDUCTION.—

“(1) ESTABLISHMENT.—Not later than 180 days after the date of the enactment of this subsection, the Secretary shall establish an advisory committee (referred to in this subsection as the ‘Advisory Committee’) to carry out the duties described in paragraph (2).

“(2) DUTIES.—The duties of the Advisory Committee shall be to—

“(A) examine the feasibility of reducing unnecessary or duplicative paperwork resulting from regulations and recordkeeping requirements, including paperwork resulting from additional State requirements, for those participating or seeking to participate in the program under this section, including State agencies, family child care homes, child care centers, and sponsoring organizations; and

“(B) provide recommendations to the Secretary to reduce such paperwork for participants in the program under this section while ensuring that proper accountability and program integrity are maintained and make such recommendations publicly available.

“(3) MEMBERSHIP.—The Advisory Committee shall be composed of not fewer than 14 members, of whom:

“(A) 1 shall be a representative of a public nonprofit center.

“(B) 1 shall be a representative of a private nonprofit center.

“(C) 1 shall be a representative of a family or group day care home.

“(D) 1 shall be a representative of a Head Start center.

“(E) 1 shall be a representative of a for-profit center.

“(F) 1 shall be a representative of an emergency shelter.

“(G) 1 shall be a representative of an adult day care center.

“(H) 1 shall be a representative of a State agency.

“(I) 1 shall be a representative of a sponsoring organization for the entities referred to in subparagraphs (A), (B), (D), (E), (F), and (G).

“(J) 1 shall be a representative of a sponsoring organization of family or group day care homes.

“(K) 1 shall be a representative of an anti-hunger advocacy organization.

“(L) 1 shall be a representative of an at-risk, after school program.

“(M) 1 shall be a representative of a child care advocacy organization.

“(N) 1 shall be a representative of an advocacy organization representing parents with young children.

“(4) CONSIDERATIONS.—In developing the recommendations described in paragraph (2)(B), the Advisory Committee shall consider—

“(A) information, recommendations, and reports from the Paperwork Reduction Work Group established by the Food and Nutrition Service pursuant to section 119(i) of the Child Nutrition and WIC Reauthorization Act of 2004 (42 U.S.C. 1766);

“(B) the use of electronic systems and recordkeeping technologies to reduce paperwork for program participants and program operators; and

“(C) duplicative requirements across multiple Federal programs.

“(5) GUIDANCE AND REGULATIONS.—Not later than 3 years after the date of the enactment of this subsection, the Secretary shall issue guidance and, as appropriate, regulations based on the recommendations described in paragraph (2)(B) for streamlined and consolidated paperwork and recordkeeping requirements for the program, including actions taken to reduce paperwork for parents and program operators by—

“(A) streamlining and modernizing applications; and

“(B) streamlining and modernizing the monitoring and auditing of programmatic documentation and recordkeeping, including—

“(i) eliminating the use of the enrollment form for the purpose of claiming meals;

“(ii) allowing the use of direct certification in all States;

“(iii) requiring States to accept as documentation digital forms, digitized and electronic signatures, and electronic records;

“(iv) allowing the use of electronic data collection systems containing all required Federal child and adult care food program standards;

“(v) addressing non-mandated State-specific requirements; and

“(vi) requiring the adoption of generally accepted technologies for client-facing technology, virtual visits, and technology used for administrative functions by the child and adult care food program to reduce the burden on participants and program operators and administrators.

“(6) REPORT.—

“(A) IN GENERAL.—Not later than 180 days after issuing the guidance and, as appropriate, regulations described in paragraph (5), the Secretary shall submit a report to the Committee on Agriculture, Nutrition, and Forestry of the Senate and the Committee on Education and Labor of the House of Representatives containing the information described in subparagraph (B).

“(B) CONTENTS.—The report under subparagraph (A) shall contain the following:

“(i) With respect to each instance in which the Secretary did not implement a recommendation of the Advisory Committee, an explanation with respect to why such recommendation was not implemented.

“(ii) Additional recommendations with respect to legislative action that may further strengthen and streamline the program application and monitoring process and reduce administrative burdens on grantees, program participants, and local, State, and Federal governments.”.

## **TITLE V—ADDRESSING CHILD FOOD INSECURITY DURING THE SUMMER**

### **SEC. 501. SUMMER FOOD SERVICE PROGRAM FOR CHILDREN.**

(a) BETTER INTEGRATE SUMMER EDUCATION AND SUMMER MEALS PROGRAM.—Section 13(a)(1)(A)(i) of the Richard B. Russell National School Lunch Act (42 U.S.C. 1761(a)(1)(A)(i)) is amended by striking “50 percent” each place it appears and inserting “40 percent”.

(b) PUBLIC-PRIVATE PARTNERSHIPS.—Section 13(a) of the Richard B. Russell National School Lunch Act (42 U.S.C. 1761(a)) is amended by striking paragraph (8) and inserting the following:

“(8) YEAR-ROUND MEAL SERVICE.—

“(A) SEAMLESS SUMMER OPTION FOR SCHOOLS.—Except as otherwise determined by the Secretary, a service institution that is a public or private non-profit 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.).

“(B) YEAR-ROUND MEAL SERVICE FOR OTHER SERVICE INSTITUTIONS.—Each service institution (other than a service institution described in subpara-

graph (A)), in addition to being eligible for reimbursement for meals described in subsection (b)(2) served during each day of operation during the periods described in subsection (c)(1), may be reimbursed for up to 1 meal and 1 snack per child served at sites that provide educational or enrichment activities during the regular school year during—

- “(i) afterschool hours;
- “(ii) weekends; and
- “(iii) school holidays.”.

(c) IMPROVE NUTRITION IN UNDERSERVED, HARD-TO-REACH AREAS.—Section 13(a) of the Richard B. Russell National School Lunch Act (42 U.S.C. 1761(a)) is amended—

- (1) by striking paragraphs (9) and (10);
- (2) by inserting after paragraph (8) the following:

“(9) IMPROVE NUTRITION IN UNDERSERVED, HARD-TO-REACH AREAS.—

“(A) IN GENERAL.—Subject to the availability of appropriations specifically for the purpose of carrying out this paragraph, the Secretary may award competitive grants to States to award subgrants to service institutions in accordance with subparagraph (B).

“(B) SUBGRANTS.—

“(i) IN GENERAL.—A State that receives a grant under subparagraph (A) shall use such grant funds to award competitive subgrants to service institutions selected by the State to increase participation in the program—

“(I) at congregate feeding sites; and

“(II) through—

“(aa) innovative approaches to addressing barriers in transportation to such sites; and

“(bb) mobile meal delivery.

“(ii) ELIGIBILITY.—To be selected to receive a subgrant under this subparagraph, a service institution shall—

“(I) be located in the State;

“(II) submit to the State an application at such time, in such manner, and containing such information as the State may require;

“(III) meet criteria established by the State; and

“(IV) agree to the terms and conditions of the subgrant, as established by the State.

“(iii) PRIORITY.—In awarding subgrants under this subparagraph, the State shall give priority to service institutions that—

“(I) serve both breakfast and lunch; or

“(II) offer educational or enrichment programs.

“(iv) TRAVEL REIMBURSEMENT.—A service institution that receives a subgrant under this subparagraph may use subgrant funds to provide reimbursement for travel to satellite congregate feeding sites.

“(C) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Secretary to make competitive grants under this paragraph, \$10,000,000 for each fiscal year.”; and

- (3) by redesignating paragraphs (11) and (12) as paragraphs (10) and (11), respectively.

(d) CULTURALLY AND LINGUISTICALLY APPROPRIATE OUTREACH REGARDING SUMMER FOOD SERVICE PROGRAM.—Paragraph (10)(B) of section 13(a) of the Richard B. Russell National School Lunch Act (42 U.S.C. 1761(a)), as redesignated by subsection (c)(3), is amended by inserting “culturally and linguistically appropriate” after “dissemination of” both places it appears.

(e) TIMING OF ADJUSTMENTS.—Section 13(b)(1)(B) of the Richard B. Russell National School Lunch Act (42 U.S.C. 1761(b)(1)(B)) is amended by striking “ending the preceding November” and inserting “ending on the preceding October”.

(f) THIRD MEAL.—Section 13(b)(2) of the Richard B. Russell National School Lunch Act (42 U.S.C. 1761(b)(2)) is amended by striking “only serve lunch” and all that follows through “migrant children may”.

(g) MEAL SERVICE DURING UNANTICIPATED SCHOOL CLOSURES.—Section 13(c)(1) of the Richard B. Russell National School Lunch Act (42 U.S.C. 1761(c)(1)) is amended by striking “at non-school sites”.

(h) NON-SCHOOL SPONSORS.—Section 13(f)(7) of the Richard B. Russell National School Lunch Act (42 U.S.C. 1761(f)(7)) is amended—

- (1) by striking “school food authority participating as a”;
- (2) by striking “, under rules that the school uses for school meals programs”;
- and
- (3) by striking “to a school” and inserting “to a service institution”.



(i) **SUMMER NUTRITION STANDARDS.**—Section 13(f) of the Richard B. Russell National School Lunch Act (42 U.S.C. 1761(f)) is amended by adding at the end the following:

“(8) Not later than 2 years after the date of the enactment of this paragraph and in accordance with paragraph (1), the Secretary shall promulgate proposed regulations to update the nutrition standards for the summer food service program authorized under this Act to be guided by 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), taking into account the structure of the Program.”.

(j) **AUTHORIZATION OF APPROPRIATIONS.**—Section 13(r) of the Richard B. Russell National School Lunch Act (42 U.S.C. 1761(r)) is amended by striking “2015” and inserting “2028”.

**SEC. 502. SUMMER ELECTRONIC BENEFITS TRANSFER FOR CHILDREN PROGRAM.**

The Richard B. Russell National School Lunch Act is amended by inserting after section 13 (42 U.S.C. 1761) the following:

**“SEC. 13A. SUMMER ELECTRONIC BENEFITS TRANSFER FOR CHILDREN PROGRAM.**

“(a) **PROGRAM ESTABLISHED.**—The Secretary shall establish a program under which States and covered Indian Tribal organizations participating in such program shall, beginning with summer 2024 and annually for each summer thereafter, issue to eligible households summer EBT benefits—

“(1) in accordance with this section; and

“(2) for the purpose of providing nutrition assistance through electronic benefits transfer during the summer months for eligible children, to ensure continued access to food when school is not in session for the summer.

“(b) **SUMMER EBT BENEFITS REQUIREMENTS.**—

“(1) **PURCHASE OPTIONS.**—

“(A) **BENEFITS ISSUED BY STATES.**—

“(i) **WIC PARTICIPATION STATES.**—In the case of a State that participated in a demonstration program under section 749(g) of the Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 2010 (Public Law 111–80; 123 Stat. 2132) during calendar year 2018 using a WIC model, summer EBT benefits issued pursuant to subsection (a) by such a State may only be used by the eligible household that receives such summer EBT benefits to purchase—

“(I) supplemental foods from retailers that have been approved for participation in—

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

“(bb) the program under this section; or

“(II) food (as defined in section 3(k) of the Food and Nutrition Act of 2008 (7 U.S.C. 2011(k))) from retail food stores that have been approved for participation in the supplemental nutrition assistance program established under such Act, in accordance with section 7(b) of such Act (7 U.S.C. 2016(b)).

“(ii) **OTHER STATES.**—Summer EBT benefits issued pursuant to subsection (a) by a State not described in clause (i) may only be used by the eligible household that receives such summer EBT benefits to purchase food (as defined in section 3(k) of the Food and Nutrition Act of 2008 (7 U.S.C. 2011(k))) from retail food stores that have been approved for participation in the supplemental nutrition assistance program established under such Act, in accordance with section 7(b) of such Act (7 U.S.C. 2016(b)).

“(B) **BENEFITS ISSUED BY COVERED INDIAN TRIBAL ORGANIZATIONS.**—Summer EBT benefits issued pursuant to subsection (a) by a covered Indian Tribal organization may only be used by the eligible household that receives such summer EBT benefits to purchase supplemental foods from retailers that have been approved for participation in—

“(i) the special supplemental nutrition program for women, infants, and children under section 17 of the Child Nutrition Act of 1966 (42 U.S.C. 1786); or

“(ii) the program under this section.

“(2) **AMOUNT.**—Summer EBT benefits issued pursuant to subsection (a)—

“(A) shall be—

“(i) for calendar year 2024, in an amount equal to \$75 for each child in the eligible household per month during the summer; and

“(ii) for calendar year 2025 and each year thereafter, in an amount equal to the amount described in clause (i), adjusted to the nearest lower dollar increment to reflect changes to the cost of the thrifty food plan (as defined in section 3(u) of the Food and Nutrition Act of 2008 (7 U.S.C. 2012(u)) for the 12-month period ending on November 30 of the preceding calendar year; and

“(B) may be issued—

“(i) in the form of an EBT card; or

“(ii) through electronic delivery.

“(c) ENROLLMENT IN PROGRAM.—

“(1) STATE REQUIREMENTS.—States participating in the program under this section—

“(A) shall, with respect to summer, automatically enroll eligible children who, in the school year immediately preceding the summer, are directly certified, are identified students (as defined in section 11(a)(1)(F)(i)), or are otherwise determined by a local educational agency to be eligible to receive free or reduce price meals in the program under this section, without further application from households;

“(B) may provide an application for children who do not meet the criteria specified in subparagraph (A) and make eligibility determinations using the same eligibility criteria for free or reduced price lunches under this Act;

“(C) shall establish procedures to carry out the enrollment described in subparagraph (A); and

“(D) shall require local educational agencies to allow eligible households to opt out of participation in the program under this section and establish procedures for opting out of such participation.

“(2) COVERED INDIAN TRIBAL ORGANIZATION REQUIREMENTS.—Covered Indian Tribal organizations participating in the program under this section shall, to the maximum extent practicable, meet the requirements under subparagraphs (A) through (C) of paragraph (1).

“(d) IMPLEMENTATION GRANTS.—Not later than October 1, 2022, the Secretary shall carry out a program to make grants to States and covered Indian Tribal organizations to build capacity for implementing the program under this section.

“(e) ALTERNATE PLANS IN THE CASE OF CONTINUOUS SCHOOL CALENDAR.—The Secretary shall establish alternative plans for when summer EBT benefits may be issued pursuant to subsection (a) in the case of children who are under a continuous school calendar.

“(f) DEFINITIONS.—In this section:

“(1) COVERED INDIAN TRIBAL ORGANIZATION.—The term ‘covered Indian Tribal organization’ means an Indian Tribal organization that participates in the special supplemental nutrition program for women, infants, and children under section 17 of the Child Nutrition Act of 1966 (42 U.S.C. 1786).

“(2) ELIGIBLE CHILD.—The term ‘eligible child’ means, with respect to a summer, a child who—

“(A) was, during the school year immediately preceding such summer—

“(i) certified to receive free or reduced price lunch under the school lunch program under this Act;

“(ii) certified to receive free or reduced price breakfast under the school breakfast program under section 4 of the Child Nutrition Act of 1966 (42 U.S.C. 1773); or

“(iii) certified by the State through the process described in subsection (c)(1)(B); or

“(B)(i) was, during the school year immediately preceding such summer, enrolled in a school described in subparagraph (B), (C), (D), (E), or (F) of section 11(a)(1); and

“(ii) either—

“(I) is an identified student (as defined in section 11(a)(1)(F)(i)); or

“(II) otherwise meets the requirements to receive free or reduced price lunch as determined by a local educational agency through an application process using the same eligibility criteria for free or reduced price lunches under this Act.

“(3) ELIGIBLE HOUSEHOLD.—The term ‘eligible household’ means a household that includes at least 1 eligible child.

“(4) SUPPLEMENTAL FOODS.—The term ‘supplemental foods’—

“(A) means foods—

“(i) containing nutrients determined by nutritional research to be lacking in the diets of children; and

“(ii) that promote the health of the population served by the program under this section, as indicated by relevant nutrition science, public

health concerns, and cultural eating patterns, as determined by the Secretary; and

“(B) includes foods not described in subparagraph (A) substituted by State agencies, with the approval of the Secretary, that—

    “(i) provide the nutritional equivalent of foods described in such subparagraph; and

    “(ii) allow for different cultural eating patterns than foods described in such subparagraph.”.

## **TITLE VI—IMPROVING CAPACITY AND PROMOTING SUSTAINABILITY**

### **SEC. 601. VALUES-ALIGNED PROCUREMENT.**

Section 9(j) of the Richard B. Russell National School Lunch Act (42 U.S.C. 1758(j)) is amended—

(1) in paragraph (1)—

(A) by striking “to purchase unprocessed agricultural products, both locally grown and locally raised”; and

(B) by striking the semicolon at the end and inserting the following: “, to purchase unprocessed agricultural products that were—

    “(A) locally grown and locally raised;

    “(B) produced in an environmentally sustainable manner;

    “(C) produced by a certified organic farm or ranch;

    “(D) produced by an underserved or limited resource producer;

    “(E) produced by a small or mid-sized farm that is structured as a family farm;

    “(F) produced by a farm with employees who, as permitted by law, are represented by a collective bargaining agreement or memorandum of understanding;

    “(G) produced by a farm participating in a worker justice certification program; or

    “(H) produced by a farm participating in an independent animal welfare certification program.”;

(2) by amending paragraph (3) to read as follows:

“(3) allow institutions receiving funds under this Act and the Child Nutrition Act of 1966 (42 U.S.C. 1771 et seq.), including the Department of Defense Fresh Fruit and Vegetable Program, to—

    “(A)(i) use a geographic preference for the procurement of unprocessed agricultural products, both locally grown and locally raised; or

        “(ii) use locally grown, locally raised, or locally caught as a product specification; and

    “(B) procure unprocessed agricultural products that are produced—

        “(i) in an environmentally sustainable manner;

        “(ii) by a certified organic farm or ranch;

        “(iii) by an underserved or limited resource producer;

        “(iv) by a small or mid-sized farm that is structured as a family farm;

        “(v) by a farm with employees who, as permitted by law, are represented by a collective bargaining agreement or memorandum of understanding;

        “(vi) by a farm participating in a worker justice certification program;

or

        “(vii) by a farm participating in an independent animal welfare certification program.”; and

(3) by adding at the end the following:

“(4) DEFINITIONS.—In this subsection:

    “(A) BEGINNING FARMER OR RANCHER.—The term ‘beginning farmer or rancher’ has the meaning given such term in section 343(a) of the Consolidated Farm and Rural Development Act (7 U.S.C. 1991(a)).

    “(B) FAMILY FARM.—The term ‘family farm’ has the meaning given such term in section 4284.902 of title 7, Code of Federal Regulations (as in effect on the date of the enactment of this paragraph).

    “(C) UNDERSERVED PRODUCER.—The term ‘underserved producer’ means an individual (including a member of an Indian Tribe) that is—

        “(i) a beginning farmer or rancher;

        “(ii) a veteran farmer or rancher; or

        “(iii) a socially disadvantaged farmer or rancher.

“(D) VETERAN FARMER OR RANCHER.—The term ‘veteran farmer or rancher’ has the meaning given such term in section 2501(a) of the Food, Agriculture, Conservation, and Trade Act of 1990 (7 U.S.C. 2279(a)).”.

**SEC. 602. PROCUREMENT TRAINING.**

Section 12(m)(4) of the Richard B. Russell National School Lunch Act (42 U.S.C. 1760(m)(4)) is amended by striking “fiscal years 2010 through 2015” and inserting “fiscal years 2023 through 2028”.

**SEC. 603. BUY AMERICAN.**

Section 12(n) of the Richard B. Russell National School Lunch Act (42 U.S.C. 1760(n)) is amended by adding at the end the following:

“(5) ADMINISTRATIVE REVIEWS.—

“(A) IN GENERAL.—In conducting the reviews required under section 22(b)(1)(C)(i) of the Richard B. Russell National School Lunch Act (42 U.S.C. 1769c(b)(1)(C)(i)), a State agency located in Puerto Rico, Hawaii, or the contiguous United States shall include the information described in subparagraph (B) regarding compliance with the requirements under this subsection.

“(B) INFORMATION REQUIRED.—The information required under subparagraph (A) shall include, with respect to a school food authority served by the State agency—

“(i) the 10 commodities or food products purchased by such school food authority that—

“(I) are not domestic commodities or food products; and

“(II) make up the largest share of the school food authority’s spending with respect to commodities or food products; and

“(ii) whether each such commodity or food product—

“(I) is not produced domestically in sufficient quantities of satisfactory quality 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); and

“(II) would be significantly higher in price if purchased domestically; and

“(iii) whether the school food authority experienced suspected, alleged, or confirmed noncompliance on the part of a distributor in the last 12 months.

“(6) ANNUAL NATIONALLY REPRESENTATIVE EVALUATION.—

“(A) IN GENERAL.—The Secretary shall—

“(i) annually evaluate in a nationally representative study the extent to which school food authorities are in compliance with the requirements of this subsection; and

“(ii) publish the findings of such evaluation on the publicly available website of the Department.

“(B) REQUIREMENTS.—The Secretary shall require each school food authority that participates in the evaluation under subparagraph (A) to disclose, as part of such evaluation—

“(i) the 10 commodities or food products purchased by such school food authority that—

“(I) are not domestic commodities or food products; and

“(II) make up the largest share of the school food authority’s spending with respect to commodities or food products;

“(ii) whether each such commodity or food product—

“(I) is not produced domestically in sufficient quantities of satisfactory quality 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); and

“(II) would be significantly higher in price if purchased domestically; and

“(iii) whether the school food authority experienced suspected, alleged, or confirmed noncompliance on the part of a distributor in the last 12 months.

“(7) STUDY AND REPORT.—The Secretary, in consultation with the Secretary of Labor and the heads of other Federal agencies determined by the Secretary to be necessary, shall conduct a study that examines whether the requirement under this subsection has an impact on the supply of commodities or food products in schools, including with respect to—

“(A) the availability of domestic commodities or food products;

“(B) the wages, occupational safety and health, and access to and quality of benefits of agricultural workers;

“(C) the price of locally grown and locally raised domestic commodities or food products as compared to commodities or food products that are not domestic commodities or food products;

“(D) the prevalence of seasonal foods in schools; and

“(E) the extent to which schools rely on processed commodities and food products.”.

**SEC. 604. PLANT-BASED FOODS IN SCHOOLS.**

Section 18 of the Richard B. Russell National School Lunch Act (42 U.S.C. 1769) is amended by adding after subsection (c) the following:

“(d) PILOT GRANT PROGRAM FOR 100 PERCENT PLANT-BASED FOOD OPTIONS.—

“(1) PROGRAM AUTHORIZED.—The Secretary shall establish and carry out a pilot grant program to award grants to eligible school food authorities to carry out the activities described in paragraph (4).

“(2) IN GENERAL.—

“(A) TERM.—The term of a grant awarded under this subsection shall be 3 years.

“(B) GRANT AMOUNT.—In awarding grants under this subsection, the Secretary shall, to the extent practicable, award grants of diverse amounts.

“(3) APPLICATION.—

“(A) IN GENERAL.—To be eligible to receive a grant under this subsection, an eligible school food authority shall submit to the Secretary an application at such time, in such manner, and containing such information as the Secretary may require, including—

“(i) a participatory evaluation plan; and

“(ii) a plan for providing culturally appropriate meals.

“(B) PRIORITY.—To the maximum extent practicable, in awarding grants under this subsection, the Secretary shall give priority to an eligible school food authority that—

“(i) will use the grant funds to—

“(I) serve a high proportion of children who are eligible for free or reduced price meals;

“(II) demonstrate collaboration with nongovernmental and community-based organizations, agricultural producers, and other community partners on the activities described in paragraph (4); and

“(III) incorporate experiential and culturally appropriate food, nutrition, or agricultural education activities related to 100 percent plant-based food options in the classroom; and

“(ii) meets any other criteria that the Secretary determines appropriate.

“(4) USE OF FUNDS.—A grant awarded under this subsection may be used for any of the following activities:

“(A) To contract with qualified third parties for professional development training for food service personnel on serving (including preparing, procuring, marketing, and creating menus) 100 percent plant-based food options.

“(B) To provide compensation, for each employee who participates in the professional development training described in subparagraph (A), at the regular rate of pay of each such employee.

“(C) To provide technical assistance and student engagement and education on 100 percent plant-based food options, including providing taste tests, recipe development, and culinary education.

“(D) To provide compensation for additional work relating to serving meals that include a 100 percent plant-based food option.

“(E) To conduct outreach to, and cover costs of procurement of foods from, agricultural producers of 100 percent plant-based food options, including—

“(i) underserved or limited resource producers; and

“(ii) local farmers.

“(5) REPORTS.—

“(A) RECORDKEEPING REQUIRED.—Each eligible school food authority awarded a grant under this subsection shall keep records of the 100 percent plant-based food options served pursuant to this subsection as the Secretary determines appropriate.

“(B) REPORT REQUIRED BY SCHOOL FOOD AUTHORITIES.—Not later than 1 year after receiving a grant under this subsection, and annually for the duration of the pilot grant program thereafter, a school food authority shall

submit to the Secretary a report on the pilot grant program, including information on—

- “(i) the number of 100 percent plant-based food options that the school food authority served during the grant period compared with the preceding school year;
- “(ii) the number of schools served by the school food authority pursuant to the grant;
- “(iii) the number of students served by the school food authority pursuant to the grant; and
- “(iv) how the school food authority used the grant funds.

“(C) REPORT BY SECRETARY.—Not later than 1 year after the end of a school year during which the Secretary receives reports required under subparagraph (B), the Secretary shall submit to Congress a report that includes a summary of such reports received and such information with respect to the pilot program as the Secretary determines to be relevant.

“(6) TECHNICAL ASSISTANCE.—The Secretary shall provide technical assistance and information to assist school food authorities—

“(A) to facilitate the coordination and sharing of information and resources that may be applicable to the activities described in paragraph (4); and

“(B) to collect and share information on best practices.

“(7) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to carry out this subsection \$10,000,000 for fiscal year 2024, to remain available through fiscal year 2028.

“(8) DEFINITIONS.—In this subsection:

“(A) 100 PERCENT PLANT-BASED FOOD OPTION.—The term ‘100 percent plant-based food option’ means a breakfast or lunch meal option or component that—

“(i) includes a meat alternate as described in—

“(I) section 210.10 of title 7, Code of Federal Regulations (or successor regulations); or

“(II) appendix A to part 210 of 7, Code of Federal Regulations (or successor regulations); and

“(ii) does not contain any animal products or byproducts, such as meat, poultry, honey, fish, dairy, or eggs.

“(B) BEGINNING FARMER OR RANCHER.—The term ‘beginning farmer or rancher’ has the meaning given such term in section 343(a) of the Consolidated Farm and Rural Development Act (7 U.S.C. 1991(a)).

“(C) ELIGIBLE SCHOOL FOOD AUTHORITY.—The term ‘eligible school food authority’ means a school food authority for which 50 percent or more of the students served by such school food authority are eligible for free or reduced price lunch under this Act or free or reduced price breakfast under section 4 of the Child Nutrition Act of 1966 (42 U.S.C. 1773).

“(D) UNDERSERVED PRODUCER.—The term ‘underserved producer’ means an individual (including a member of an Indian Tribe) that is—

“(i) a beginning farmer or rancher;

“(ii) a veteran farmer or rancher; or

“(iii) a socially disadvantaged farmer or rancher.

“(E) VETERAN FARMER OR RANCHER.—The term ‘veteran farmer or rancher’ has the meaning given such term in section 2501(a) of the Food, Agriculture, Conservation, and Trade Act of 1990 (7 U.S.C. 2279(a)).”.

#### **SEC. 605. FOOD WASTE AND NUTRITION EDUCATION.**

Section 18 of the Richard B. Russell National School Lunch Act (42 U.S.C. 1769(e)) is amended by adding after subsection (d), as added by section 604 of this Act, the following:

“(e) SCHOOL FOOD WASTE REDUCTION GRANT PROGRAM.—

“(1) GRANT PROGRAM ESTABLISHED.—

“(A) IN GENERAL.—The Secretary shall carry out a program to award grants, on a competitive basis, to school food authorities to carry out food waste measurement and reporting, prevention, education, and reduction projects.

“(B) REGIONAL BALANCE.—In awarding grants under this subsection, the Secretary shall, to the maximum extent practicable, ensure that—

“(i) a grant is awarded to a school food authority in each region served by the Administrator of the Food and Nutrition Service; and

“(ii) there is equitable treatment of rural, urban, and tribal communities.

“(2) APPLICATION.—To be eligible to receive a grant under this subsection, a school food authority shall submit an application to the Secretary at such time, in such manner, and containing such information as the Secretary may require.

“(3) PRIORITY.—In awarding grants under this subsection, the Secretary shall give priority to a school food authority that demonstrates in the application under paragraph (2) that such school food authority will use the grant to—

“(A) carry out experiential education activities that encourage children served by such school food authority to participate in food waste measurement and reporting, prevention, education, and reduction projects;

“(B) prioritize the best use of food in accordance with the Food Recovery Hierarchy published by the Administrator of the Environmental Protection Agency;

“(C) with respect to food waste measurement and reporting, prevention, education, and reduction projects, collaborate with other school food authorities, tribes, nongovernmental and community-based organizations, and other community partners;

“(D) make evaluation plans and evaluate the activities carried out using grant funds; and

“(E) establish a food waste measurement and reporting, prevention, education, and reduction project with the goal of long-term project sustainability.

“(4) USE OF FUNDS.—A school food authority that receives a grant under this section shall use funds under such grant to carry out at least one of the following:

“(A) Planning and carrying out a food waste measurement and reporting, prevention, education, and reduction project.

“(B) Providing training to support such a project.

“(C) Purchasing equipment to support such a project.

“(D) Offering food waste education to students served by such school food authority.

“(5) REQUIREMENT.—A food waste measurement and reporting, prevention, education, and reduction project funded by a grant under this subsection shall comply with the 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), as applicable.

“(6) REPORTS.—

“(A) SCHOOL FOOD AUTHORITY REPORT.—Not later than 1 year after receiving a grant under this subsection, and on an annual basis thereafter, a school food authority shall submit to the Secretary a report that includes an evaluation of the outcomes of the projects carried out pursuant to such grant.

“(B) SECRETARY REPORT.—Not later than 1 year after the end of a school year during which the Secretary receives reports required under subparagraph (B), the Secretary shall submit to Congress a report that includes a summary of the reports received under subparagraph (B) and such information with respect to the program as the Secretary determines to be relevant.

“(7) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to carry out this subsection \$10,000,000 for fiscal year 2024, to remain available through fiscal year 2028.”.

#### SEC. 606. FARM TO SCHOOL GRANT PROGRAM.

Section 18(g) of the Richard B. Russell National School Lunch Act (42 U.S.C. 1769(g)) is amended—

(1) by amending paragraph (1) to read as follows:

“(1) DEFINITIONS.—In this subsection:

“(A) AGRICULTURAL PRODUCER.—The term ‘agricultural producer’ means a farmer, rancher, or fisher (including of farm-raised fish).

“(B) BEGINNING FARMER OR RANCHER.—The term ‘beginning farmer or rancher’ has the meaning given such term in section 343(a) of the Consolidated Farm and Rural Development Act (7 U.S.C. 1991(a)).

“(C) ELIGIBLE INSTITUTION.—The term ‘eligible institution’ 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).

“(D) FARM TO SCHOOL PROGRAM.—The term ‘farm to school program’ means a program that—

“(i) benefits an eligible institution, as determined by the Secretary; and

“(ii) carries out—

- “(I) planting and maintenance of farms or gardens;
- “(II) procurement from local agricultural producers; or
- “(III) educational activities relating to agriculture, nutrition, or food.

“(E) UNDERSERVED PRODUCER.—The term ‘underserved producer’ means an individual (including a member of an Indian Tribe) that is—

- “(i) a beginning farmer or rancher;
- “(ii) a veteran farmer or rancher; or
- “(iii) a socially disadvantaged farmer or rancher.

“(F) VETERAN FARMER OR RANCHER.—The term ‘veteran farmer or rancher’ has the meaning given such term in section 2501(a) of the Food, Agriculture, Conservation, and Trade Act of 1990 (7 U.S.C. 2279(a)).”;

(2) in paragraph (2)—

(A) by striking “schools” each place it appears and inserting “institutions”;

(B) by inserting “land-grant colleges and universities,” before “and non-profit”; and

(C) by striking “grants and technical assistance” and inserting “grants, technical assistance, research, and evaluation”;

(3) in paragraph (3)—

(A) in subparagraph (A)—

(i) in clause (i), by inserting “and technical assistance” after “training”;

(ii) by redesignating clauses (vi) and (vii) as clauses (viii) and (ix), respectively; and

(iii) by inserting after clause (v) the following:

“(vi) implementing educational activities relating to agriculture, nutrition, or food;

“(vii) implementing innovative approaches to aggregation, processing, transportation, and distribution of food.”; and

(B) by amending subparagraph (C) to read as follows:

“(C) AWARDS.—

“(i) MAXIMUM AMOUNT.—The total amount provided to a grant recipient under this subsection shall not exceed \$500,000.

“(ii) TERM.—The term of an award shall not exceed 3 years.

“(iii) PURPOSE AND SCOPE.—In making awards under this subsection, the Secretary shall, to the extent practicable, make awards of diverse amounts and duration in order to best match the award to the purpose and scope of the project to be funded.”;

(4) by striking paragraph (4);

(5) by redesignating paragraphs (5) through (9) as paragraphs (4) through (8), respectively;

(6) in paragraph (4), as so redesignated—

(A) in the heading, by striking “CRITERIA FOR SELECTION” and inserting “PRIORITY”;

(B) in the matter preceding subparagraph (A), by striking “To the maximum extent practicable” and inserting the following:

“(A) IN GENERAL.—To the maximum extent practicable”;

(C) in subparagraph (A), by striking “school” and inserting “institution”;

(D) in subparagraph (B), by striking “lunches” and inserting “meals”;

(E) by striking subparagraph (C);

(F) in subparagraph (D), by striking “eligible schools” and all that follows through “partners” and inserting “eligible institutions, State and local agencies, Tribal organizations and agencies, agricultural producers or groups of agricultural producers, land-grant colleges and universities, and nonprofit entities on the activities described in paragraph (3)”;

(G) in subparagraph (F), by striking “and” at the end;

(H) by redesignating subparagraphs (A) and (B) as clauses (i) and (ii) and adjusting the margins accordingly;

(I) by redesignating subparagraphs (D) through (F) as clauses (iv) through (vi), respectively, and adjusting the margins accordingly;

(J) by inserting after clause (ii), as so redesignated by subparagraph (H), the following:

“(iii) incorporate experiential, traditional, and culturally appropriate food, nutrition, or agricultural education activities in curriculum planning.”;

(K) by redesignating subparagraph (G) as clause (ix);

(L) by inserting after clause (vi) (as so redesignated) the following:



- “(vii) expand the selection of local commodities for eligible institutions;
- “(viii) identify and address chronic diet-related health issues of children served by eligible institutions; and”; and
- (M) by adding at the end the following:
  - “(B) TRIBAL COMMUNITY PROJECTS.—In the case of projects serving Tribal communities, the Secretary shall, to the maximum extent practicable, give priority to projects that best utilize products, including traditional foods, from Tribal agricultural producers, as determined by the Secretary.”;
- (7) in paragraph (6), as so redesignated—
  - (A) in the matter preceding subparagraph (A), by striking “The Secretary” and all that follows through “nonprofit entities” and inserting the following:
    - “(A) IN GENERAL.—The Secretary shall provide technical assistance and information to assist eligible institutions, State and local agencies, Indian Tribal organizations, agricultural producers or agricultural producer groups, and nonprofit entities”;
    - (B) in subparagraph (B), by striking “and” at the end;
    - (C) in subparagraph (C), by striking the period at the end and inserting “; and”;
    - (D) by redesignating subparagraphs (A) through (C) as clauses (i) through (iii), respectively, and adjusting the margins accordingly;
    - (E) by adding after clause (iii), as so redesignated by subparagraph (D), the following:
      - “(iv) to increase awareness of, and participation in, farm to school programs among agricultural producers or agricultural producer groups, including—
        - “(I) underserved or limited resource producers; and
        - “(II) local farmers.”; and
  - (F) by adding at the end the following:
    - “(B) REVIEW.—
      - “(i) IN GENERAL.—Not later than 1 year after the date of enactment of the Healthy Meals, Healthy Kids Act, and every 3 years thereafter, the Secretary shall submit to the Committee on Agriculture of the House of Representatives, 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 progress that has been made in identifying and eliminating barriers related to developing farm to school programs.
      - “(ii) REQUIREMENTS.—In preparing the report, the Secretary shall examine—
        - “(I) the direct and indirect regulatory compliance costs affecting the production and marketing of locally or regionally produced agricultural food products to child nutrition programs;
        - “(II) barriers to local and regional child nutrition program market access for small-scale production;
        - “(III) barriers to funding projects that meet the criteria described in paragraph (5)(A);
        - “(IV) barriers to local and regional child nutrition market access for Tribal farmers and ranchers; and
        - “(V) barriers to funding Tribal projects under farm to school programs.”;
  - (8) in paragraph (7), as so redesignated—
    - (A) in subparagraph (A), by striking “\$5,000,000” and inserting “\$15,000,000”; and
    - (B) by adding at the end the following:
      - “(C) ADMINISTRATION.—Of the funds provided to the Secretary under subparagraph (A), not more than 5 percent may be used to pay administrative costs incurred by the Secretary in carrying out this subsection.”; and
  - (9) in paragraph (8), as so redesignated, by striking “2011 through 2015” and inserting “2023 through 2028”.

## TITLE VII—SUPPORTING TRIBES AND FREELY ASSOCIATED STATES

### SEC. 701. TRIBALLY OPERATED MEAL AND SNACK PILOT PROJECT.

Section 18 of the Richard B. Russell National School Lunch Act (42 U.S.C. 1769) is amended by inserting after subsection (e), as added by section 605 of this Act, the following:

“(f) TRIBALLY OPERATED MEAL AND SNACK PILOT PROJECT.—

“(1) IN GENERAL.—The Secretary of Agriculture shall establish a pilot project to award grants to up to 10 eligible entities to prepare such entities to administer or operate and implement, in covered schools—

“(A) the school lunch program authorized under this Act;

“(B) the child and adult care food program established by section 17 of this Act;

“(C) the summer food service program for children established by section 13 of this Act; and

“(D) the school breakfast program established by section 4 of the Child Nutrition Act of 1966 (42 U.S.C. 1773).

“(2) APPLICATION.—To be eligible to participate in the pilot project under this subsection, an eligible entity shall submit to the Secretary an application at such time, in such manner, and containing such information as the Secretary may require.

“(3) CRITERIA FOR SELECTION.—In selecting participants under this subsection, the Secretary shall select up to 10 eligible entities that—

“(A) are located in diverse geographic areas; and

“(B) serve Indian tribes of varying population size.

“(4) GRANTS.—

“(A) IN GENERAL.—The Secretary shall award, to each eligible entity selected to participate in the project under this subsection, a grant, of an amount negotiated with such eligible entity, that is not less than \$10,000 and not more than \$200,000.

“(B) SUNSET.—The authority of the Secretary to award grants under this subsection shall terminate on the date that is 5 years after the date on which the first grant is awarded under this subsection.

“(5) REIMBURSEMENTS.—

“(A) IN GENERAL.—Notwithstanding any other provision of law, an eligible entity participating in the project under this subsection—

“(i) may carry out the programs referenced in subparagraphs (A) through (D) of paragraph (1);

“(ii) with respect to the school lunch program authorized under this Act, shall be reimbursed as if it were a State under section 12(f);

“(iii) with respect to the child and adult care food program established under this Act, shall be reimbursed as if it were a State under section 17, including audit funds under subsection (i) of such section;

“(iv) with respect to the summer food service program for children established under this Act, shall be reimbursed as if it were a State under section 13, including administrative funds under subsection (k) of such section; and

“(v) with respect to the school breakfast program established by section 4 of the Child Nutrition Act of 1966 (42 U.S.C. 1773), shall be reimbursed as if it were a State under such section.

“(B) ADMINISTRATIVE FUNDS.—An eligible entity that participates in the project under this subsection may receive administrative funds at a rate that is consistent with the amount received by a State under section 7 of the Child Nutrition Act of 1966 (42 U.S.C. 1776).

“(C) TRIBAL OPERATORS.—An eligible entity that is an Indian tribe that participates in the project under this subsection as direct program operators shall be reimbursed by the Department.

“(6) DEFINITIONS.—In this subsection:

“(A) BUREAU-FUNDED SCHOOL.—The term ‘Bureau-funded school’ has the meaning given such term in section 1141 of the Education Amendments of 1978 (25 U.S.C. 2021).

“(B) COVERED SCHOOL.—The term ‘covered school’ means—

“(i) a Bureau-funded school;

“(ii) a school—

“(I) on or in proximity to a reservation; or

“(II) that primarily serves Native American students; and

“(iii) early care and education facilities, including facilities that participate in a Head Start program authorized under the Head Start Act (42 U.S.C. 9831 et seq.).

“(C) ELIGIBLE ENTITY.—The term ‘eligible entity’ means—

“(i) an Indian tribe or tribal organization approved by an Indian tribe;

“(ii) a consortium of Indian tribes; and

“(iii) a partnership between—

“(I) an Indian tribe; and

“(II) either—

“(aa) a State educational agency;

“(bb) a local educational agency;

“(cc) a tribal educational agency; or

“(dd) the Bureau of Indian Education.

“(D) INDIAN TRIBE.—The term ‘Indian tribe’ has the meaning given such term in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 5304).

“(E) SCHOOL.—The term ‘school’ has the meaning given such term in section 12(d) of the Richard B. Russell National School Lunch Act (42 U.S.C. 1760(d)).

“(F) TRIBAL EDUCATIONAL AGENCY.—The term ‘tribal educational agency’ has the meaning given such term in section 6132(b) of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 7452(b)).”.

**SEC. 702. ISLAND AREAS ELIGIBILITY FEASIBILITY STUDY UNDER THE RICHARD B. RUSSELL NATIONAL SCHOOL LUNCH ACT.**

Section 18 of the Richard B. Russell National School Lunch Act (42 U.S.C. 1769) is amended by adding at the end the following:

“(1) ISLAND AREAS ELIGIBILITY FEASIBILITY STUDY.—

“(1) IN GENERAL.—Not later than 12 months after the date of the enactment of this subsection, the Secretary shall begin a feasibility study to assess the ability and preparedness of the freely associated States to operate—

“(A) the school lunch program authorized under this Act;

“(B) the child and adult care food program established by section 17 of this Act;

“(C) the summer food service program for children established by section 13 of this Act; and

“(D) the school breakfast program established by section 4 of the Child Nutrition Act of 1966 (42 U.S.C. 1773).

“(2) CONTENTS.—In conducting the study described in paragraph (1), the Secretary shall consider—

“(A) any new or additional administrative processes and technology needed to implement each program listed under paragraph (1);

“(B) an assessment of preparedness to—

“(i) comply with management evaluations conducted by the Secretary, acting through the Administrator of the Food and Nutrition Service; and

“(ii) cooperate in Federal audits and evaluations;

“(C) administrative and financial capability to meet the requirements of each program listed under paragraph (1);

“(D) ability to oversee each program listed under paragraph (1);

“(E) statutory requirements that require waiver or modification by the Secretary and the feasibility of carrying out such waivers or modifications; and

“(F) any other relevant considerations, as determined by the Secretary.

“(3) SUBMISSION.—Not later than 24 months after the date on which the Secretary begins the study under paragraph (1), the Secretary shall—

“(A) complete such study; and

“(B) submit the findings of such study to the Committee on Education and Labor of the House of Representatives and the Senate Committee on Agriculture, Nutrition, and Forestry.

“(4) FREELY ASSOCIATED STATE DEFINED.—In this subsection, the term ‘freely associated State’ means—

“(A) the Federated States of Micronesia;

“(B) the Republic of the Marshall Islands; and

“(C) the Republic of Palau.”.

## TITLE VIII—ADDRESSING LUNCH SHAMING AND UNPAID MEAL DEBT

### SEC. 801. UNPAID MEAL DEBT.

(a) RETROACTIVE REIMBURSEMENT.—Section 9(b)(9)(C) of the Richard B. Russell National School Lunch Act (42 U.S.C. 1758(b)(9)(C)) is amended—

(1) by striking “Except” and inserting the following:

“ (i) IN GENERAL.—Except”;

(2) by redesignating clauses (i) and (ii) as subclauses (I) and (II); and

(3) by adding at the end the following:

“ (ii) RETROACTIVITY.—A local educational agency shall revise a previously submitted meal claim to reflect the eligibility approval of a child for free or reduced price meals for the period that begins on the first day of the current school year.

“ (iii) MEAL CLAIM DEFINED.—In this subsection, the term ‘meal claim’ means any documentation provided by a school food authority to a State agency in order to receive reimbursement for the cost of a meal served to a child by such school food authority.”.

(b) REDUCING STIGMA ASSOCIATED WITH UNPAID SCHOOL MEAL FEES.—Section 9(b)(10) of the Richard B. Russell National School Lunch Act (42 U.S.C. 1758(b)(10)) is amended to read as follows:

“(10) REDUCING STIGMA ASSOCIATED WITH UNPAID SCHOOL MEAL FEES.—

“(A) OVERT IDENTIFICATION PROHIBITED.—A local educational agency or school food authority may not, based on the status of a child as a covered child—

“ (i) physically segregate or otherwise discriminate against such covered child;

“ (ii) overtly identify such covered child—

“ (I) through the use of special tokens or tickets; or

“ (II) by an announcement or a published list of names; or

“ (iii) identify or stigmatize such covered child by any other means.

“(B) ELIGIBILITY DETERMINATION BY LOCAL EDUCATIONAL AGENCY.—For any covered child who is a member of a household that owes a week or more of unpaid school meal fees, a local educational agency shall—

“ (i) attempt to directly certify such covered child for free meals under paragraph (4) or (5); or

“ (ii) in a case where the local educational agency is not able to directly certify such covered child under paragraph (4) or (5), provide to the household of such covered child—

“ (I) a household application and applicable descriptive material; and

“ (II) written and oral communications to encourage submission of the application.

“(C) COLLECTION OF UNPAID SCHOOL MEAL FEES.—In attempting to collect unpaid school meal fees from a household, a local educational agency or school food authority may not—

“ (i) except as described in subparagraph (D), direct any communication regarding unpaid school meal fees to a covered child who is a member of such household;

“ (ii) withhold educational opportunities (including grades and participation in extracurricular activities or local educational agency programs or services) from, or otherwise stigmatize, a covered child due to the status of the covered child as a covered child; or

“ (iii) use a debt collector (as such term is defined in section 803 of the Consumer Credit Protection Act (15 U.S.C. 1692a)).

“(D) LETTERS.—A school food authority may require that a covered child deliver a sealed letter addressed to a parent or guardian of the covered child that contains a communication relating to unpaid school meal fees, subject to the condition that the letter shall not be distributed to the covered child in a manner that stigmatizes the covered child.

“(E) ELIMINATING STIGMA IN MEAL SERVICE.—In providing a meal to a covered child, a local educational agency or school food authority may not, based on the status of the covered child as a covered child, dispose of or take away from the covered child any food that has already been served to such covered child.

“(F) DEFINITIONS.—In this paragraph:

“ (i) COVERED CHILD.—The term ‘covered child’ means a child who—

“(I) is—

“(aa) enrolled in a school that participates 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); and

“(bb) is a member of a household that owes unpaid school meal fees; or

“(II) is eligible for a free or reduced price lunch under this section.

“(ii) UNPAID SCHOOL MEAL FEES.—The term ‘unpaid school meal fees’ means outstanding fees owed by a household to a school food authority or local educational agency (or both) for lunches under this Act or breakfasts under section 4 of the Child Nutrition Act of 1966 (42 U.S.C. 1773).”.

**SEC. 802. NATIONAL ADVISORY COUNCIL ON UNPAID MEAL DEBT IN CHILD NUTRITION PROGRAMS.**

(a) ESTABLISHMENT.—There is established a National Advisory Council on Unpaid Meal Debt in Child Nutrition Programs (in this section referred to as the “Council”).

(b) DUTIES.—The Council shall provide recommendations, in accordance with subsection (g), to the Administrator of the Food and Nutrition Service with respect to addressing unpaid school meal fees by ensuring that—

(1) students are not stigmatized; and

(2) school food authorities can maintain fiscal solvency in order to ensure the long-term viability of school meal programs.

(c) MEMBERSHIP.—

(1) NUMBER AND APPOINTMENT.—The Council shall be composed of 14 members appointed by the Secretary as follows:

(A) 2 members shall be school nutrition State agency directors who are employed in different States;

(B) 2 members shall be school food service directors of a school meal program in an urban area who are employed in different States;

(C) 2 members shall be school food service directors of a school meal program in a rural area who are employed in different States;

(D) 2 members shall be officials of the Food and Nutrition Service office of the Department of Agriculture;

(E) 2 members shall be parents or guardians (who are not related to one another or to the same child) of children who are eligible for free and reduced price school meals;

(F) 2 members shall represent organizations with expertise in the school meal programs; and

(G) 2 members shall be food service professionals who—

(i) work in school cafeterias; and

(ii) maintain daily contact with students, including by preparing or serving meals or working at registers.

(2) TERMS.—

(A) IN GENERAL.—Each member shall be appointed for the life of the Council.

(B) VACANCIES.—Any member appointed to fill a vacancy occurring before the expiration of the life of the Council shall be appointed for the remainder of the life of the Council.

(d) COMPENSATION.—

(1) IN GENERAL.—Members shall serve without pay.

(2) TRAVEL EXPENSES.—Each member shall receive travel expenses, including per diem in lieu of subsistence, in accordance with applicable provisions under subchapter I of chapter 57 of title 5, United States Code.

(3) PARENTS OR GUARDIANS.—In the case of a member who is a parent or guardian appointed under subsection (c)(1)(E), such member, in addition to reimbursement under paragraph (2), shall, at the discretion of the Secretary, be compensated in advance for other personal expenses related to participation on the Council, including child care expenses and lost wages during scheduled Council meetings.

(4) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out this subsection \$1,500,000, to remain available through the date described in subsection (h).

(e) CHAIRPERSON; VICE CHAIRPERSON.—

(1) ELIGIBILITY.—To be eligible for election to Chairperson or Vice Chairperson of the Council, an individual must be a member of the Council described in subsection (c)(1).

- (2) ELECTION.—The Chairperson and Vice Chairperson of the Council shall be elected by such members.
- (f) MEETINGS.—
- (1) IN GENERAL.—The Council shall meet not fewer than 2 times per year at the call of the Chairperson.
- (2) QUORUM.—5 members of the Council shall constitute a quorum.
- (g) REPORT.—
- (1) IN GENERAL.—Not later than 3 years after the establishment of the Council under subsection (a), the Council shall submit to the Administrator of the Food and Nutrition Service a report containing the recommendations described in subsection (b).
- (2) GUIDANCE.—Not later than 1 year after the submission of the report under paragraph (1), the Secretary, acting through the Administrator of the Food and Nutrition Service, shall use the recommendations contained in such report to issue guidance with respect to addressing unpaid school meal fees.
- (h) TERMINATION.—The Council shall terminate on the date that is 1 day after the submission of the report required under subsection (g).
- (i) TECHNICAL ASSISTANCE.—The Secretary shall provide the Council with such technical and other assistance, including secretarial and clerical assistance, as may be required to carry out its functions.
- (j) UNPAID SCHOOL MEAL FEES DEFINED.—In this section, the term “unpaid school meal fees” means outstanding fees owed by a household to a local educational agency for lunches under this Act or breakfasts under section 4 of the Child Nutrition Act of 1966 (42 U.S.C. 1773).

## **TITLE IX—STRENGTHENING EVIDENCE-BASED NUTRITION STANDARDS**

### **SEC. 901. UPDATING NUTRITION STANDARDS FOR MEAL PATTERNS.**

#### **(a) NUTRITION STANDARDS FOR SCHOOL MEALS.—**

(1) AMENDMENTS TO THE RICHARD B. RUSSELL NATIONAL SCHOOL LUNCH ACT.—Section 9(f) of the Richard B. Russell National School Lunch Act (42 U.S.C. 1758(f)) is amended—

- (A) in paragraph (1)—
- (i) by striking “Schools that are participating” and inserting the following:
- “(A) SCHOOLS PARTICIPATING IN MEAL PROGRAMS.—Schools that are participating”;
- (ii) in subparagraph (B)—
- (I) by striking “nutrient” and inserting “dietary”; and
- (II) by striking “and food insecurity” and inserting “, food and nutrition insecurity, or chronic disease”;
- (iii) by redesignating subparagraphs (A) and (B) as clauses (i) and (ii), respectively, and adjusting the margins accordingly; and
- (iv) by adding at the end the following:

“(B) UPDATING STANDARDS.—Not later than 1 year after the first publication 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) that occurs after the date of the enactment of this subparagraph, and not less frequently than once every 10 years, or not later than 1 year after the publication of 2 consecutive updates to 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) thereafter, whichever occurs first, the Secretary shall:

“(i) Enter into an agreement with the National Academies of Sciences, Engineering, and Medicine to—

“(I) conduct a review of the nutrition standards and requirements under paragraph (1); and

“(II) recommend updates to such requirements so that they are substantially similar to 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), taking into account the practical application for implementation.

“(ii) Not later than 1 year after the conclusion of the review described in clause (i)(I), promulgate regulations to update the school nutrition standards and requirements pursuant to paragraph (1) to align with the recommendations under clause (i)(II).

“(C) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out subparagraph (B), \$3,000,000, for the fiscal year in which the first publication 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) occurs after the date of the enactment of this Act, to remain available until expended.”;

(B) in paragraph (2)—

(i) by striking “To assist schools in meeting the requirements of this subsection, the Secretary” and inserting “Assistance to schools.”;

(ii) in subparagraph (A)—

(I) by striking “shall” and inserting “ASSISTANCE REQUIRED.—To assist schools in meeting the requirements of this subsection, the Secretary shall”;

(II) in clause (i), by striking “and” at the end;

(III) in clause (ii), by striking “and” at the end;

(IV) by adding at the end of subparagraph (A) the following:

“(iii) develop and provide to schools best practices, trainings (including peer-to-peer trainings), and other resources;

“(iv) implement healthier school environment recognition programs; and

“(v) work with food manufacturers and retailers to support development and increased availability and affordability of products that meet the nutrition standards; and”;

(iii) by amending subparagraph (B) to read as follows:

“(B) ASSISTANCE PERMITTED.—

“(i) IN GENERAL.—To assist schools in meeting the requirements of this subsection, the Secretary may—

“(I) provide to schools information regarding other approaches, as determined by the Secretary; and

“(II) award grants and monetary incentives to carry out 1 or more of the following:

“(aa) Improving the nutritional quality of meals and snacks served under a child nutrition program.

“(bb) Enhancing the nutrition and wellness environment of institutions participating in a child nutrition program, including by reducing the availability of less healthy foods during the school day.

“(cc) Supporting food systems that supply nutritious foods and beverages for children in both schools and retail markets, including those in underserved communities.

“(dd) Funding a statewide nutrition education coordinator to support individual school food authority nutrition education efforts and to facilitate collaboration with other nutrition education efforts in the State.

“(ii) RECIPIENTS.—Grants provided pursuant to clause (i) may be made available to third party entities that have experience working with school food service personnel 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) to provide technical assistance to schools in meeting the goals of this subparagraph.

“(iii) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to carry out grants and monetary incentives pursuant to clause (i) \$30,000,000 for fiscal year 2024, to be available until expended.”; and

(C) by striking paragraphs (3) and (4).

(2) AMENDMENTS TO THE CHILD NUTRITION ACT OF 1966.—Section 10(b) of the Child Nutrition Act of 1966 (42 U.S.C. 1779) is amended—

(A) by striking “(b) NATIONAL SCHOOL NUTRITION STANDARDS.—”;

(B) in paragraph (1)—

(i) in subparagraph (A)—

(I) in clause (i)—

(aa) by inserting “that 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)” after “nutrition standards”; and

(bb) by striking “; and” and inserting a period;

(II) by striking “Secretary shall—” and inserting “Secretary shall”;

(III) by striking “(i) establish science-based” and inserting “establish science-based”; and

(IV) by striking clause (ii);

(ii) by striking subparagraph (D);

(iii) by redesignating paragraph (1) as subsection (b) and adjusting the margins accordingly; and

(iv) by redesignating subparagraphs (A) through (C) as paragraphs (1) through (3), respectively, and adjusting the margins accordingly;

(C) by adding at the end of subsection (b) (as so redesignated) the following:

“(4) **UPDATING STANDARDS.**—Not later than 1 year after the first publication 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) that occurs after the date of the enactment of this subparagraph, and not less frequently than once every 10 years or not later than 1 year after the publication of 2 consecutive updates to 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), thereafter, whichever occurs first, the Secretary shall:

“(A) Enter into an agreement with the National Academies of Sciences, Engineering, and Medicine to—

“(i) conduct a review of the school nutrition standards and requirements established under this subsection; and

“(ii) recommend updates to such standards and requirements so that they are substantially similar to 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), taking into account the practical application for implementation.

“(B) Not later than 1 year after the conclusion of the review described in subparagraph (A)(i), promulgate regulations to update the school nutrition standards and requirements established under this subsection to align with the recommendations under subparagraph (A)(ii).

“(5) **AUTHORIZATION OF APPROPRIATIONS.**—There are authorized to be appropriated to carry out paragraph (4), \$3,000,000, for the fiscal year in which the first publication 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) occurs after the date of the enactment of this Act, to remain available until expended.”; and

(D) by striking paragraph (2).

(3) **APPLICABILITY.**—This subsection and the amendments made by this subsection shall apply on and after the date on which the first publication 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) occurs after the date of the enactment of this Act.

(4) **REGULATIONS.**—Regulations promulgated pursuant to amendments made by this subsection to update the nutrition standards and requirements under the Richard B. Russell National School Lunch Act (42 U.S.C. 1751 et seq.) and the Child Nutrition Act of 1966 (42 U.S.C. 1771 et seq.) shall not prohibit any variety of milk that is consistent with the most recent Dietary Guidelines for Americans.

(b) **ADDITIONAL REIMBURSEMENT.**—Section 4(b)(3)(D) of the Richard B. Russell National School Lunch Act (42 U.S.C. 1753(b)(3)(D)) is amended—

(1) by striking “To be eligible” and inserting the following:

“(i) **IN GENERAL.**—To be eligible”; and

(2) by adding at the end the following:

“(ii) **REPORT.**—The Secretary shall make publicly available on the website of the Department and update on an annual basis a list of school food authorities certified to be in compliance in accordance with clause (i).”.

**SEC. 902. NON-NUTRITIVE SWEETENERS, SYNTHETIC DYES, AND OTHER POTENTIALLY HARMFUL SUBSTANCES IN SCHOOL MEALS.**

(a) **IN GENERAL.**—Not later than 6 months after the date of the enactment of this section, the Secretary shall seek to enter into an agreement with the National Academy of Sciences, Engineering, and Medicine (referred to in this section as the “National Academy”) under which the National Academy shall create and publish the report described in subsection (b).

(b) **REPORT.**—The report shall include recommendations for nutrition standards for the school lunch program authorized 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 the Child Nutrition Act of 1966 (42 U.S.C. 1773) with respect to non-nutritive sweeteners, synthetics dyes, and other potentially harmful substances in school meals.

(c) PUBLICATION.—

(1) NATIONAL ACADEMY.—Not later than 1 year after the date on which the Secretary and the National Academy enter into the agreement described in subsection (a), the National Academy shall—

(A) submit the report to the Secretary; and

(B) publish the report.

(2) SECRETARY.—Not later than 30 days after the submission of the report under paragraph (1)(A), the Secretary shall make such report publicly available in an easily identifiable place on the website of the Department.

(d) NON-NUTRITIVE SWEETENERS, SYNTHETIC DYES, AND OTHER POTENTIALLY HARMFUL SUBSTANCES STANDARDS.—Not later than 18 months after the submission of the report under subsection (c)(1)(A), the Secretary may promulgate proposed regulations to include standards for non-nutritive sweeteners, synthetic dyes, and other potentially harmful substances for the school lunch program authorized 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 the Child Nutrition Act of 1966 (42 U.S.C. 1773) based on recommendations made in such report.

## **TITLE X—OTHER MATTERS**

### **Subtitle A—Programs Under the Richard B. Russell National School Lunch Act**

#### **SEC. 1001. ACCOMMODATING DIETARY REQUIREMENTS.**

Section 9(a) of the Richard B. Russell National School Lunch Act (42 U.S.C. 1758(a)) is amended—

(1) in paragraph (1)—

(A) in subparagraph (A), by amending clause (i) to read as follows:

“(i) shall not—

“(I) be construed to prohibit the substitution of foods to accommodate the medical needs of individual students; or

“(II) be construed to prohibit the nutritionally-equivalent substitution of foods to accommodate religiously-based or other special dietary needs of individual students; and”; and

(B) in subparagraph (B), by striking “lower-fat versions of foods commonly used in the school lunch program under this Act” and inserting “foods that comply with the meal patterns prescribed by the Secretary”; and

(2) in paragraph (2)—

(A) by amending subparagraph (A)(iii) to read as follows:

“(iii) as a reasonable accommodation under the Americans with Disabilities Act (42 U.S.C. 12101 et seq.) and section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), shall provide a substitute for fluid milk for a student whose disability restricts their diet.”; and

(B) by amending subparagraph (B) to read as follows:

“(B) OTHER SUBSTITUTIONS.—

“(i) STANDARDS FOR REQUIRED SUBSTITUTION.—

“(I) A school shall substitute, for the fluid milk provided under subparagraph (A), a nondairy beverage that meets the nutritional needs of a student for whom fluid milk is not nutritionally appropriate due to a medical or other special dietary need other than a disability described in subparagraph (A)(iii), as determined by the school in consultation with the parent or legal guardian of such student.

“(II) A school shall 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 if the substitution is requested by written statement by a parent or legal guardian of such student.

“(ii) STANDARDS FOR DISCRETIONARY SUBSTITUTION.—A school may offer all students a nondairy beverage as a substitute for fluid milk that is nutritionally equivalent to fluid milk and meets nutritional standards established by the Secretary.

“(iii) EXCESS EXPENSES.—Except as provided in clause (iv), expenses incurred by providing substitutions under clauses (i) and (ii) that are in excess of expenses covered by reimbursements under this Act shall be paid by the school food authority.

“(iv) PILOT PROGRAM.—

“(I) PROGRAM AUTHORIZED.—Not later than 90 days after the date of the enactment of this subparagraph, the Secretary shall establish and carry out a pilot grant program to award grants to eligible school food authorities to carry out subclause (III).

“(II) PRIORITY.—In awarding grants under this clause, the Secretary may give priority to—

“(aa) an eligible school food authority that serves high proportions of children who demonstrate high rates of lactose intolerance; and

“(bb) an eligible school food authority that—

“(AA) submits, as part of the application for a grant, a need for nondairy beverages among its student population due to dietary reasons; and

“(BB) demonstrates a need for providing nondairy beverages to children by serving a sufficient number (as determined by the Secretary) of such children.

“(III) USE OF FUNDS.—A school food authority shall use grant funds awarded under this clause to reimburse the full cost of providing nondairy beverages as substitutes for fluid milk under clause (i)(I) incurred by such school food authority.

“(IV) REPORTS.—

“(aa) ANNUAL REPORT BY SCHOOL FOOD AUTHORITY.—Not later than 1 year after receiving a grant under this clause, and on an annual basis for the duration of the pilot program thereafter, a school food authority shall submit to the Secretary a report on the pilot grant program, including information with respect to—

“(AA) the number of schools served by the school food authority pursuant to the grant; and

“(BB) the number of students served by the school food authority pursuant to the grant.

“(bb) FINAL REPORT BY SCHOOL FOOD AUTHORITY.—The report that is the final report submitted under item (aa) shall include, in addition to the information required under subitems (AA) and (BB) of such item—

“(AA) the number of nondairy beverages as substitutes for fluid milk that the school food authority served during the grant period; compared with

“(BB) the number of nondairy beverages as substitutes for fluid milk that the school food authority served during the school year immediately preceding the start of the grant period.

“(cc) REPORT BY THE SECRETARY.—Not later than 6 months after the date described in subclause (V), the Secretary shall submit to Congress a report that includes a summary of the information included in the reports received under this subclause and any such information with respect to the pilot program the Secretary determines to be relevant.

“(V) SUNSET.—The authority to carry out this clause shall terminate on the date that is 3 years after the date of the enactment of this subparagraph.

“(VI) ELIGIBLE SCHOOL FOOD AUTHORITY DEFINED.—In this clause, the term ‘eligible school food authority’ means a school food authority for which 50 percent or more of the students served by such school food authority are eligible for free or reduced price lunch under this Act or free or reduced price breakfast under section 4 of the Child Nutrition Act of 1966 (42 U.S.C. 1773).

“(VII) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to carry out this clause \$2,000,000 for fiscal year 2024, to remain available until the date described in subclause (V).”.

**SEC. 1002. DATA PROTECTIONS FOR HOUSEHOLD APPLICATIONS.**

Section 9(b)(3)(B) of the Richard B. Russell National School Lunch Act (42 U.S.C. 1758(b)(3)(B)) is amended by adding at the end the following:

“(iii) CONFIDENTIALITY STANDARDS.—The confidentiality standards established by the Secretary shall ensure—

“(I) the maintenance of reasonable and appropriate administrative, technical, and physical safeguards to ensure the integrity and confidentiality of information submitted through electronic applications described in clause (ii);

“(II) protection against security threats or unauthorized uses or disclosures of the information submitted through such electronic applications; and

“(III) that data collected by such electronic applications shall be used only as permitted under paragraph (6).”.

**SEC. 1003. EATING DISORDER PREVENTION.**

Section 9A of the Richard B. Russell National School Lunch Act (42 U.S.C. 1758b) is amended—

(1) in subsection (b)—

(A) in paragraph (1), by inserting “mental health promotion and education, including awareness of eating disorders” after “physical activity,”;

(B) in paragraph (2)(B), by striking “childhood obesity” and inserting “diet-related illnesses”; and

(C) in paragraph (3), by inserting “school-based registered dietitians, school-based mental health services providers,” after “school administrators,”;

(2) in subsection (d)—

(A) in paragraph (1)—

(i) by inserting “and the Administrator of the Substance Abuse and Mental Health Services Administration” after “Prevention”; and

(ii) by inserting “, school health professionals (including school-based mental health services providers when available)” after “school food authorities”;

(B) by amending paragraph (2)(C) to read as follows:

“(C) includes such other technical assistance as is required to—

“(i) promote sound nutrition and establish healthy school nutrition environments; and

“(ii) promote mental health, encourage mental health assessments, and establish resilient school environments; and”; and

(C) in paragraph (3)—

(i) in subparagraph (A)—

(I) by striking “conjunction” and inserting “consultation”; and

(II) by inserting “and the Administrator of the Substance Abuse and Mental Health Services Administration” after “Centers for Disease Control and Prevention”;

(ii) in subparagraph (C), by striking “January 1, 2014,” and inserting “4 years after the date on which funds are first appropriated to carry out this section after the date of the enactment of the Healthy Meals, Healthy Kids Act,”; and

(iii) in subparagraph (D)—

(I) by striking “\$3,000,000” and inserting “\$5,000,000”; and

(II) by striking “2011” and inserting “2024”.

**SEC. 1004. COMPLIANCE AND ACCOUNTABILITY.**

Section 22(d) of the Richard B. Russell National School Lunch Act (42 U.S.C. 1769c) is amended by striking “fiscal years 2011 through 2015” and inserting “fiscal years 2023 through 2028”.

**SEC. 1005. NATIONAL HUNGER HOTLINE AND CLEARINGHOUSE.**

Section 26(d) of the Richard B. Russell National School Lunch Act (42 U.S.C. 1769g(d)) is amended by striking “\$250,000 for each of fiscal years 2010 through 2023” and inserting “\$500,000 for each of fiscal years 2023 through 2028”.

**SEC. 1006. ENSURING ADEQUATE MEAL TIME.**

The Richard B. Russell National School Lunch Act (42 U.S.C. 1751 et seq.) is amended by adding at the end the following:

**“SEC. 30. MEAL TIME STUDY AND GUIDANCE.**

“(a) STUDY.—The Secretary shall—

“(1) not later than 1 year after the date on which funds are first appropriated under subsection (c), enter into an agreement with an independent, non-

partisan, science-based research organization to carry out a study on the time lunches are served, recess is offered, and the duration of lunch periods at schools participating in the school lunch program under this Act; and

“(2) not later than 4 years after the date on which funds are first appropriated under subsection (c), publish on the publicly available website of the Department a report that includes the findings of the study required under paragraph (1).

“(b) DEVELOPMENT AND DISSEMINATION OF BEST PRACTICES.—The Secretary shall—

“(1) not later than 1 year after the date on which the report required under subsection (a)(2) is published, in coordination with the Secretary of Education, establish a task force to—

“(A) review such report;

“(B) review other research relating to the time lunches are served, recess is offered, and the duration of lunch periods in schools; and

“(C) develop best practices with respect to the time lunches are served, recess is offered, and the duration of lunch periods in schools to ensure student health, including appropriate nutritional intake; and

“(2) not later than 2 years after the date on which the report required under subsection (a)(2) is published—

“(A) review the best practices developed under paragraph (1)(C); and

“(B) issue guidance with respect to such best practices to schools participating in the school lunch program under this Act.

“(c) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to carry out this section \$1,000,000 for fiscal year 2024, to remain available until expended.”.

## **Subtitle B—Programs Under the Child Nutrition Act of 1966**

### **SEC. 1011. ENHANCING NUTRITION EDUCATION.**

Section 19 of the Child Nutrition Act of 1966 (42 U.S.C. 1788) is amended—

(1) in subsection (a)—

(A) in paragraph (3), by inserting “, including training on scratch cooking,” after “provide training”; and

(B) in paragraph (5), by striking “helping children to maintain a healthy weight by”;

(2) in subsection (h)—

(A) in paragraph (5)(B)—

(i) in clause (i)—

(I) by striking “educate” and inserting “conduct evidence-based nutrition education for”; and

(II) by striking “of a poor diet and inactivity to obesity and other health problems” and inserting “between diet, activity, and health”;

(ii) in clause (iv), by inserting “ other classroom education,” after “health education.”;

(iii) in clause (viii), by striking “and” at the end;

(iv) in clause (ix), by striking the period at the end and inserting “; and”; and

(v) by adding at the end the following:

“(x) conduct projects that—

“(I) hire qualified food and nutrition educators to carry out programs in schools; and

“(II) have the goal of improving student health and nutrition through such programs.”; and

(B) by striking paragraph (6);

(3) by striking subsection (k); and

(4) by redesignating subsection (l) as subsection (k).

## **Subtitle C—Improving Food Donations**

### **SEC. 1021. FOOD DONATION IN SCHOOLS.**

Section 9(l) of the Richard B. Russell National School Lunch Act (42 U.S.C. 1758(l)) is amended—

(1) in paragraph (1)—

(A) by striking “local educational agency” and inserting “school food authority”;

(B) by striking “eligible local food banks or charitable organizations” and inserting “nonprofit organizations or individuals in need as determined by such school or school food authority”;

(C) by striking “GENERAL.—Each” and inserting the following: “GENERAL.—

“(A) FOOD DONATIONS PERMISSIBLE.—Each”; and

(D) by adding at the end the following:

“(B) USE OF SCHOOL CAMPUS.—The food donated by a school through the school food authority serving such school pursuant to this paragraph may be received, stored, and distributed on the campus of such school.”;

(2) in paragraph (2)(A), by striking “local educational agencies” in each place it appears and inserting “school food authorities”;

(3) in paragraph (3), by striking “local educational agency” and inserting “school food authority”; and

(4) by amending paragraph (4) to read as follows:

“(4) DEFINITION.—In this subsection, the term ‘nonprofit organization’ means an incorporated or unincorporated entity that—

“(A) is operating for religious, charitable, or educational purposes; and

“(B) does not provide net earnings to operate in any other manner that inures to the benefit of any officer, employee, or shareholder of the entity.”.

**SEC. 1022. BILL EMERSON GOOD SAMARITAN FOOD DONATION ACT.**

Section 22 of the Child Nutrition Act of 1966 (42 U.S.C. 1791) is amended—

(1) in subsection (b)—

(A) in paragraph (1)—

(i) by striking “quality and labeling” and inserting “safety and safety-related labeling”; and

(ii) by inserting “being past date label,” after “surplus,”;

(B) in paragraph (2)—

(i) by striking “quality and labeling” and inserting “safety and safety-related labeling”; and

(ii) by inserting “being past date label,” after “surplus,”;

(C) in paragraph (3), by adding “or is charged a good Samaritan Reduced Price” before the period at the end;

(D) in paragraph (4), by striking “for human” and inserting the following: “for—

“(A) human consumption; or

“(B) pet, emotional support animal, or service animal consumption.”;

(E) in paragraph (6), by adding “pet supply,” after “cleaning product,”;

(F) in paragraph (10), by inserting “pet food supplier, school, school food authority,” after “caterer, farmer,”;

(G) by adding at the end the following:

“(11) EMOTIONAL SUPPORT ANIMAL.—The term ‘emotional support animal’ means an animal that is covered by the exclusion specified in section 5.303 of title 24, Code of Federal Regulations (or a successor regulation) and that is not a service animal.

“(12) GOOD SAMARITAN REDUCED PRICE.—The term ‘good Samaritan reduced price’ means, with respect to an apparently wholesome food or an apparently fit grocery product, a price that is an amount not greater than the cost of handling, administering, and distributing such food or grocery product.

“(13) PET.—The term ‘pet’ means a domesticated animal that is kept for pleasure rather than for commercial purposes.

“(14) PET SUPPLIES.—The term ‘pet supplies’ means tangible personal property used for the caring of pets.

“(15) QUALIFIED DIRECT DONOR.—The term ‘qualified direct donor’ means a retail grocer, wholesaler, agricultural producer, restaurant, caterer, school food authority, or institution of higher education (as defined in section 101 or 102(a)(1)(B) of the Higher Education Act of 1965 (20 U.S.C. 1001; 1002(a)(1)(B))).

“(16) SERVICE ANIMAL.—The term ‘service animal’ has the meaning given the term in section 36.104 of title 28, Code of Federal Regulations (or a successor regulation).”; and

(H) by reordering paragraphs (1) through (10) and the paragraphs added by subparagraph (G) of this paragraph in alphabetical order based on the headings of such paragraphs, and renumbering such paragraphs as so renumbered;

(2) in subsection (c)—

- (A) in paragraph (1)—
  - (i) by inserting “or State or unit of local government” after “nonprofit organization”; and
  - (ii) by inserting “or sale at a good Samaritan reduced price” after “ultimate distribution”;
- (B) in paragraph (2), by inserting “or sale at a good Samaritan reduced price” after “ultimate distribution”;
- (C) by adding after paragraph (2) the following:
 

“(3) LIABILITY OF STATE OR UNIT OF LOCAL GOVERNMENT.—A State or unit of local government shall not be subject to liability arising from the nature, age, packaging, or condition of apparently wholesome food or an apparently fit grocery product that the State or unit of local government received as a donation in good faith from a person, gleaner, or nonprofit organization for ultimate distribution to needy individuals.

“(4) DIRECT DONATIONS TO NEEDY INDIVIDUALS.—A qualified direct donor shall not be subject to civil or criminal liability arising from the nature, age, packaging, or condition of apparently wholesome food or an apparently fit grocery product that the qualified direct donor donates in good faith to needy individuals.

“(5) LIABILITY WITH RESPECT TO PETS.—

“(A) DONATIONS MADE.—A person or gleaner shall not be subject to civil or criminal liability arising from the nature, age, packaging, or condition of food described in subsection (b)(4)(B) or pet supplies that the person or gleaner donates in good faith to a nonprofit organization or State or unit of local government for direct distribution to pets.

“(B) DONATIONS RECEIVED.—A nonprofit organization or State or unit of local government shall not be subject to civil or criminal liability arising from the nature, age, packaging, or condition of food described in subsection (b)(4)(B) or pet supplies that the nonprofit organization or State or unit of local government received as a donation in good faith from a person or gleaner for direct distribution to pets.”;
- (D) by redesignating paragraph (3) as paragraph (6); and
- (E) in paragraph (6), as so redesignated by subparagraph (D)—
  - (i) by striking “Paragraphs (1) and (2)” and inserting “Paragraphs (1), (2), (3), (4), and (5)”;
  - (ii) by inserting “qualified direct donor, State or local government,” after “person, gleaner,”; and
- (3) in subsection (e)—
  - (A) by inserting “or State or unit of local government” after “the nonprofit organization”; and
  - (B) by striking “quality and labeling” in each place it appears and inserting “safety and safety-related labeling”.

#### **SEC. 1023. REGULATIONS.**

Not later than 180 days after the date of the enactment of this section, the Secretary shall—

- (1) in consultation with the Secretary of Health Human Services, issue regulations with respect to the safety and safety-related labeling standards of apparently wholesome food and an apparently fit grocery product under section 22 of the Child Nutrition Act of 1966 (42 U.S.C. 1791);
- (2) issue guidance with respect to section 22 of the Child Nutrition Act of 1966 (42 U.S.C. 1791), including promoting awareness of food donation under such section.

## **Subtitle D—Miscellaneous**

#### **SEC. 1031. TECHNICAL AMENDMENTS.**

(a) COMMITTEE ON EDUCATION AND LABOR.—The following Acts are amended by striking “Committee on Education and the Workforce” each place such term appears in heading and text and inserting “Committee on Education and Labor”:

- (1) The Child Nutrition Act of 1966 (42 U.S.C. 1771 et seq.).
- (2) The Richard B. Russell National School Lunch Act (42 U.S.C. 1751 et seq.).

(b) OTHER AMENDMENTS.—Section 17(h)(4)(A)(vi) of the Child Nutrition Act of 1966 (42 U.S.C. 1786(h)(4)(A)(vi)) is amended by striking “and” at the end.

(c) CITATION TO SECTION 504 OF REHABILITATION ACT OF 1973.—Section 12(d)(3) of the Richard B. Russell National School Lunch Act (42 U.S.C. 1760(d)(3)) is

amended by striking “in the” and all that follows through the period at the end and inserting “in section 7 of the Rehabilitation Act of 1973 (29 U.S.C. 705).”

#### PURPOSE AND SUMMARY

The purpose of H.R. 8450, the *Healthy Meals, Healthy Kids Act*, is to modernize and reauthorize federal child nutrition programs to better meet the needs of children and families.

The *Healthy Meals, Healthy Kids Act* is a comprehensive reauthorization of child nutrition and related programs authorized under the *Richard B. Russell National School Lunch Act*<sup>1</sup> and the *Child Nutrition Act of 1966*.<sup>2</sup> These programs include, but are not limited to, the National School Lunch Program (NSLP), the Child and Adult Care Food Program (CACFP), the School Breakfast Program (SBP), and the Special Supplemental Nutrition Program for Women, Infants, and Children (WIC). Collectively, these programs ensure nutrition security for our nation’s infants and children, and they provide nutritious meals and snacks in a variety of settings. Child nutrition programs have not been reauthorized since 2010. Reauthorization will ensure greater certainty for child nutrition programs that fill a critical role in meeting the nutrition needs of children and families and get us closer to achieving our goal of ending child hunger.

H.R. 8450 builds upon the successes of prior child nutrition reauthorizations to meet current nutrition needs and respond to new needs as we emerge from the COVID–19 pandemic. H.R. 8450 expands school meals and out-of-school feeding programs and strengthens and expands WIC. This bill ensures alignment with the Dietary Guidelines for Americans<sup>3</sup> and establishes grant programs to improve kitchen infrastructure, invest in Farm to School, and support scratch cooking.

#### COMMITTEE ACTION

##### 117TH CONGRESS

On May 12, 2021, the Committee on Education and Labor’s (Committee) Subcommittee on Civil Rights and Human Services (CRHS Subcommittee) held a hearing titled “Examining the Policies and Priorities of the U.S. Department of Agriculture’s Food and Nutrition Service” (May 12 Hearing). The purpose of this hearing was to discuss President Biden’s Fiscal Year (FY) 2022 Budget proposal for child nutrition programs under the U.S. Department of Agriculture’s (USDA) Food and Nutrition Service (FNS) as well as the Biden Administration’s priorities for federal child nutrition programs. The Subcommittee heard testimony from Ms. Stacy Dean, Deputy Under Secretary for Food, Nutrition, and Consumer Services, USDA, Washington, DC.

On June 10, 2021, the CRHS Subcommittee held a hearing titled “Ending Child Hunger: Priorities for Child Nutrition Reauthorization.” The purpose of this hearing was to explore ideas for congress-

<sup>1</sup> The Richard B. Russell National School Lunch Act, Pub. L. No. 79–396, 60 Stat. (1946) (codified in scattered sections of 7 U.S.C.).

<sup>2</sup> Child Nutrition Act of 1966, Pub. L. No. 89–642, 80 Stat. (1966) (codified in scattered sections of 7 U.S.C.).

<sup>3</sup> U.S. DEP’T OF AGRIC. and U.S. DEP’T OF HEALTH & HUMAN SERVS. *Dietary Guidelines for Americans, 2020–2025, 9th Edition*. (December 2020). [https://www.dietaryguidelines.gov/sites/default/files/2020-12/Dietary\\_Guidelines\\_for\\_Americans\\_2020-2025.pdf](https://www.dietaryguidelines.gov/sites/default/files/2020-12/Dietary_Guidelines_for_Americans_2020-2025.pdf).

sional action to end child hunger, including through the reauthorization of federal child nutrition programs and additional federal investment. The Subcommittee heard testimony from: Mr. Michael Wilson, Director, Maryland Hunger Solutions, Baltimore, MD; Ms. Crystal Cooper, Executive Director, Nutrition Support Services in Chicago Public Schools, Chicago, IL; Mr. Brandon Lipps, Principal, Caprock Strategies, Alexandria, VA; and Mr. Tom Colicchio, Chef and Owner, Crafted Hospitality, New York, NY.

On July 28, 2021, the CRHS Subcommittee held a hearing titled “Food for Thought: Examining Federal Nutrition Programs for Young Children and Infants.” The purpose of this hearing was to discuss ways to improve and strengthen WIC and CACFP. The Subcommittee heard testimony from: Ms. Teresa Turner, MS, RD, LDN, SNS, FAND, Nutritionist, Child and Youth Services, United States Army, Glen Burnie, MD; Ms. Paula Garrett, MS, RD, Division Director for Community Nutrition, Virginia Department of Health, Richmond, VA; Ms. Jessica Burris, North Carolina WIC Participant and Breastfeeding Peer Counselor, Montgomery County Department of Health, Troy, NC; and Mr. Trevor Farrell, Senior Vice President and Chief Commercial Officer, Americas, Schreiber Foods, Inc., Green Bay, WI.

On June 23, 2022, the CRHS Subcommittee held a hearing titled “Examining the Policies and Priorities of the U.S. Department of Agriculture’s Food and Nutrition Service.” The purpose of the hearing was to discuss President Biden’s FY 2023 Budget proposal for child nutrition programs under FNS as well as the Biden Administration’s priorities for federal child nutrition programs. The Subcommittee heard testimony from Ms. Cindy Long, Administrator, Food and Nutrition Service, USDA, Washington, DC.

On July 27, 2022, the Committee marked up H.R. 8450. The Committee considered the following amendments to H.R. 8450:

- Representative Suzanne Bonamici (D–OR–1) offered an amendment in the nature of a substitute. The amendment was adopted by voice vote and made the following modifications:
  - adds improvement grants and technical assistance to support direct certification;
  - expands the request for information from food service management companies to include trends in compensation and benefits and requires the Secretary of Agriculture (Secretary) to issue a rule regarding food service management companies;
  - streamlines and clarifies the requirement for school food authorities to submit a report to the Secretary on the impact of scratch cooking at the conclusion of the grant period;
  - adds a prohibition on interchange and transaction fees on WIC vendors;
  - increases WIC back spend authority for food funds, nutrition services and administration funds, and the WIC Farmers’ Market Nutrition Program (FMNP);
  - adds a maximum FMNP benefit of \$100;
  - directs the Secretary to award competitive grants to states to award subgrants to improve nutrition in hard-to-reach areas under the Summer Food Service Program (SFSP);



- allows SFSP to operate at school sites during unanticipated closures;
- clarifies the application for the Summer Electronic Benefits Transfer (Summer EBT) Program;
- directs the Secretary to provide Summer EBT Program implementation grants to states and Indian Tribal organizations in FY 2023;
- requires school food authorities, in the context of administrative reviews and surveys, to note if they have experienced suspected, alleged, or confirmed noncompliance with Buy American requirements on the part of a distributor in the last 12 months;
- changes the timeframe in which the Secretary submits a report to Congress regarding the school food waste reduction grant program;
- increases the maximum Farm to School grant award to \$500,000 and removes the match requirement;
- updates the reimbursement amounts for the tribally operated meal and snack pilot project to include administrative funds for SFSP;
- updates the definitions of Indian Tribe and Tribal Operator;
- updates the definition of a covered child under the unpaid meal debt provision;
- updates the requirements for the Island Areas Eligibility Feasibility Study;
- clarifies the process and timing for updating the nutrition standards and adds a National Academies of Sciences, Engineering, and Medicine study as part of the process to ensure that school nutrition standards align with the Dietary Guidelines for Americans (DGAs);
- adds a requirement for the Secretary to annually post a list of schools in compliance with nutrition standards on the USDA website;
- includes additional language to ensure milk varieties consistent with the DGAs are made available; and
- makes minor and technical changes throughout.
- Chairman Bobby Scott (D-VA-3) offered a Democratic Manager's Amendment. The amendment was adopted by voice vote and made the following modifications:
  - allows a state to establish a system for statewide online application to determine eligibility for free or reduced price meals;
  - makes technical corrections to the commodity assistance provisions;
  - allows non-school sponsors under SFSP to utilize the offer versus serve provision;
  - makes minor and technical changes to the Summer EBT Program, CACFP, and the plant-based foods grant program;
  - adds appropriations to provide technical assistance to support the healthy food initiative and improve the nutritional quality of meals served in schools, including funding for a statewide nutrition education coordinator;

- clarifies that non-dairy alternatives (when not provided for a medical reason or dietary reason) must be nutritionally equivalent to fluid milk and meet nutritional standards established by the Secretary;
  - clarifies the application of the food donation provisions to instances where donations are given to animal shelters; and
  - makes minor and technical changes throughout.
  - Representative Lisa McClain (R-MI-10) offered an amendment to allow any vegetable to be substituted for fruit in the School Breakfast Program. The amendment was withdrawn.
  - Representative Glenn Thompson (R-PA-15) offered an amendment to allow any milk to be served in certain school meals programs and provided through WIC. The amendment was defeated by voice vote.
  - Representative Tim Walberg (R-MI-7) offered an amendment to ensure that schools may make food substitutions for religious dietary needs. The amendment was adopted by voice vote.
  - Representative Bob Good (R-VA-5) offered an amendment to require nutrition regulations promulgated under the bill to make grain-based desserts eligible for reimbursement. The amendment was withdrawn.
  - Representative McClain offered an amendment to prohibit changes in the bill from taking effect until an independent economist certifies that the bill will not increase inflation and inflation drops to two percent or below. The amendment was defeated by a vote of 19 Yeas and 27 Nays.
  - Representative Diana Harshbarger (R-TN-1) offered an amendment to require a feasibility study prior to the issuance of new or updated regulations on school meal programs to determine if potential nutrition standards would impact cost or increase food waste and to examine the time necessary for school meal program operators to have food that meets the standards available for purchase. The amendment was defeated by a vote of 19 Yeas and 27 Nays.
  - Representative Elise Stefanik (R-NY-21) offered an amendment to require WIC to contract with two infant formula manufacturers per state or state consortia. The amendment was defeated by a vote of 20 Yeas and 24 Nays.
  - Representative Glenn Grothman (R-WI-6) offered an amendment to prohibit the enforcement of the May 25, 2022, memorandum on Title IX enforcement as it relates to child nutrition programs. The amendment was defeated by a vote of 20 Yeas and 25 Nays.
  - Representative Mary Miller (R-IL-15) offered an amendment to strike the word “individual” in each place it appears in the definitions of “breastfeeding woman” and “postpartum woman” and insert “woman” in each instance and strike the definition of “pregnant woman.” The amendment was defeated by a vote of 20 Yeas and 25 Nays.
- The Committee voted to report H.R. 8450 favorably, as amended, to the House of Representatives by a vote of 27 Yeas and 19 Nays.

## COMMITTEE VIEWS

Since the 1930s, the federal government has invested in programs to feed children, beginning with aid provided to support school lunch programs.<sup>4</sup> These programs have evolved, and today, federal child nutrition programs are generally authorized in two federal statutes. The *Richard B. Russell National School Lunch Act*<sup>5</sup> was first signed into law by President Truman in 1946 to create the NSLP to bolster national security threatened by rampant malnutrition among military recruits. The *Child Nutrition Act of 1966*<sup>6</sup> later authorized the SBP and other relevant programs. All of these programs are administered by USDA. Both statutes are generally reauthorized by Congress at the same time in a process commonly referred to as Child Nutrition Reauthorization (CNR).

The most recent CNR was the *Healthy Hunger-Free Kids Act of 2010* (HHKFA), which received bipartisan congressional support and was signed into law by President Obama on December 13, 2010.<sup>7</sup> After September 30, 2015, that authorization lapsed. Still, with few exceptions, the child nutrition programs continue to operate without disruption through annual appropriations. The *Healthy Meals, Healthy Kids Act* provides an opportunity to address issues that could not have been forecasted when HHKFA was enacted, such as meeting the nutrition needs of our nation's children amidst a public health crisis. This reauthorization is an important opportunity for Congress to assess what is working from the prior reauthorization—which expired nearly seven years ago—and build upon lessons learned to address the current reality of child nutrition programs.

The critical role of federal nutrition programs in ensuring the food security and health of children was made clear during the COVID-19 pandemic. As the nation emerges from this public health and economic crisis, Congress must take action to ensure that families continue to receive the support they need by expanding access to federal child nutrition programs. H.R. 8450 implements the lessons from the pandemic as well as the changing landscape over the past seven years since the prior authorization to modernize the programs and ensure that they can meet the needs of children and families today. Fundamentally, H.R. 8450 is a comprehensive and long overdue six-year child nutrition reauthorization that invests in the nation's future.

## EXPANDING AND PROTECTING ACCESS TO SCHOOL MEALS

Federal school meal programs provide reimbursement to schools that provide healthy meals to students. Meals are served to all children in schools that participate in the programs and the reimbursement rate varies based on whether the meal is provided to a student who qualifies for free or reduced price meals. USDA sets income eligibility guidelines annually based upon the federal pov-

<sup>4</sup>Kara Clifford Billings, *School Meals and Other Child Nutrition Programs: Background and Funding (R46234v8)*, CONG. RSCH. SERV. (2022), <https://crsreports.congress.gov/product/pdf/R/R46234>.

<sup>5</sup>The Richard B. Russell National School Lunch Act, Pub. L. No. 79-396, 60 Stat. (1946) (codified in scattered sections of 7 U.S.C.).

<sup>6</sup>Child Nutrition Act of 1966, Pub. L. No. 89-642, 80 Stat. (1966) (codified in scattered sections of 7 U.S.C.).

<sup>7</sup>Healthy, Hunger-Free Kids Act of 2010, Pub. L. No. 111-296, 124 Stat. 3183 (2010) (codified in scattered sections of 7 U.S.C., 20 U.S.C. and 42 U.S.C.).

erty guidelines that determine whether a child is eligible for free or reduced price meals. Families making under 130 percent of the federal poverty guidelines qualify for free meals and families making between 130 and 185 percent of the federal poverty guidelines qualify for reduced price lunch. A child can be certified for a free or reduced price meal through household income eligibility typically through household applications, categorical (or automatic) eligibility via household applications or direct certification, or the community eligibility provision (CEP).

In 2019, roughly 30 million children participated in the NSLP daily and nearly 15 million children participated in the SBP.<sup>8</sup> These programs are especially impactful for children from low-income and food insecure families, as children who participate in SBP and NLSP receive over half of their daily energy intake from school.<sup>9</sup> School meal programs have multiple benefits to children including increasing focus in the classroom, improving educational outcomes, and reducing food insecurity.<sup>10</sup> Additionally, children who participate in school meal programs consume more whole grains, fruits, and vegetables and have a better overall diet than children who do not participate in school meals.<sup>11</sup>

#### *Building on the Success of Community Eligibility*

CEP was first authorized in 2010 and was available nationwide beginning July 1, 2014.<sup>12</sup> CEP allows schools and local educational agencies (LEAs) to provide free breakfast and lunch to all enrolled students if more than 40 percent of the students are directly certified for free school meals by virtue of their household participation in other means-tested programs, such as the Supplemental Nutrition Assistance Program (SNAP) or Temporary Assistance for Needy Families (TANF). The percentage of children who are directly certified is called the identified student percentage (ISP). States may also opt-in to use Medicaid data through a USDA demonstration project to evaluate the use of Medicaid eligibility data to directly certify children for free or reduced price school meals.

Community eligibility has been linked to positive outcomes for students, including lower disciplinary rates and healthier body mass indexes.<sup>13</sup> CEP helps fight the stigma of receiving free and reduced price meals by providing universal benefits without having to prove eligibility. Additionally, many immigrant families have indicated reluctance to complete meal applications due to their immigration status.<sup>14</sup> CEP also reduces barriers for families since it

<sup>8</sup> *National Level Annual Summary Tables: FY 1969–2021*, U.S. DEPT OF AGRIC. FOOD & NUTRITION SERV. (Jul. 8, 2022), <https://www.fns.usda.gov/pd/child-nutrition-tables>.

<sup>9</sup> *The Importance of School Meals*, NO KID HUNGRY (last visited Aug. 5, 2022), <https://state.nokidhungry.org/new-york/wp-content/uploads/sites/16/2020/08/Importance-of-School-Meals.pdf>.

<sup>10</sup> *Why School Meals?*, HUNGER FREE VERMONT (last visited Aug. 5, 2022), <https://www.hungerfreevt.org/why-school-meals#:~:text=School%20meals%20are%20a%20powerful,source%20or%20pack%20from%20home>.

<sup>11</sup> *School Nutrition And Meal Cost Study: Volume 4—Student Participation, Satisfaction, And Dietary Intakes*, U.S. DEPT OF AGRIC. FOOD & NUTRITION SERV. (Apr. 2019), <https://fns-prod.azureedge.us/sites/default/files/resource-files/SNMCS-Volume4-Summary.pdf>.

<sup>12</sup> *The Community Eligibility Provision (CEP): What Does It Mean For Your School or Local Educational Agency?*, U.S. DEPT OF AGRIC. FOOD & NUTRITION SERV. (Apr. 19, 2019), <https://www.fns.usda.gov/cn/community-eligibility-provision>.

<sup>13</sup> Amelie A. Hecht et.al., *Impact of The Community Eligibility Provision of the Healthy, Hunger-Free Kids Act on Student Nutrition, Behavior, and Academic Outcomes: 2011–2019*, 110 AM. J. OF PUB. HEALTH, 1405, 1407 (2020).

<sup>14</sup> Cecibel Henriquez, *New Report Shows that Fear in Immigrant Communities Kept Children from Getting the Food They Needed*, NO KID HUNGRY (Dec. 9, 2021), <https://state.nokidhungry.org/new-york/wp-content/uploads/sites/16/2020/08/Importance-of-School-Meals.pdf>.

eliminates the need for families to spend time filling out paperwork. Schools benefit from CEP as school personnel enjoy more streamlined meal programs and less administrative work. Finally, healthier meals for students have shown to increase scores on achievement tests.<sup>15</sup>

When utilizing CEP, schools are reimbursed based on an estimate of the number of students eligible for free school meals using a multiplier of 1.6 times the ISP. Schools with lower ISPs do not always see CEP as a financially viable option; in some areas of the country, an estimated 30 percent of eligible schools do not elect to participate in CEP.<sup>16</sup> H.R. 8450 increases the multiplier used to determine school reimbursement rates from 1.6 to 2.5, thereby increasing the reimbursement level for schools and incentivizing more schools to participate. An increase in the multiplier encourages CEP participation in school districts with high costs for producing meals, such as rural districts that often have smaller economies of scale and limited food purchasing and transportation options.<sup>17</sup>

Additionally, H.R. 8450 lowers the participation threshold for schools from 40 percent to 25 percent of identified students and allows statewide election of CEP. A new statewide CEP option would ensure that states with high child poverty rates can administer the school breakfast and lunch programs more effectively.<sup>18</sup> It also ensures that low-income students can easily receive free meals regardless of whether they transfer schools or poverty is not concentrated in their area.<sup>19</sup>

### *Expanding Direct Certification*

Direct certification allows children from low-income families to access free school meals without having to complete an additional application if they are already participating in certain benefits programs. Direct certification is therefore beneficial for both schools and families as it does not require any individual household paperwork. Instead, states and school districts use data-matching between school enrollment information and state agency program enrollment at least three times per year.<sup>20</sup> USDA introduced the policy of direct certification for free meals in the late 1980s.<sup>21</sup> In 2004, Congress began requiring school districts to directly certify children residing in households that receive SNAP benefits, and HHFKA re-

[www.nokidhungry.org/blog/new-report-shows-fear-immigrant-communities-kept-children-getting-food-they-needed](http://www.nokidhungry.org/blog/new-report-shows-fear-immigrant-communities-kept-children-getting-food-they-needed).

<sup>15</sup>Michael L. Anderson et al., *School Meal Quality and Academic Performance*, UC BERKELEY (Oct. 23, 2018), [https://are.berkeley.edu/~mlanderson/pdf/school\\_lunch.pdf](https://are.berkeley.edu/~mlanderson/pdf/school_lunch.pdf).

<sup>16</sup>*Community Eligibility: The Key to Hunger-Free Schools: School Year 2019–2020*, FOOD RSCH. & ACTION CTR. (May 2020), <https://frac.org/cep-report-2020>.

<sup>17</sup>Zoë Neuberger, *American Families Plan Could Substantially Reduce Children's Food Hardship*, CTR. ON BUDGET & POL'Y PRIORITIES (May 2020), <https://www.cbpp.org/sites/default/files/5-21-21pov.pdf>.

<sup>18</sup>Emily Gutierrez, *The States That Need It Most Might Not Enroll in Statewide Free Meals*, URB. INST. (Nov. 2021), <https://www.urban.org/sites/default/files/publication/105065/the-states-that-need-it-most-might-not-enroll-in-statewide-free-meals.pdf>.

<sup>19</sup>Zoë Neuberger, *Nutrition Provisions in New House Build Back Better Legislation Could Substantially Reduce Children's Food Hardship*, CTR. ON BUDGET & POL'Y PRIORITIES (Nov. 2021), <https://www.cbpp.org/sites/default/files/11-5-21fa.pdf>.

<sup>20</sup>Alison Maurice, *Direct Certification Improves Low-Income Student Access to School Meals: An Updated Guide to Direct Certification*, FOOD RSCH. & ACTION CTR. (Nov. 2018), <https://frac.org/wp-content/uploads/direct-cert-improves-low-income-school-meal-access.pdf>.

<sup>21</sup>Philip Gleason et al., *Direct Certification in the National School Lunch Program—Impacts on Program Access and Integrity*, MATHEMATICA (2003), [https://www.ers.usda.gov/webdocs/publications/43317/15905\\_efan03009fm\\_1\\_1.pdf?v=0](https://www.ers.usda.gov/webdocs/publications/43317/15905_efan03009fm_1_1.pdf?v=0).

quired states to directly certify at least 95 percent of children residing in households that receive SNAP benefits by the 2013–2014 school year.<sup>22</sup> HHFKA also created a pilot program for states to use Medicaid data for direct certification in addition to SNAP data. In 2020, USDA found that 1.2 million students were directly certified for free meals based on access to Medicaid data in the 13 states that had opted into the pilot.<sup>23</sup> Over the years, USDA and Congress have empowered states to include additional data in their direct certification process, such as TANF and foster care data.<sup>24</sup> As a result of expanding direct certification, state administrative costs decreased over the 2019–2020 school year.<sup>25</sup>

H.R. 8450 builds on the success of direct certification by discontinuing the Medicaid pilot program and permanently allowing children in Medicaid to directly qualify to receive free or reduced price meals. Under the bill, children who are enrolled in Medicaid and are members of households with incomes at or below 133 percent of the poverty line, or who are eligible to receive assistance under Medicaid by virtue of receiving Adoption Assistance, Social Security Income, or Guardianship Assistance can be directly certified to receive free school meals. The bill also allows children who are enrolled in Medicaid and who are members of households with incomes between 133 and 185 percent of the poverty line to be directly certified for reduced price meals.

#### *Addressing Lunch Shaming and Unpaid Meal Debt*

Not every child who is food insecure qualifies for free or reduced price school meals. An estimated 29 percent of individuals who are food insecure live in a household with an income that makes them unlikely to qualify for federal assistance.<sup>26</sup> Many students can begin accumulating a negative balance on their school meal account and, in fact, 75 percent of school districts surveyed by the School Nutrition Association in 2019 reported that they had outstanding school lunch debts.<sup>27</sup> Reports have indicated that students who were unable to pay have had their food thrown away, been subjected to wearing wristbands and stamps, and have had their extracurricular activities limited.<sup>28</sup>

The notion of shaming, embarrassing, and penalizing students and families struggling to afford school meals is unacceptable. H.R. 8450 prohibits these alienating practices and requires schools to attempt to directly certify students with unpaid meal debt. The legislation also allows schools to be retroactively reimbursed for meals served once a child is deemed eligible and necessary documentation is provided by the School Food Authority (SFA)—the administering

<sup>22</sup> Madeline Levin and Zoë Neuberger, *Improving Direct Certification Will Help More Low-Income Children Receive School Meals*, CTR. ON BUDGET & POLY PRIORITIES (July 2014), <https://www.cbpp.org/sites/default/files/atoms/files/7-25-14fa.pdf>.

<sup>23</sup> Lara Hulsey et al., *Direct Certification with Medicaid for Free and Reduced-Price Meals (DCM-F/RP) Demonstration, School Year 2019–2020 Report*, MATHEMATICA (Mar. 2022), <https://www.fns.usda.gov/cn/usda-dcm-frp-demonstration>.

<sup>24</sup> Levin and Neuberger, *supra* note 22.

<sup>25</sup> Hulsey, *supra* note 23.

<sup>26</sup> Craig Gunderson et al., *Map The Meal Gap 2019*, FEEDING AM. (2019), [https://www.feedingamerica.org/sites/default/files/2019-05/2017-map-the-meal-gap-all-modules\\_0.pdf](https://www.feedingamerica.org/sites/default/files/2019-05/2017-map-the-meal-gap-all-modules_0.pdf).

<sup>27</sup> SCH. NUTRITION ASS'N., *School Meal Trends & Stats*, (last visited Aug. 5, 2022), <https://schoolnutrition.org/aboutschoolmeals/schoolmealtrendsstats/#6>.

<sup>28</sup> Crystal FitzSimons, *School Lunch Debt and Lunch Shaming Is a Problem That Needs a National Solution*, NBC NEWS (Oct. 16, 2019), <https://www.nbcnews.com/think/opinion/school-lunch-debt-lunch-shaming-problem-needs-national-solution-ncna1066461>.

unit for the operation of a school feeding program—to the state agency. Additionally, H.R. 8450 establishes an advisory council to provide recommendations to the Department on addressing unpaid meal debt that ensures that no student is stigmatized and that school food authorities can maintain fiscal solvency.

#### *Providing Flexibility During Qualified Emergencies*

During the COVID-19 pandemic, the USDA's FNS has provided various waivers to child nutrition program operators to allow them to adjust and react to the complexities arising from the pandemic.<sup>29</sup> Many of these administrative simplifications—such as waiving certain reporting requirements—have eased the burden on operators during these challenging and uncertain times. H.R. 8450 provides the Secretary with the authority to waive certain statutory or regulatory requirements under child nutrition programs on a state-by-state or national level in the event of a qualifying emergency, such as a public health emergency or a federally declared natural disaster. This authority is temporary and limited to respond to extenuating circumstances and prevent meal disruption.

#### INVESTING IN SCHOOL MEAL CAPACITY

Ongoing supply chain disruptions that began in 2020 persist as a result of pandemic related interruptions in production and regional instability in areas with high exports of wheat, including Ukraine.<sup>30</sup> As a result, SFAs have been increasingly concerned about supply shortages and have been forced to make last minute arrangements to accommodate supply challenges (*e.g.*, delayed and incorrect deliveries).<sup>31</sup> H.R. 8450 increases the reimbursement rate for school lunches by ten cents and provides six cents in commodity assistance per school breakfast. These increases reduce the pressure on schools as they try to keep pace with rising costs. Such investments are crucial to ensuring school food service directors have the means to serve meals that meet or exceed the nutrition standards consistent with the DGAs.<sup>32</sup> Additionally, H.R. 8450 provides grants for the purchase of kitchen equipment and software to support the establishment, maintenance, and expansion of child nutrition programs in schools. Separately, school food authorities can receive subgrants from state agencies to purchase or improve equipment needed to serve healthy meals. These new grant programs will help schools improve food safety and promote scratch cooking to better serve nutritious meals.

#### *Investing in Local Communities and Sustainability*

H.R. 8450 ensures schools have the financial means and technical assistance to not only serve kids nutritious, fresh, and appealing meals, but support local producers and communities. SFAs na-

<sup>29</sup> U.S. DEPT OF AGRIC. FOOD & NUTRITION SERV. *FNS Responds to COVID-19* (last visited Aug. 5, 2022), <https://www.fns.usda.gov/coronavirus>.

<sup>30</sup> Press Release, U.S. Dep't of Agric., USDA Announces Framework for Shoring Up the Food Supply Chain and Transforming the Food System to Be Fairer, More Competitive, More Resilient (June 1, 2022), <https://www.usda.gov/media/press-releases/2022/06/01/usda-announces-framework-shoring-food-supply-chain-and-transforming>.

<sup>31</sup> SCH. NUTRITION ASS'N., SCH. NUTRITION FOUNDATION, AND NO KID HUNGRY, *Staying Afloat in a Perfect Storm: The K-12 School Nutrition Segment Contends with Historic Supply Challenges*, (2022), <https://schoolnutrition.org/resource/2022-supply-chain-report-staying-afloat-in-a-perfect-storm/>.

<sup>32</sup> *Id.*

tionwide spent over \$1 billion on local foods during the 2018–2019 school year.<sup>33</sup> Under the Buy American provisions in the *National School Lunch Act*,<sup>34</sup> SFAs in the continental United States are required to purchase domestic agriculture commodities and food products to the “maximum extent practicable.”<sup>35</sup> There are two exceptions to the Buy American rule: (1) when a product is not produced or manufactured in the U.S. in sufficiently available quantities, and (2) when costs are significantly higher to buy a domestic product.<sup>36</sup> While purchasing domestically benefits local communities and empowers farmers and their families, a lack of clarity surrounding compliance requirements has stymied enforcement, among other challenges. To support local procurement and local farmers, H.R. 8450 clarifies Buy American requirements for SFAs in the context of existing administrative review processes. The bill also allows the Secretary to obtain information on the availability of domestically-produced products and where cost differentials between domestically-produced and foreign goods are prohibitive. Additionally, the bill allows SFAs to report suspected, alleged, or confirmed noncompliance on the part of food distributors. Together, these provisions clarify existing standards for Buy American compliance, collect compliance information in a way that is usable and meaningful for both states and USDA, and enable adequate oversight of the law.

H.R. 8450 expands the list of criteria institutions are encouraged to use to purchase food for their school meal programs, such as unprocessed foods that were locally grown and raised, foods produced sustainably or organically, or foods produced by a small farm or underserved producer. In addition, H.R. 8450 invests in the proven success of the Farm to School Program. First authorized in 2010, Farm to School familiarizes students with where their food comes from through education activities, taste tests, school gardens, field trips, and local procurement.<sup>37</sup> Schools participating in the Farm to School Program have reported benefits, including higher quality meals, increased student awareness of healthy food and agriculture, lower program costs, and reduced food waste.<sup>38</sup> Schools have also experienced how the Farm to School Program can greatly benefit the surrounding communities, through job creation and increased economic resiliency.<sup>39</sup> In recent years, participation in the program has increased, with an estimated two-thirds of SFAs participating in the 2018–2019 school year and an increase to nearly three-fourths for the 2019–2020 school year.<sup>40</sup> H.R. 8450 makes an important investment in this program by tripling the grant author-

<sup>33</sup> *Farm to School Census Results Overview*, U.S. DEP’T OF AGRIC. FOOD & NUTRITION SERV. (last visited Jul. 15, 2022), <https://farmtoschoolcensus.fns.usda.gov/census-results-overview>.

<sup>34</sup> Richard B. Russell National School Lunch Act, 79 P.L. 396, 60 Stat. 230 (2010) (codified in scattered sections of 7 U.S.C., 20 U.S.C. and 42 U.S.C.).

<sup>35</sup> *Buy American Provision Fact Sheet*, U.S. DEP’T OF AGRIC. FOOD & NUTRITION SERV. (2019), [https://fns-prod.azureedge.us/sites/default/files/resource-files/FactSheet\\_BuyAmerican.pdf](https://fns-prod.azureedge.us/sites/default/files/resource-files/FactSheet_BuyAmerican.pdf); 42 U.S.C. § 1760(n).

<sup>36</sup> *Compliance with and Enforcement of the Buy American Provision in the NSLP*, U.S. DEP’T OF AGRIC. FOOD & NUTRITION SERV. (2017), <https://www.fns.usda.gov/nslp/compliance-enforcement-buy-american>.

<sup>37</sup> *The USDA Farm to School Grant Program*, U.S. DEP’T OF AGRIC. FOOD & NUTRITION SERV. (2021), [https://fns-prod.azureedge.us/sites/default/files/resource-files/USDA\\_OCFS\\_FactSheet\\_GrantProgram\\_508.pdf](https://fns-prod.azureedge.us/sites/default/files/resource-files/USDA_OCFS_FactSheet_GrantProgram_508.pdf).

<sup>38</sup> Ellen Bobronnikov et al., *2019 Farm to School Census*, ABT ASSOCIATES (2019), <https://fns-prod.azureedge.us/sites/default/files/resource-files/2019-Farm-to-School-Census.pdf>.

<sup>39</sup> *Id.*, at 38.

<sup>40</sup> *Id.*, at 38.



ization level from \$5,000,000 to \$15,000,000 per year, striking the match requirement, and increasing the maximum grant to \$500,000.<sup>41</sup>

*Supporting Equitable Procurement and Improving Meal Practices*

H.R. 8450 extends the authorization of procurement training funding to ensure compliance with Buy American requirements, procurement of safe foods, and support for procurement of goods and services for programs under the *Child Nutrition Act of 1966*. Education surrounding sustainable practices can empower children and their families to make informed and environmentally friendly choices and shift toward more equitable and sustainable practices.<sup>42</sup> H.R. 8450 also establishes a grant program to carry out food waste management and reporting, prevention, education, and reduction projects in schools. While increased food waste is sometimes attributed to strong nutrition standards, a 2014 report revealed that the updated school meal standards that went into effect in 2012 did not result in increased food waste.<sup>43</sup> A 2019 study on the barriers and motivators of food waste revealed that poor food preparation and cooking methods, lack of food choices, and school policies around meal time increased food waste in schools.<sup>44</sup> To support food waste reduction efforts directly, H.R. 8450 takes steps to improve the capacity of school kitchens and thereby schools' ability to serve healthy and appealing foods. The bill establishes a grant program for school food authorities to promote scratch cooking through a variety of activities, including offering professional development, compensating employees for additional food preparation, and providing technical assistance and student education.

For schools committed to environmental sustainability and limiting pollution, H.R. 8450 establishes a pilot grant program to support plant-based foods in schools participating in NSLP. Research has shown that transitioning to a lower carbon food diet is essential to meeting global environmental targets as the food and agriculture sector accounts for between 21 and 37 percent of global greenhouse gas emissions.<sup>45</sup> Given that 30 million children are served through NSLP,<sup>46</sup> the program is uniquely situated to play a role in mitigating greenhouse emissions and subsequent environmental impacts. Additionally, many schools are interested in exploring more plant-based options since studies have shown that consuming plant-based foods reduces the risk of diabetes and cardiovascular disease, maintain a healthy weight, and protect against

<sup>41</sup>The Committee notes that the H.R. 8239, *Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 2023*, which passed the House Committee on Appropriations on June 23, 2022, also increased the maximum grant award to \$500,000.

<sup>42</sup>*Child Nutrition Act Reauthorization—2022*, NAT'L FARM TO SCHOOL NETWORK (last visited Aug. 5, 2022), <https://www.farmtoschool.org/policy/cnr2022>.

<sup>43</sup>Juliana Cohen et al., *Impact of the New U.S. Department of Agriculture School Meal Standards on Food Selection, Consumption, and Waste*, 46 AM. J. OF PREVENTIVE MEDICINE 388, 388 (2014).

<sup>44</sup>Chenchen Zhao et al., *Plate Waste in School Lunch: Barriers, Motivators, and Perspectives of SNAP-Eligible Early Adolescents in the US*, 51 J. OF NUTRITION EDUC. AND BEHAVIOR 967, 967 (2019).

<sup>45</sup>Chaopeng Hong et al., *Global And Regional Drivers Of Land-Use Emissions In 1961–2017*, 589 NATURE 554, 554 (2021).

<sup>46</sup>U.S. DEPT OF AGRIC. FOOD & NUTRITION SERV., *supra* note 4.

certain cancers and diseases.<sup>47</sup> Plant-based diets have also been identified as a potential tool to address racial health disparities.<sup>48</sup> The pilot program aims to promote sustainable practices in school lunches through professional development training, technical assistance, student engagement and education, and outreach.

STRENGTHENING AND ENSURING EVIDENCE-BASED NUTRITION  
STANDARDS AND DEVELOPING LIFE-LONG EATING HABITS

*Updating Nutrition Standards in Meal Patterns*

Often, more than half of a child's daily caloric intake comes from school meals, as breakfast and lunch provide one-fourth and one-third of a child's total daily caloric intake, respectively.<sup>49</sup> With a substantial percentage of calories consumed from school meals, high nutrition standards are vital. High standards also provide us a tool for achieving greater health equity, acknowledging that NSLP and SBP serve a high percentage of low-income, children of color,<sup>50</sup> and Black and Hispanic communities face food insecurity and diet-related chronic diseases at a disproportionate rate.<sup>51</sup> In order to address health disparities and support racial equity in school meals, it is important that the nutrition standards conform to recommendations that are evidence-based.

HHFKA required the Secretary to promulgate regulations to update meal patterns and nutrition standards based upon recommendations made by the Food and Nutrition Board of the National Research Council of the National Academy of Science.<sup>52</sup> The updated standards resulted in an overall improvement in the nutritional quality of meals.<sup>53</sup> The Healthy Eating Index (HEI) measures the diet quality of how consistent meals are with the recommendations of the DGAs by assigning scores out of 100 total possible points. In school year (SY) 2009–2010, the total HEI for lunch was 58 percent of the maximum score and the HEI for breakfast was 50 percent of the maximum score.<sup>54</sup> As a result of HHFKA, the updated nutrition standards went into effect in SY 2012–2013 and by SY 2014–2015, the HEI score for lunch was 82 percent of the maximum score and the HEI for breakfast was 71 percent of the maximum score, both demonstrating a statistically

<sup>47</sup> Renata Micha, et al., *Red and Processed Meat Consumption and Risk of Incident Coronary Heart Disease, Stroke, and Diabetes Mellitus: A Systematic Review and Meta-Analysis*, 121 CIRCULATION, 2271, 2271 (2010).

<sup>48</sup> Samara R. Sterling & Shelly-Ann Bowen, *The Potential for Plant-Based Diets to Promote Health Among Blacks Living in the United States*, 11 NUTRIENTS 2915, 2915 (2019).

<sup>49</sup> *Meal Patterns for Grades K–12 In School Nutrition Programs*, CONNECTICUT DEP'T OF EDUC. (last visited Aug. 5, 2022), <https://portal.ct.gov/SDE/Nutrition/Meal-Patterns-School-Nutrition-Programs/Documents>.

<sup>50</sup> Mary Kay Fox et al., *School Nutrition and Meal Cost Study Final Report Volume 4: Student Participation, Satisfaction, Plate Waste, and Dietary Intakes*, MATHEMATICA (Apr. 2019), <https://www.mathematica.org/publications/school-nutrition-and-meal-cost-study-final-report-volume-4-student-participation-satisfaction-plate>.

<sup>51</sup> Alisha Coleman-Jensen et al., *Household Food Security in the United States in 2020*, U.S. DEP'T OF AGRIC. ECON. RSCH. SERV. (2021), <https://www.ers.usda.gov/webdocs/publications/102076/err-298.pdf?v=7553.8>; Debbie Thompson et al., *Perspectives of Black/African American and Hispanic Parents and Children Living in Under-Resourced Communities Regarding Factors That Influence Food Choices and Decisions: A Qualitative Investigation*, 8 CHILDREN 236, 236 (2021).

<sup>52</sup> Healthy, Hunger-Free Kids Act of 2010, Pub. L. No. 111–296, 124 Stat. 3183 (2010) (codified in scattered sections of 7 U.S.C., 20 U.S.C. and 42 U.S.C.).

<sup>53</sup> Elizabeth C. Gearan & Mary Kay Fox, *Updated Nutrition Standards Have Significantly Improved the Nutrition Quality of School Lunches and Breakfasts*, 120 J. ACAD. NUTR. DIET. 363, 363 (2020).

<sup>54</sup> Gearan, *supra* note 53.

significant improvement.<sup>55</sup> Although HHFKA updated the standards for meals and foods served in schools, there is no process outlined in the statute for updating the nutrition standards based on the most recent iteration of the DGAs. H.R. 8450 adds requirements to ensure that the nutrition standards align with the newest DGAs and the latest evidence. H.R. 8450 requires the Secretary to promulgate regulations to update the nutrition standards to be consistent with the most recent DGAs not less than once every ten years or not later than one year after two consecutive publications.

*Supporting the National Hunger Hotline and Clearinghouse*

On behalf of USDA, the National Hunger Clearinghouse/National Hunger Hotline is operated by Hunger Free America and serves as a resource for low-income individuals or communities on how and where to obtain food. The database provides information about where individuals can access soup kitchens, food pantries, gleaning programs, and food banks, as well as federal nutrition assistance programs. This database houses over 15,000 listings.<sup>56</sup>

In 2020, the call volume into the National Hunger Hotline was 308 percent higher than in 2019 while federal funding remained the same.<sup>57</sup> In fact, federal funding for the National Hunger Hotline has remained at \$250,000 annually for more than ten years.<sup>58</sup> H.R. 8450 responds to the increased demand by doubling the authorization for appropriations from \$250,000 to \$500,000 for each fiscal year through FY 2028.

*Enhancing Nutrition Education*

Nutrition education in schools can help students establish healthy eating behaviors and empower them to make more nutritious food and beverage choices. A school's role in providing nutrition education to students can include offering more nutritious and appealing foods and beverages, displaying consistent and accurate messaging about good nutrition, and providing different ways to learn about and practice healthy eating. Teaching children about nutrition in schools can help them learn about the food groups and benefits to eating a variety of foods, teach them to limit beverages higher in added sugars and foods higher in saturated fat, and how to follow an eating pattern that will support their growth and development.<sup>59</sup>

Nutrition education can be incorporated in the classroom as health education or integrated throughout the curriculum in other subjects. Activities such as gardening, cooking demonstrations, and field trips can also be used to incorporate nutrition education, where having taste tests in the cafeteria, displaying posters and artwork promoting healthy eating, and sending resources and materials home to families can be opportunities for learning throughout the day. H.R. 8450 aims to enhance nutrition education by al-

<sup>55</sup> Gearan, *supra* note 53.

<sup>56</sup> Letter from Joel Berg, CEO, Hunger Free America, to Representative Robert Scott, Chairman, H. Comm. On Educ. & Labor, and Senator Debbie Stabenow, Chair, of the S. Comm. On Ag. (Apr. 13, 2021) (on file with committee staff).

<sup>57</sup> *Id.* at 56.

<sup>58</sup> *Id.* at 56.

<sup>59</sup> *Opportunities for Nutrition Education in Schools*, U.S. DEPT OF HEALTH & HUMAN SERVS. CTRS. FOR DISEASE CONTROL AND PREVENTION (2019), [https://www.cdc.gov/healthyschools/nutrition/pdf/308155-A\\_FS\\_SchoolNutritionEd-508.pdf](https://www.cdc.gov/healthyschools/nutrition/pdf/308155-A_FS_SchoolNutritionEd-508.pdf).

lowing Team Nutrition funds to be used for hiring qualified nutrition educators to carry out nutrition education programs in schools.

### *Ensuring Adequate Meal Time*

Ensuring a child has enough time to eat a meal is an important factor in reducing food waste and making sure the child has proper nutrition. The Centers for Disease Control and Prevention (CDC) recommends that children have at least 20 minutes of “seat time” to eat and socialize.<sup>60</sup> Seat time refers to the amount of time allocated to eating meals, not considering the time waiting in line for food, using the restroom, waiting to pay, cleaning up afterwards, or any other activity done during meal periods.<sup>61</sup>

When students have enough time to eat, there is less plate waste<sup>62</sup> and more consumption of fruits and vegetables as well as other meal components that provide necessary nutrients for optimal growth and development.<sup>63</sup> H.R. 8450 requires the Secretary to enter into an agreement with an independent, nonpartisan, science-based research organization to carry out a study on the time lunches are served, recess is offered, and the duration of lunch periods. Within one year of the appropriation of funds, the Secretary is required to partner with the Secretary of Education to form a task force to review the study and issue guidance on best practices for meal time, recess, and duration of lunch periods.

### *Responding to the Health Needs of Students*

An eating disorder is a serious and potentially fatal mental illness that relates to severe persistent disturbances in eating behaviors and negatively affects an individual’s health, emotions, thoughts, and ability to function.<sup>64</sup> Anorexia nervosa is the most severe and deadly eating disorder characterized by restrictive eating, food avoidance, compulsive exercise, extreme fear of gaining weight, and distorted perception of weight or body shape.<sup>65</sup> Eating disorders affect people of different ages, races, genders, and socioeconomic groups, with a higher risk of prevalence in 15–19-year-old girls.<sup>66</sup>

H.R. 8450 incorporates mental health promotion and education, including awareness of eating disorders, into local school wellness policies.<sup>67</sup> H.R. 8450 increases investments, up to \$5,000,000 from

<sup>60</sup> *Making Time for School Lunch*, U.S. DEP’T OF HEALTH & HUMAN SERVS. CTRS. FOR DISEASE CONTROL & PREVENTION (Sept. 11, 2019), [https://www.cdc.gov/healthyschools/nutrition/pdf/310518-A\\_FS\\_SchoolLunchUpdate\\_508.pdf](https://www.cdc.gov/healthyschools/nutrition/pdf/310518-A_FS_SchoolLunchUpdate_508.pdf).

<sup>61</sup> *Ibid.*

<sup>62</sup> See Ethan A. Bergman et al., *The Relationship Between the Length of the Lunch Period and Nutrient Consumption in the Elementary School Lunch Setting*, 28 J. OF CHILD NUTRITION & MGMT. (2004).

<sup>63</sup> See Juliana Cohen, Jaquelyn L. Jahn, Scott Richardson, Sarah A. Cluggish, Ellen Parker, Eric B. Rimm, *The Amount of Time to Eat Lunch is Associated with Children’s Selection and Consumption of School Meal Entree, Fruits, Vegetable, and Milk*, 116 J. OF THE ACAD. OF NUTRITION AND DIETETICS 123, 127–128 (2016).

<sup>64</sup> *Eating Disorders*, NAT’L INST. OF MENTAL HEALTH, <https://www.nimh.nih.gov/health/topics/eating-disorders> (last visited July 28, 2022).

<sup>65</sup> *Eating Disorders*, MAYO CLINIC (last visited July 28, 2022), <https://www.mayoclinic.org/diseases-conditions/eating-disorders/symptoms-causes/syc-20353603>.

<sup>66</sup> Frederique R.E. Smink et. al., *Epidemiology of Eating Disorders: Incidence, Prevalence and Mortality Rates*, 14 CURRENT PSYCHIATRY REPORTS 406 (2012).

<sup>67</sup> The *Richard B. Russell National School Lunch Act* requires the Secretary to promulgate regulations that provide the framework and guidelines for local educational agencies to establish local school wellness policies. School wellness policies are intended to guide LEA’s efforts to promote student health, well-being, and ability to learn. These policies must include specific goals for nutrition promotion and education that promote student wellness, standards and nutrition guidelines for all foods and beverages available to students at schools, including foods that are

\$3,000,000, which will support technical assistance to promote nutrition and establish healthy school nutrition environments and promote student mental health.

In addition to mental health promotion, H.R. 8450 is responsive to students with disabilities that cause the student to require a non-dairy substitute. Currently, schools are required to provide a non-dairy substitute to a student with a disability only if a parent or guardian has a letter from a physician documenting the disability that restricts the child's diet. Obtaining a letter from a physician may be difficult for some families; there can be financial and administrative barriers that can make obtaining the needed paperwork from a medical provider challenging, including limited transportation, the cost of a physician visit, and parent work schedules. H.R. 8450 changes this requirement to instead provide reasonable accommodations to students with disabilities without requiring a physician's letter. This change will make it easier for families to access alternatives if they have a child with a disability that restricts the child's diet or presents other challenges to consuming lactose.

H.R. 8450 is also responsive to other medical and dietary reasons why a student should not consume dairy milk. Currently, schools have flexibility to provide a non-dairy substitute if a child has a note from a physician or parent speaking to the medical or dietary reason why dairy milk should not be consumed by the student such as lactose intolerance, which is widespread among people of color.<sup>68</sup> According to Boston Children's Hospital, 80 percent of all African Americans and Native Americans and over 90 percent of Asian Americans are lactose intolerant, whereas lactose intolerance is least common among those with Northern European descent.<sup>69</sup> To address equity concerns and ensure that students who need a non-dairy alternative can access one, H.R. 8450 removes the requirement for a physician's note and reduces the parental burden by no longer requiring an explanation of the need for a non-dairy alternative. The bill also allows schools to provide a non-dairy substitute, that is nutritionally equivalent to fluid milk and meets nutrition standards, to any student as part of a reimbursable meal without a note. Additionally, H.R. 8450 creates a pilot grant program to help schools offset the cost difference between dairy and non-dairy milk options and allows the Secretary to prioritize schools for participation in the pilot program that serve a high population of students with lactose intolerance.

#### REMOVING BARRIERS AND INCREASING ACCESS TO THE CACFP

Initially created as a pilot in 1968, the CACFP in its current form was built incrementally over decades of congressional action to support the nutritional needs of millions of children and adults.<sup>70</sup> CACFP provides meals to children up to age 12 or mi-

sold and not sold at schools, policies for food and beverage marketing, and a description of public involvement, public updates, policy leadership, and evaluation plan. See, U.S. DEP'T. OF AGRIC., *Local School Wellness Policies*, (last visited Aug. 11, 2022), <https://www.fns.usda.gov/tn/local-school-wellness-policy>.

<sup>68</sup> JOHN HOPKINS MEDICINE, *Lactose Intolerance* (last visited Aug. 18, 2022), <https://www.hopkinsmedicine.org/health/conditions-and-diseases/lactose-intolerance>.

<sup>69</sup> BOSTON CHILDREN'S HOSPITAL, *Lactose Intolerance* (last visited Aug. 19, 2022), <https://www.childrenshospital.org/conditions/lactose-intolerance>.

<sup>70</sup> NAT'L CACFP SPONSORS ASS'N, *Program History: Celebrating 50 Years* (last visited Aug. 17, 2022), <https://www.cacfp.org/program-history/>.

grant children up to age 15 in child care settings, at-risk children up to age 18 enrolled in after-school programs, and children up to age 18 in emergency or homeless shelters.<sup>71</sup> CACFP also provides reimbursements to non-residential adult day care facilities that provide food to disabled individuals and older individuals (age 60 or older).<sup>72</sup> In 2019, CACFP served almost 4.8 million people.<sup>73</sup> CACFP has demonstrated success in increasing children's consumption of vegetables and milk<sup>74</sup> and decreasing the financial barrier for child care centers to provide healthy food options.<sup>75</sup>

CACFP centers are reimbursed based on the income of their participants, ranging from fully-covered, or "free rate," reimbursement for households below 130 percent of the federal poverty line to the lowest reimbursement rate, or "paid rate," for households making above 185 percent of the federal poverty level. For those households between 130 percent and 185 percent of the poverty line, centers receive a partial reimbursement for reduced-price meals and snacks. Centers can use categorical eligibility for their reimbursements as well, receiving reimbursement at the free rate for certain categories of children, including children enrolled in Head Start, children in foster care, and children who live in households that participate in SNAP, the Food Distribution Program on Indian Reservations (FDPIR), or TANF.

The *Healthy Meals, Healthy Kids Act* builds on the success of CACFP by removing barriers and increasing access to the program, mirroring provisions contained in bipartisan legislative proposals introduced in prior Congressional sessions.<sup>76</sup>

#### *Increasing Access to CACFP*

H.R. 8450 takes significant steps to ensure access to meals and snacks through CACFP. Under current law, children who live in households that participate in several federal assistance programs, such as SNAP and TANF, are categorically eligible to receive assistance through CACFP. H.R. 8450 expands this provision and allows a child to be automatically eligible for benefits without further application or eligibility determination if the child is a member of a household that receives SNAP benefits. Before the pandemic, 14.6 million children received SNAP benefits, and 4.8 million individuals, including 4.7 million children, participated in CACFP through their child care or day care centers.<sup>77</sup> Allowing receipt of SNAP benefits to confer automatic eligibility reduces barriers to participation and could help CACFP serve more children by closing the gap for children who receive SNAP benefits but who do not participate in CACFP.

CACFP currently provides funding for two meals and one snack or one meal and two snacks daily. H.R. 8450 expands the program

<sup>71</sup> BILLINGS, *supra* note 4.

<sup>72</sup> BILLINGS, *supra* note 4.

<sup>73</sup> BILLINGS, *supra* note 4.

<sup>74</sup> Sanders Korenman et al., *The Child and Adult Care Food Program and the nutrition of pre-schoolers*, 28 EARLY CHILDHOOD RSCH. QUARTERLY 325, 340 (2013).

<sup>75</sup> Daniel Zaltz et al., *Participation in the Child and Adult Care Food Program is associated with fewer barriers to serving healthier foods in early care and education*, 20 BMC PUBLIC HEALTH 856, 860 (2020). See also, BILLINGS, *supra* note 4.

<sup>76</sup> See, e.g., Early Childhood Nutrition Improvement Act, H.R. 5919, 117th Cong. (2021).

<sup>77</sup> Michael King and Katherine Geifer, *Nearly a Third of Children Who Receive SNAP Participate in Two or More Additional Programs*, US Census Bureau, (2021), <https://www.census.gov/library/stories/2021/06/most-children-receiving-snap-get-at-least-one-other-social-safety-net-benefit.html>; BILLINGS, *supra* note 4.

to cover up to two meals and two snacks or three meals and one snack per child per day for children in care for at least eight hours per day. The CDC recommends that parents and caregivers provide snacks for children every two to three hours;<sup>78</sup> therefore, an additional snack or meal over the longer than eight-hour time period would greatly help caregivers meet that nutrition goal. Parents often work long hours where children are in care for more than eight hours and thus rely on providers for a significant portion of their child's nutritional needs. Further, the COVID-19 pandemic has increased families' reliance on child care and exacerbated the need for additional nourishment to be provided by the program.

Additionally, H.R. 8450 increases the age limit for reimbursement for meals and supplements served in homeless and emergency shelters from the age of 18 to individuals under the age of 25. This change is modeled off a temporary allowance under the *American Rescue Plan Act of 2021*.<sup>79</sup> Nearly half of those experiencing homelessness are under the age of 30. Therefore, increasing the eligibility threshold for meal assistance will make a significant impact on the wellbeing of one of the country's most vulnerable populations.<sup>80</sup>

#### *Modernizing CACFP and Improving Administrative Efficiency*

H.R. 8450 updates the annual adjustment of the CACFP reimbursement rates to reflect the Consumer Price Index (CPI) for food away from home to be used for reimbursements for food served in family or group day care homes. This provision ensures that reimbursement aligns with the actual cost of providing meals through CACFP.

H.R. 8450 also improves CACFP program integrity. USDA uses a system of accountability for institutions that receive CACFP funds, known as the serious deficiency process. The serious deficiency process "provides a systematic way to correct serious management problems, and when that effort fails, protects the program through due process."<sup>81</sup> If an institution is found in violation of CACFP guidelines, it must take corrective action and provide a written corrective action plan within 30 to 90 days of receiving the notice, depending on the offense.<sup>82</sup> If the institution is still found to be in violation of program guidelines, it can be disqualified from receiving CACFP funding.<sup>83</sup> Not later than one year after the date of enactment, H.R. 8450 requires the Secretary to review and issue

<sup>78</sup> CNTRS. FOR DISEASE CONTROL & PREVENTION, *Nutrition: How Much and How Often to Feed*, CDC, (last visited Aug. 18, 2022), <https://www.cdc.gov/nutrition/infantandtoddlernutrition/foods-and-drinks/how-much-and-how-often.html#:~:text=Give%20your%20child%20something%20to,to%203%20snacks%20every%20day>.

<sup>79</sup> Press Release, U.S. Dep't of Agriculture, USDA Boosts Food Assistance for Homeless Young Adults Seeking Refuge in Shelters (Apr. 9, 2021), <https://www.fns.usda.gov/news-item/usda-007021>.

<sup>80</sup> Kristen Paquette, *Current Statistics on the Prevalence and Characteristics of People Experiencing Homelessness in the United States*, SUBSTANCE ABUSE & MENTAL HEALTH SERV'S ADMIN. (July 2011), [https://www.samhsa.gov/sites/default/files/programs\\_campaigns/homelessness\\_programs\\_resources/hrc-factsheet-current-statistics-prevalence-characteristics-homelessness.pdf](https://www.samhsa.gov/sites/default/files/programs_campaigns/homelessness_programs_resources/hrc-factsheet-current-statistics-prevalence-characteristics-homelessness.pdf).

<sup>81</sup> Request for Information: The Serious Deficiency Process in the Child and Adult Care Food Program, 84 Fed. Reg. 22,431 (May 17, 2019).

<sup>82</sup> *Serious Deficiency, Suspension, & Appeals for State Agencies & Sponsoring Organizations: A Child and Adult Care Food Program Handbook*, U.S. DEPT OF AGRIC. FOOD & NUTRITION SERV. (Feb. 2015), [https://www.dec.al.gov/documents/attachments/SD\\_SuspensionandAppealsHandbook.pdf](https://www.dec.al.gov/documents/attachments/SD_SuspensionandAppealsHandbook.pdf).

<sup>83</sup> *Id.*

guidance on the regulations regarding this process for CACFP that will streamline and modernize the program.

H.R. 8450 makes other modest improvements to help streamline CACFP. The bill allows CACFP eligibility for proprietary child care centers to be determined on an annual basis, in alignment with eligibility determination for other child care centers. Currently, CACFP providers—particularly smaller family homes—face administrative burdens to operating the program. Eligibility certification for proprietary institutions can differ state by state, and several states require monthly submission by the child care provider in order to continue receiving reimbursements.<sup>84</sup> A streamlined annual eligibility certification that aligns with other administrative processes will reduce complications for both state agencies and smaller providers.

The bill also creates a new Advisory Committee on Paperwork Reduction to examine the feasibility of reducing unnecessary or duplicative paperwork and provide recommendations to the Secretary. USDA previously formed the CACFP Paperwork Reduction Work Group (Work Group) in response to the HHFKA, requiring the Department to examine the feasibility of reducing unnecessary or duplicative paperwork. A 2015 report to Congress submitted by USDA on behalf of the Work Group outlined the inefficiencies in current program operations and urged the Secretary to work with state agencies to decrease the administrative burden for child care centers and families.<sup>85</sup> The Work Group also recommended continued stakeholder engagement to guide paperwork reduction efforts.<sup>86</sup> H.R. 8450 also requires the Secretary to issue guidance and, if appropriate, regulations, in response to these new recommendations within two years.

#### ENSURING CHILDREN'S ACCESS TO NUTRITIOUS FOOD DURING THE SUMMER AND AFTER SCHOOL

When schools close for the summer break, food insecurity continues to be a challenge for families and children. Thirty-two percent of low-income families report that they do not have enough food during the summer months, and studies show that children without consistent access to healthy meals face significant threats to their health and educational achievement as a result.<sup>87</sup> Recognizing the need for intervention, in 1968, Congress created the Special Food Service Program for Children—a pilot program that provided states with grants to feed children when school was not in session.<sup>88</sup> In 1975, that program split, and the Child Care Food Program and the SFSP were authorized.<sup>89</sup>

In its current form, SFSP reimburses program operators who provide free meals and snacks to children in low-income areas through camps, schools, and community organizations. Meals pro-

<sup>84</sup> *Report to Congress: Reducing Paperwork in the Child and Adult Care Food Program*, U.S. DEPT OF AGRIC. FOOD & NUTRITION SERV. (Aug. 2015), [https://omb.report/icr/201809\\_0584\\_001/doc/original/86419001.pdf](https://omb.report/icr/201809_0584_001/doc/original/86419001.pdf).

<sup>85</sup> *Id.* at 84.

<sup>86</sup> *Id.* at 84.

<sup>87</sup> Katie Orovecz, et. al., *Summer Nutrition Program Social Impact Analysis*, DELOITTE, NO KID HUNGRY, and ARBY'S FOUNDATION (2015), [http://bestpractices.nokidhungry.org/sites/default/files/2019-11/Summer%20Nutrition%20Program%20Social%20Impact%20Analysis\\_lin7.pdf](http://bestpractices.nokidhungry.org/sites/default/files/2019-11/Summer%20Nutrition%20Program%20Social%20Impact%20Analysis_lin7.pdf).

<sup>88</sup> U.S. DEPT OF AGRIC. FOOD & NUTRITION SERV., *Summer Food Service Program History* (last visited Aug. 18, 2022), <https://www.fns.usda.gov/sfsp/program-history>.

<sup>89</sup> *Ibid.*



vided through SFSP help to manage diet, reduce food insecurity, and minimize summer learning loss, which accounts for up to 80 percent of the reading skills gap between low- and high-income students.<sup>90</sup>

In 2019, SFSP provided over 141 million meals and snacks to children when school was not in session, and in 2020 the program served 4.7 million children each day in its peak month of July.<sup>91</sup> Access to nutritious meals during the summertime has far-reaching effects, with implications on children's food security, physical and mental health, educational attainment, and long-term benefits associated with economic and workforce development for children and their communities.<sup>92</sup> SFSP also emphasizes the importance of enrichment activities to engage children through music, games, art, and movement.<sup>93</sup> Educational or instructional activities are the type of activity most often offered in SFSP programs (81 percent) and serve a critical role in addressing learning loss.<sup>94</sup>

Other innovative approaches to reducing summer food insecurity have played a key role in ensuring children do not go hungry during the summer months, such as the Summer EBT Program.<sup>95</sup> *The Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 2010* provided authority and funding for USDA to implement demonstration projects to develop and test methods of improving food access for children during the summer.<sup>96</sup> Using this authority, USDA initially established Summer EBT as a demonstration project to test a household-based method of delivering nutrition assistance to low-income children during the summer.<sup>97</sup> Due to the success of the pilot project, Congress invested additional resources into Summer EBT through the annual appropriations process as the program has since grown to serve more states and children. The program is not yet authorized in permanent statute and operates in select states, providing families with an EBT card with \$30 or \$60 per child monthly to pay for meals during the summer.<sup>98</sup>

Other child nutrition programs, including CACFP At-Risk and NSLP Afterschool Snack also ensure children are fed during afterschool hours. The CACFP At-Risk Afterschool component allows providers to be reimbursed for up to one snack and one meal per child per day, while the NSLP Afterschool Snack option allows schools to be reimbursed for one snack per day.<sup>99</sup> The reimbursement rates for both CACFP At-Risk and NSLP Afterschool Snack are in line with the CACFP reimbursement rates under existing

<sup>90</sup> OROVECZ, *supra* note 87.

<sup>91</sup> U.S. DEPT OF AGRIC. FOOD & NUTRITION SERV., *Summer Food Service Program* (last visited Aug. 18, 2022), <https://www.fns.usda.gov/sfsp/summer-food-service-program>.

<sup>92</sup> OROVECZ, *supra* note 87.

<sup>93</sup> U.S. DEPT OF AGRIC., *Nutrition Education Activities* (last visited July 13, 2022), [https://fns-prod.azureedge.us/sites/default/files/resource-files/smt-nutrition\\_education.pdf](https://fns-prod.azureedge.us/sites/default/files/resource-files/smt-nutrition_education.pdf).

<sup>94</sup> Tracy Vericker et al., *USDA Summer Meals Study Summary*, WESTAT (Oct. 2021), <https://fns-prod.azureedge.us/sites/default/files/resource-files/SummerMealsStudy-2018-SummaryofFindings.pdf>.

<sup>95</sup> *Supra* note 91.

<sup>96</sup> Agriculture, Rural Development Food and Drug Administration, and Related Agencies Appropriations Act, 2010, Pub. L. No. 111–80, tit. VII, § 749, 123 Stat. 2132 (2009).

<sup>97</sup> *FY 2010 Summer Electronic Benefits Transfer for Children (SEBTC) SNAP MODEL*, U.S. DEPT OF AGRIC. (last visited Aug. 16, 2022), <https://www.fns.usda.gov/sfsp/fy-2010-summer-electronic-benefits-transfer-children-sebtc-snap-model>.

<sup>98</sup> Kara Clifford Billings, *Summer Meals for Children: An Overview of Federal Aid (IF11633)*, CONG. RSCH. SERV. (2020), <https://crsreports.congress.gov/product/pdf/IF/IF11633>; Agriculture Appropriations Act of Fiscal Year 2010, § 749, Pub. L. No. 111–80, 123 Stat. 2090 (2010).

<sup>99</sup> BILLINGS, *Supra* note 4.

statute. Additionally, both CACFP At-Risk and NSLP Afterschool Snack require some sort of educational or enrichment activity.<sup>100</sup>

H.R. 8450 includes several provisions that will strengthen both SFSP and Summer EBT to ensure that all children have access to nutritious food even when school is not in session.

*Expanding the Summer Food Service Program for Children*

H.R. 8450 expands SFSP by lowering the eligibility threshold for participation in SFSP from 50 to 40 percent of children residing in the area who have been determined to be eligible for free or reduced price meals. This new threshold will increase the geographical areas in which children are served, expanding the number of children who can access healthy meals through SFSP. H.R. 8450 also creates an option to allow for year-round meal service under SFSP for non-school meal providers during afterschool hours, weekends, and school holidays.

The bill authorizes a competitive grant program to increase participation in SFSP at congregate feeding sites through innovative approaches to addressing transportation barriers and mobile meal delivery. This kind of innovation has proven successful in places such as Huntsville, Alabama, where children and teenagers were offered free specially designed bus passes to increase access to meal sites, and in Murfreesboro, Tennessee, where refurbished school buses have been used to deliver hot meals directly to children.<sup>101</sup> H.R. 8450 allows service institutions that participate in SFSP to serve up to three meals, or two meals and one snack, per child per day, an increase from the current maximum of two meals per day. The bill also allows non-school sponsors under SFSP to utilize the offer versus serve (OVS) provision. The OVS provision, currently operating under the NSLP and the SBP, allows students to decline some of the food offered to reduce food waste. This change simply aligns the requirements for non-school sponsors with those of schools. H.R. 8450 recognizes the need to ensure strong nutrition during the summer months by further requiring the Secretary of Agriculture to issue proposed regulations to update SFSP nutrition standards in alignment with the goals of the DGAs.

*Making the Summer Electronic Benefit Transfer Program for Children Permanent and Nationwide*

Summer EBT provides families with a debit card containing a fixed dollar amount, historically either \$30 or \$60, to purchase groceries during the summer.<sup>102</sup> Summer EBT is particularly important for food-insecure families in rural areas or areas with limited access to summer meals.<sup>103</sup> According to a 2016 report on the impact of the initial Summer EBT demonstration project, providing a \$30 or \$60 per month per child benefit reduced very low food insecurity by one-third and food insecurity by one-fifth.<sup>104</sup> Recognizing

<sup>100</sup> BILLINGS, *Supra* note 4.

The requirement for an educational or enrichment activity for CACFP At-Risk is dictated in statute and the requirement for the NSLP Afterschool Snack option is through USDA guidance.

<sup>101</sup> Report: *Transportation Strategies to Connect Youth with Summer Food Programs*, NAT'L CTR. FOR MOBILITY MGMT. (last visited July 13, 2022), <https://nationalcenterformobilitymanagement.org/wp-content/uploads/Pdfs/FNS-Transport-Final-.pdf>.

<sup>102</sup> *The Summer Electronic Benefit Program (Summer EBT)*, FOOD RSCH & ACTION CTR. (July 2021), <https://frac.org/wp-content/uploads/frac-facts-summer-ebt-program.pdf>.

<sup>103</sup> *Supra* note 97.

<sup>104</sup> *Supra* note 97.

the positive impact, H.R. 8450 will authorize a permanent and nationwide Summer EBT Program, providing \$75 per child per summer month.<sup>105</sup> A permanent and nationwide Summer EBT Program will help to ensure that all children, regardless of their geographic proximity to meal providers, have access to healthy food when schools are closed.

#### MODERNIZING AND INCREASING ACCESS TO WIC

First authorized as a pilot program in 1972, WIC is a federally funded program that provides vital services to low-income pregnant, postpartum, and breastfeeding women, infants, and children up to age five who are at nutritional risk.<sup>106</sup> These services include access to nutrient-dense food, education on balanced nutrition, breastfeeding support, and referrals to health care and social services. Individuals are considered income eligible if they belong to a household that has an income at or below 185 percent of the federal poverty level or are a member of a household that receives benefits through TANF, SNAP, Medicaid, or other identified state programs.<sup>107</sup> WIC has proven vital for participants by demonstrating improved growth and development in infants and children, increased enrollment in prenatal care, higher intakes of vitamins, minerals, and nutrient-dense foods, savings in health care costs, and fewer infant deaths.<sup>108</sup> With proven results, the WIC program enjoys robust bipartisan support.<sup>109</sup>

#### *Increasing Access to WIC by Expanding Eligibility*

H.R. 8450 expands WIC eligibility by requiring that WIC automatically certify infants born to a mother participating in WIC and extending adjunctive eligibility to women, infants, and children (under six-years-old) living in a household in which a member participates in the Children's Health Insurance Program (commonly referred to as CHIP), Head Start, Early Head Start, or FDIPIR. These changes to adjunctive eligibility in WIC may help ease administrative burdens on both applicants and local WIC providers and serve as an effective tool for enrolling and retaining more eligible children in the program.<sup>110</sup> The bill also extends eligibility for WIC through either a child's sixth birthday or their first day of kindergarten, whichever is earlier, allowing participating children to glean the benefits of WIC until they are able to receive school meals.

H.R. 8450 extends certification periods to ensure continuity of access to WIC services. Currently, certification periods can restrict

<sup>105</sup> Changes during the markup removed the pre-appropriated funding for the bill's Summer EBT Program; the Committee's intent is to create a permanent entitlement funded through annual appropriations.

<sup>106</sup> Randy Aussenberg, *A Primer on WIC: The Special Supplemental Nutrition Program for Women (R44115)*, CONG. RSCH. SERV. (2017), <https://crsreports.congress.gov/product/pdf/R/R44115>.

<sup>107</sup> *Ibid.*

<sup>108</sup> *WIC Helps Your Community*, WIC STRONG (last visited Aug. 18, 2022), <https://www.wicstrong.com/community/wic-helps-your-community/>.

<sup>109</sup> Press Release, U.S. Representative Gwen Moore, Congresswoman Gwen Moore and Congresswoman Jennifer González-Colón Lead Bipartisan Effort to Increase WIC funding (Apr. 28, 2022), <https://gwenmoore.house.gov/news/documentsingle.aspx?DocumentID=5004>.

<sup>110</sup> *Food for Thought: Examining Federal Nutrition Programs for Young Children and Infants Before the H. Comm. On Educ. & Labor*, 117th Cong. (July 28, 2021) [Hereafter Garrett Testimony] (Statement of Paula N. Garrett MS, RD, Division Director, Division of Community Nutrition, Virginia Department of Health, <https://edlabor.house.gov/imo/media/doc/GarrettPaulaTestimony0728211.pdf>).

participants' ability to consistently receive their benefits.<sup>111</sup> The annual requirement for recertification can also lead to repetitive paperwork and deters ongoing participation.<sup>112</sup> Extending certification periods is vital to ensure that eligible families consistently have access to the services they need, strengthen retention of child participants, and promote administrative efficiency. The bill requires WIC agencies to certify infants, children, breastfeeding women, and (non-breastfeeding) postpartum women for two-year periods, an increase from the current period that ranges from six months to one year. To further improve the certification process, the bill allows WIC agencies to adjust certification periods for members within the same household so that the periods align and allows a single document provided by a health care provider, including an electronic form, to be used to establish the nutritional risk determination required for certification or recertification.

Nutrition risk is an eligibility requirement that is unique to the WIC program. In addition to meeting categorical, income, and residency requirements, all WIC participants must be determined to be at nutrition risk by a physician, nutritionist, dietitian, nurse, or other competent professional authority.<sup>113</sup> There are two major types of nutrition risk that are recognized for WIC eligibility: medically-based risks, such as anemia, underweight, maternal age, history of pregnancy complications, or poor pregnancy outcomes; and diet-based risks, such as inadequate dietary pattern.<sup>114</sup> H.R. 8450 provides a 90-day period of interim nutritional risk eligibility for all participants and allows 30-day temporary eligibility for all participants based on a signed self-attestation of eligibility to ensure that individuals who are likely to be served by the program have adequate time to determine full nutrition risk. The Committee recognizes and encourages service delivery models that facilitate nutrition risk assessment and coordinated care between WIC agencies and health care providers.

H.R. 8450 further modernizes the certification and recertification process by requiring WIC clinics to offer applicants in-person, phone, and video options for certification and recertification and nutritional risk evaluation appointments. Congress temporarily provided targeted flexibilities to WIC in response to the COVID-19 public health emergency including by providing authority for USDA to waive the physical presence requirement for participants to become certified or recertified in the program and allowing WIC agencies to issue benefits remotely to minimize exposure.<sup>115</sup> As demonstrated by the pandemic, offering remote options can increase access for individuals who have traditionally faced transportation, child care, and work-related challenges that make in-person appointments difficult to attend. Income, health, or other information collected by a health care provider should be shared with a WIC agency to inform determinations of program eligibility and nu-

<sup>111</sup> *Maximizing Efficiency: Streamlining WIC Services to Reach More Children*, NATIONAL WIC ASS'N (Mar. 2021), [https://s3.amazonaws.com/aws.upl/nwica.org/updated\\_fy21\\_nwa\\_factsheet\\_certs-003.pdf](https://s3.amazonaws.com/aws.upl/nwica.org/updated_fy21_nwa_factsheet_certs-003.pdf).

<sup>112</sup> Garrett Testimony, *supra* note 110.

<sup>113</sup> Debra R. Whitford, *WIC Policy Memorandum 2011-5 WIC Nutrition Risk Criteria*, U.S. DEPT. OF AGRIC. FOOD & NUTRITION SERV. (May 20, 2011), <https://fns-prod.azureedge.us/sites/default/files/2011-5-WICNutritionRiskCriteria.pdf>.

<sup>114</sup> *WIC Frequently Asked Questions (FAQs)*, U.S. DEPT. OF AGRIC. FOOD & NUTRITION SERV. <https://www.fns.usda.gov/wic/frequently-asked-questions> (last visited Oct. 5, 2022).

<sup>115</sup> 42 U.S.C. § 1786.

trition risk. H.R. 8450 builds upon flexibility provided during the public health emergency by permanently allowing state agencies to provide benefits remotely. This change further modernizes and streamlines the WIC program, enhancing participants' experience while building on the success of emerging and evolving technologies in implementing social services programs.<sup>116</sup> The bill authorizes \$90,000,000 in annual discretionary appropriations for FY 2023 through FY 2028 for investments in WIC technology to improve the existing infrastructure and establish efficient communication between WIC clinics and other health care providers to ensure the program works more effectively for both participants and providers. H.R. 8450 also requires the Secretary to collect data on the percentage of WIC-eligible SNAP recipients and the percentage of WIC-eligible Medicaid recipients certified in WIC and develop a plan across programs to increase these percentages, with the goal to reach more eligible individuals.

#### *Modernizing WIC to Increase Access*

As online sales have increased significantly in recent years, particularly during the COVID-19 pandemic,<sup>117</sup> online purchasing has grown to be an important tool for expanding food access. In the wake of the pandemic and the need for social distancing, USDA rapidly expanded its SNAP Online Purchasing Pilot to reach more recipients of SNAP and Pandemic Electronic Benefit Transfer (P-EBT). During first year of the pandemic, monthly online SNAP and P-EBT purchases grew from \$3 million in February 2020 to \$246 million in December 2020—86 times the value in February 2020.<sup>118</sup> In light of the expansion of online SNAP and P-EBT purchasing and allowing more SNAP recipients flexibility in redeeming benefits, USDA announced plans to test and implement online ordering in the WIC program.<sup>119</sup> Allowing for online ordering in WIC will ease access for participating households, a priority identified by USDA and food security advocates, particularly after the 2022 infant formula shortage.<sup>120</sup> H.R. 8450 facilitates online purchasing in several key ways. First, the bill makes statutory updates needed to allow for online and mobile payments in WIC and prohibits interchange and transaction fees from being imposed on WIC vendors. Second, the bill requires each state agency to approve at least three vendors for online WIC purchases by October 1, 2025, and to report to Congress on the implementation of online and mobile payments in WIC. Finally, the bill includes \$40,000,000 in annual discretionary appropriations to be made available each year from FY

<sup>116</sup> *Ending Child Hunger: Priorities for Child Nutrition Reauthorization Before the H. Comm. On Educ. & Labor*, 117th Cong. (June 10, 2021) (Statement of Michael J. Wilson, Director, Maryland Hunger Solutions, <https://edlabor.house.gov/imo/media/doc/WilsonMichaelTestimony061021.pdf>).

<sup>117</sup> Mayumi Brewster, *Annual Retail Trade Survey Shows Impact of Online Shopping on Retail Sales During COVID-19 Pandemic*, U.S. CENSUS BUREAU (Apr. 27, 2022), <https://www.census.gov/library/stories/2022/04/ecommerce-sales-surged-during-pandemic.html>.

<sup>118</sup> Jordan W. Jones, *Online Supplemental Nutrition Assistance Program (SNAP) Purchasing Grew Substantially in 2020*, U.S. DEP'T OF AGRIC. ECONOMIC RSCH. SERV. (July 6, 2021), <https://www.ers.usda.gov/amber-waves/2021/july/online-supplemental-nutrition-assistance-program-snap-purchasing-grew-substantially-in-2020/>.

<sup>119</sup> Press Release, U.S. DEP'T OF AGRIC. FOOD & NUTRITION SERV., USDA Expands Access to Online Shopping in SNAP, Invests in Future WIC Opportunities (Nov. 2, 2020), <https://www.fns.usda.gov/news-item/fns-001820>.

<sup>120</sup> Brenda Goodman, *Families can't use WIC benefits to buy baby formula online, making shortage woes worse*, CNN (June 30, 2022), <https://www.cnn.com/2022/06/30/health/wic-online-formula-shortage/index.html>.

2023 to FY 2028 to ensure support for retailers, particularly small businesses, in building out modernization efforts.

H.R. 8450 includes provisions to ensure the program works effectively for both participants and retailers. First, the bill increases flexibility for WIC state agencies around the use of funds for food purchases and Nutrition Services and Administration (NSA) funding. Second, it makes a technical change to the way product prices are described to align with modern retail systems. These updates are intended to ensure that state and local WIC agencies are best able to serve all eligible women and children.

#### *Modernizing the WIC Farmers' Market Nutrition Program*

H.R. 8450 includes several provisions to modernize WIC FMNP. FMNP was established in 1992 to provide locally grown produce to WIC families and to expand awareness and access to farmers' markets.<sup>121</sup> FMNP exposes children and their families to fruits and vegetables as well as nutrition education to encourage recipients to improve their diet and teach them how to store and prepare nutritious foods.<sup>122</sup> H.R. 8450 modernizes FMNP by allowing benefits to be accepted by Community Supported Agriculture programs and allowing benefits to be redeemed at a central point of sale, making it easier for participating families to redeem benefits at a farmers' market. The bill also eliminates the state matching requirement for states and Tribal state agencies for FMNP, and it increases the minimum benefit level to \$20 and the maximum to \$100.

#### *Breastfeeding Promotion and Ensuring Access to Infant Formula*

Increasing breastfeeding rates has long been a priority for WIC due to its proven benefits, including lowering the risk of certain infections and diseases, encouraging digestive system growth, decreasing health costs, and reducing breastfeeding mothers' risk for certain types of cancer.<sup>123</sup> Due to these proven benefits, H.R. 8450 includes provisions that support and promote breastfeeding. H.R. 8450 marks the first time the Breastfeeding Peer Counseling Program (BFPC) has been codified. This successful program—which was officially launched in 2004 as part of FNS's national peer counseling initiative, *Using Loving Support to Implement Best Practices in Peer Counseling*<sup>124</sup>—links breastfeeding women with other breastfeeding women within their community who can provide support, advice, and tips throughout the breastfeeding process.<sup>125</sup> Pairing breastfeeding women with peer counselors from their communities fosters shared understanding and personalized supports that many health professionals are not able to provide. Evidence suggests that participation in the WIC BFPC is associated with several positive outcomes, such as increased initiation of breastfeeding

<sup>121</sup> *Farmers Market Nutrition Program*, U.S. DEPT OF AGRIC. FOOD & NUTRITION SERV. (last visited Aug. 18, 2022), <https://www.fns.usda.gov/fmnp/wic-farmers-market-nutrition-program>.

<sup>122</sup> *Ibid.*

<sup>123</sup> *WIC Breastfeeding Support*, U.S. DEPT OF AGRIC. FOOD & NUTRITION SERV. (last visited Aug. 18, 2022), <https://wicbreastfeeding.fns.usda.gov/breastfeeding-benefits>.

<sup>124</sup> *WIC Breastfeeding Peer Counseling Study Supporting Statement for Paperwork Reduction Act Submission GSA Mobis Task Order #AG-3198-D-06-0105*, ABT ASSOCIATES INC. (June 26, 2008), <https://www.reginfo.gov/public/do/DownloadDocument?objectID=5786202>.

<sup>125</sup> *Breastfeeding Peer Counselors: A Successful Program that Should be Expanded*, NAT'L WIC ASS'N (Mar. 2019), <https://s3.amazonaws.com/aws.upl/nwica.org/2019-breastfeeding-peer-counselors.pdf>.

and longer breastfeeding duration.<sup>126</sup> The bill increases the authorization of discretionary annual appropriations for breastfeeding peer counselors from \$90,000,000 to \$180,000,000, including funding for providing breastfeeding support in health care settings outside of WIC clinics, such as hospitals or physicians' offices, or in partnership with the Maternal, Infant, and Early Childhood Home Visiting Program. H.R. 8450 also allows breastfeeding supplies to be purchased with funds available for the provision of food benefits, further easing cost barriers that may prevent women from choosing to breastfeed.

While breastfeeding has been shown to provide important benefits, it is not always a viable option. When breastfeeding is not possible, infant formula provides a safe and nutritious alternative. The vast majority of WIC supported infants, approximately 88 percent, receive some amount of formula through the program.<sup>127</sup> In the wake of the 2022 infant formula shortage that left thousands of families struggling to access formula, Congress took decisive bipartisan action through the passage and subsequent enactment of the *Access to Baby Formula Act* to ease the challenges faced by WIC families during emergency periods and supply chain disruptions.<sup>128</sup> While the shortage was not unique to WIC and was compounded by supply issues, H.R. 8450 takes steps to strengthen the infant formula contracting process by requiring the Secretary to create an online source of information pertaining to state agency infant formula bid solicitations. The bill also allows state or local agencies to purchase and distribute safe drinking water to WIC participants during an emergency period for preparing infant formula, helping to protect women and children affected by crises.

### *Supporting Healthy Mothers and Infants*

Substance use disorder (SUD) is defined as “impairment caused by the recurrent use of alcohol or other drugs (or both), including health problems, disability, and failure to meet major responsibilities at work, school, or home.”<sup>129</sup> SUD can have particularly damaging effects on families as prenatal substance use can result in health challenges to the infant, including birth defects and learning disabilities.<sup>130</sup> The COVID-19 pandemic brought an increase in SUD and related deaths; for example, in 2020, 40 states experienced an increase in opioid-related mortality.<sup>131</sup> Mothers have not been immune to the rising occurrence of SUD. Between 1999 and 2014, the number of women with an opioid use disorder during

<sup>126</sup> NATIONAL WIC ASS'N, *Breastfeeding Peer Counselors: A Successful Program that Should be Expanded* (last visited Aug. 18, 2022), <https://s3.amazonaws.com/aws.upl/nwica.org/2019-breastfeeding-peer-counselors.pdf>.

<sup>127</sup> Christina Szalinski, *For Many Low-Income Families, Getting Formula Has Always Been a Strain*, KHN (June 3, 2022), <https://khn.org/news/article/low-income-families-baby-formula-strain-wic/>.

<sup>128</sup> Access to Baby Formula Act, Pub. L. No. 117-129, 136 Stat. 1225 (2022) (codified at 42 U.S.C. § 1786).

<sup>129</sup> *Key Substance Use and Mental Health Indicators in the United States: Results from the 2020 National Survey on Drug Use and Health*, U.S. DEPT OF HEALTH & HUMAN SERVS. SUBSTANCE ABUSE & MENTAL HEALTH SERVS. ADMIN. (2020), <https://www.samhsa.gov/data/sites/default/files/reports/rpt35325/NSDUHFFR1PDWHTMFiles2020/2020NSDUHFFR1PDW102121.pdf>.

<sup>130</sup> Grace Chang, *Maternal Substance Use: Consequences, Identification, and Interventions*, 40 ALCOHOL RES. no. 2, 2020, at 1, 3.

<sup>131</sup> Ashley Abramson, *Substance use during the pandemic*, AM. PSYCHOLOGICAL ASS'N (Mar. 1, 2021), <https://www.apa.org/monitor/2021/03/substance-use-pandemic#:~:text=According%20to%20the%20Centers%20for,the%20onset%20of%20the%20pandemic>.

labor and delivery quadrupled.<sup>132</sup> H.R. 8450 recognizes the importance of assisting women and infants impacted by SUD. The bill requires the Secretary, in collaboration with the Secretary of Health and Human Services, to develop and disseminate evidence-based WIC nutrition education materials for individuals impacted by a SUD and requires the Secretary to make available to state agencies an online clearinghouse with nutrition education and training materials for such individuals. To implement these provisions, \$1,000,000 is authorized to be appropriated in FY 2024.

#### *Improving Nutrition Education Materials Related to Food Allergies*

H.R. 8450 allows the provision of nutrition education materials for WIC-eligible individuals with food allergies. A food allergy is a serious and potentially life-threatening immune system reaction that occurs soon after eating a certain food.<sup>133</sup> Reactions can include congestion, coughing, itchiness of the skin, and difficulty breathing. In the United States, approximately 7.6 percent, or 1 in 13 children, have a food allergy.<sup>134</sup> Providing nutrition education materials for WIC-eligible households will help protect against potentially harmful allergic reactions and ensure that the needs of women, infants, and children with unique nutritional and medical considerations can be better met through the program.

### SUPPORTING COMMUNITIES

#### *Bolstering Tribal Sovereignty*

Federal nutrition assistance programs are crucial to the American Indian/Alaska Native (AI/AN) community as this population is often susceptible to high poverty rates, food insecurity, and an increased risk of nutrition-related health conditions.<sup>135</sup> Adults are 60 percent more likely to face obesity<sup>136</sup> and three times more likely to receive a diabetes diagnosis compared to their non-Hispanic white counterparts.<sup>137</sup> Additionally, only one-fourth reside within a mile of a supermarket.<sup>138</sup>

The majority of federal nutrition assistance programs are operated by state agencies, but programs currently administered by Tribes include the Commodity Supplemental Food Program; WIC; FDIPIR; FMNP; and the Senior Farmer's Market Nutrition Program. In a 2016 report on the feasibility of Tribal administration, surveyed Tribal leaders and administrators from large Tribes indicated that additional flexibility to administer other programs not currently administered by Tribes would allow them to offer more

<sup>132</sup> Chang, *supra* note 130.

<sup>133</sup> U.S. DEPT OF AGRIC. *Food Allergies* (last visited Aug. 18, 2022), <https://wicworks.fns.usda.gov/resources/food-allergies>.

<sup>134</sup> Ruchi Gupta et al., *The public health impact of parent-reported childhood food allergies in the United States*, 142 PEDIATRICS 1, 1 (2018).

<sup>135</sup> Steven Garasky et al., *Feasibility of Tribal Administration of Federal Nutrition Assistance Programs*, U.S. DEPT OF AGRIC. FOOD & NUTRITION SERV. OFFICE OF POLY SUPPORT (July 2016), <https://fns-prod.azureedge.us/sites/default/files/ops/TribalAdministration.pdf>.

<sup>136</sup> U.S. DEPT OF HEALTH & HUMAN SERVS. OFFICE OF MINORITY HEALTH, *Obesity and American Indians/Alaska Natives* (last visited Aug. 18, 2022), <http://minorityhealth.hhs.gov/omh/browse.aspx?lvl=4&lvlID=40>.

<sup>137</sup> U.S. DEPT OF HEALTH & HUMAN SERVS. OFFICE OF MINORITY HEALTH, *Diabetes and American Indians/Alaska Natives* (last visited Aug. 18, 2022), <http://minorityhealth.hhs.gov/omh/browse.aspx?lvl=4&lvlID=33>.

<sup>138</sup> Phillip Kaufman et al., *Measuring Access to Healthful, Affordable Food in American Indian and Alaska Native Tribal Areas*, U.S. DEPT OF AGRIC. ECONOMIC RSCH. SERV. (Dec. 2014), [https://www.ers.usda.gov/webdocs/publications/43905/49690\\_eib131\\_errata.pdf](https://www.ers.usda.gov/webdocs/publications/43905/49690_eib131_errata.pdf).



culturally appropriate programming and services.<sup>139</sup> Tribal members also believe that they have the means to administer these programs more efficiently and promptly in their communities.<sup>140</sup>

The *Indian Self-Determination and Education Assistance Act of 1975*<sup>141</sup> was enacted to allow greater Tribal control of federal programs that impact their members, resources, and governments. Tribal members have often reported numerous instances of program administrators impeding the administration of programs because they could not comprehend the differences in finance, operations, and governance across Tribes.<sup>142</sup> The recognition of Tribes as autonomous and distinct nations ensures that community needs are met. In the June 23 Hearing on USDA FNS policies and priorities for FY 2023, Food and Nutrition Service Administrator, Cindy Long, emphasized the importance of Tribal sovereignty as well as the Department's commitment to advancing sovereignty and self-determination across programs.<sup>143</sup>

However, it is important to note that some Tribes, particularly smaller Tribes, have voiced concerns about the ability to independently operate nutrition programs due to a lack of resources. In a 2016 FNS report on the feasibility of Tribal administration, 44 percent of interviewed Tribes reported the lack of financial resources as an expected challenge in administering a nutrition program, and nearly a third indicated a lack of human resources and technological infrastructure as obstacles.<sup>144</sup> A USDA feasibility study found concerns with the Tribal operation of child nutrition programs, specifically concerning the resources and assistance needed for Tribes to update internal systems for program administration.<sup>145</sup> There are also logistical realities that would need to be considered for the administration of these programs to transition from states to Tribes. In order to examine any potential challenges and mitigate unforeseen complications, H.R. 8450 creates a pilot project to allow Indian tribes to assume responsibility for administering SBP, NSLP, CACFP, and SFSP in lieu of a state agency.

#### *Supporting the Freely Associated States*

The Freely Associated States (FAS), formerly known as Trust Territories, include the Marshall Islands, Micronesia, and Palau. They are sovereign "insular areas" that have established bilateral Compacts of Free Association with the U.S., and thus they receive economic assistance and allow the U.S. to operate military bases and provide mutual security.<sup>146</sup> In 1975, the *National School Lunch Act and Child Nutrition Act Amendments of 1975*<sup>147</sup> added language regarding the Trust Territories to statute and added the

<sup>139</sup> GARASKY, *supra* note 135.

<sup>140</sup> GARASKY, *supra* note 135.

<sup>141</sup> Pub. L. No. 93-638, as amended, 88 Stat. 2203, (1975) (codified at 25 U.S.C. § 450).

<sup>142</sup> GARASKY, *supra* note 135.

<sup>143</sup> *Examining the Policies and Priorities of the U.S. Department of Agriculture's Food and Nutrition Service: Hearing Before the Comm. On Educ. & the Workforce*, 117th Cong. 30 (2022) (statement of Cindy Long, Administrator, U.S. Department of Agriculture).

<sup>144</sup> GARASKY, *supra* note 135.

<sup>145</sup> GARASKY, *supra* note 135.

<sup>146</sup> THOMAS LUM, CONG. RSCH. SERV., THE FREELY ASSOCIATED STATES AND ISSUES FOR CONGRESS, R46573 (2020), <https://crsreports.congress.gov/product/pdf/R/R46573/2>. The Marshall Islands, Micronesia, Palau, and the Northern Mariana Islands became U.S. Trust Territories in 1947. In 1978, the Marshall Islands, Micronesia, and Palau rejected territorial or commonwealth status, and instead chose free association.

<sup>147</sup> Pub. L. No. 94-105, 89 Stat. 511, (1975) (codified at 42 U.S.C. §§ 1751, 1773).

Trust Territories to the definition of a state. This addition authorized the Freely Associated States to receive child nutrition program and WIC funding. However, the *Personal Responsibility and Work Opportunity Reconciliation Act of 1996*<sup>148</sup> repealed those provisions.

FNS does not currently work with any of the Freely Associated States on child nutrition efforts, and therefore additional work is needed to assess the administrative and financial capability of doing so. If Freely Associated States were to be included in the definition of a state in statute for the purpose of participation in the child nutrition programs, they would need to adopt new administrative processes and technology to implement programs and would be responsible for program operations, including program oversight and payments. To gather information regarding administrative and financial capacity, potential challenges, and needed changes to statute to effectuate the policy of allowing Freely Associated States to participate in child nutrition programs, H.R. 8450 directs the Secretary to complete a feasibility study to assess the ability and preparedness of the Freely Associated States to operate such programs.

### *Supporting Food Donation*

According to the Environmental Protection Agency, the United States wastes over one-third of its food supply each year, containing enough calories to feed more than 150 million people.<sup>149</sup> The Natural Resources Defense Council found in 2015 that 8 percent of food waste comes from institutional settings such as schools and hospitals.<sup>150</sup> While this may be a small percentage of overall food waste, schools can play an important role in helping eliminate child hunger and reducing food waste. Further, food donation provisions can be helpful in diverting leftover food from going to landfills and help feed more children and families.<sup>151</sup>

The *Bill Emerson Good Samaritan Food Donation Act of 1996* (the Emerson Act) provided the first federal protection for individuals and organizations who wish to donate food in good faith.<sup>152</sup> The Emerson Act provides protection from civil and criminal liability for persons involved in the donation and distribution of food and grocery products to needy individuals when donations are made in good faith and the products are apparently wholesome or apparently fit. With millions of Americans facing food insecurity,<sup>153</sup> the

<sup>148</sup> The Personal Responsibility and Work Opportunity Reconciliation Act of 1988, Pub. L. No. 104–193, 110 Stat. 2105 (1996) (codified at 42 U.S.C. § 1305).

<sup>149</sup> *From Farm to Kitchen: The Environmental Impacts of U.S. Food Waste*, U.S. ENV'T PROT. AGENCY (last visited Aug. 4, 2022), [https://www.epa.gov/system/files/documents/2021-11/from-farm-to-kitchen-the-environmental-impacts-of-u.s.-food-waste\\_508-tagged.pdf](https://www.epa.gov/system/files/documents/2021-11/from-farm-to-kitchen-the-environmental-impacts-of-u.s.-food-waste_508-tagged.pdf).

<sup>150</sup> *Wasted: How America is Losing up to 40 Percent of its Food from Farm to Fork to Landfill*, National Resources Defense Council (Aug. 2017), <https://www.nrdc.org/sites/default/files/wasted-2017-report.pdf>.

<sup>151</sup> Food Waste and Lost: Donations, U.S. DEP'T OF AGRIC. (last visited Aug. 19, 2022), <https://www.usda.gov/foodlossandwaste/donating>.

<sup>152</sup> 42 U.S. Code § 1791. In 1996, Pub. Law No. 104–210 converted the *Model Good Samaritan Food Donation Act* to permanent law and transferred the Act to the *Child Nutrition Act of 1966*, renaming it as the *Bill Emerson Good Samaritan Food Donation Act*.

<sup>153</sup> The Committee notes that both 42 U.S.C. § 1791 and 42 U.S.C. § 1758(l) contain provisions relating to food donation, with the latter pertaining specifically to food donation in schools. Further, the Committees notes that USDA has interpreted the *Emerson Act* to provide protections for schools because of the *Emergency Food Assistance Act of 1983*'s definition of “qualified direct donor.” H.R. 8450 adds school and school food authority under the *Emerson Act* to preclude any ambiguity. See e.g., U.S. DEP'T OF AGRIC., *Frequently Asked Questions about the Bill*

provisions included in H.R. 8450 take important steps to encourage food donation efforts by updating the provisions of the *Emerson Act*. First, H.R. 8450 allows food donated by a school to be received, stored, and distributed on the campus of the same school donating the food. This provision complements child nutrition programs by helping ensure that children and families can access food after the school day has ended. Additionally, this provision may help reduce stigma associated with food insecurity as schools are already a place where children and families are regularly present and feel comfortable.

The bill extends liability protections to donors when a recipient pays a deeply reduced price (referred to as a “good Samaritan reduced price”). Currently, the *Emerson Act* only protects food donations when the ultimate recipient receives the donation free of charge. H.R. 8450 expands protections to include instances where small fees are incurred, allowing nonprofit organizations to provide food at a low price, for example, through nonprofit grocery stores. Additionally, H.R. 8450 extends liability protection from the *Emerson Act* to direct donations to individuals. Further, H.R. 8450 requires USDA to release updated regulations on the donations process, which will provide much-needed clarity to businesses and food pantries alike. The bill also makes technical and other changes to modernize the provisions of the statutes.<sup>154</sup>

In addition to addressing food insecurity for children and families, H.R. 8450 expressly extends liability protections to pet supplies donated to animal shelters. These provisions build upon other aspects of H.R. 8450, such as ensuring adequate meal time, reducing meal shaming, and reducing food waste, to collectively achieve the goal of eliminating child hunger.

## CONCLUSION

For over seventy-five years, child nutrition programs have provided vital nutrition support to children and families and nurtured children’s health and school readiness. Child nutrition and related programs are essential to addressing food insecurity for our nation’s children. These crucial programs help ensure that infants and children receive adequate nutrients to support their health during a critical period of growth and development. Reauthorizing and updating these child nutrition programs is necessary to meet the needs of our nation. H.R. 8450 modernizes and invests in these vital programs.

## SECTION-BY-SECTION ANALYSIS

### *Section 1. Short title; Table of contents*

This section states that the title of the bill is the *Healthy Meals, Healthy Kids Act* and lists the table of contents.

### *Section 2. Definition of Secretary*

This section states that the term “Secretary” means the Secretary of Agriculture.

*Emerson Good Samaritan Food Donation Act* (last visited Aug. 18, 2022), <https://www.usda.gov/sites/default/files/documents/usda-good-samaritan-faqs.pdf>.

<sup>154</sup> H.R. 8450 includes several changes to bring more alignment across the two sets of provisions. For example, the definition of “nonprofit organization” has been made consistent.

## TITLE I—EXPANDING ACCESS TO SCHOOL MEALS

*Section 101. Emergency waivers or modifications*

This section provides the Secretary with the authority to waive certain statutory or regulatory requirements under certain child nutrition programs on a state-by-state or national level in the event of a qualifying emergency.

*Section 102. Direct certification for children receiving Medicaid benefits*

This section discontinues the pilot program allowing for direct certification of children receiving Medicaid and permanently extends eligibility for direct certification of such children for free or reduced price school meals. For free school meals, the bill allows for direct certification of children receiving Medicaid who are members of households with incomes at or below 133 percent of the poverty line and who are eligible to receive Medicaid by virtue of receiving Adoption Assistance, Social Security Income, or Guardianship Assistance. For reduced price meals, the bill allows direct certification of children receiving Medicaid who are members of households with incomes between 133 to 185 percent of the poverty line. This section also provides improvement grants and technical assistance to state agencies or Tribal organizations to carry out direct certification.

*Section 103. Expanding community eligibility*

This section changes the multiplier used to determine the rate of federal reimbursement to schools participating in the Community Eligibility Provision (CEP) from 1.6 to 2.5, lowers the participation threshold for schools to elect CEP from 40 percent to 25 percent of identified students, and allows statewide election of CEP.

## TITLE II—ENSURING THE LONG-TERM VIABILITY OF SCHOOL MEAL PROGRAMS

## Subtitle A—Programs Under the Richard B. Russell National School Lunch Act

*Section 201. Increasing reimbursement rate of school meals*

This section increases the base reimbursement rate for meals served in the National School Lunch Program (NSLP) by 10 cents.

*Section 202. Statewide technology solutions included as State administrative costs*

This section allows state administrative expense (SAE) funds to be used for statewide technology solutions.

*Section 203. Annual reimbursement rate and commodity improvements*

This section adds commodity assistance at a rate of 6 cents per meal, adjusted for inflation, to the School Breakfast Program (SBP). This section also changes the date on which the value of commodities is updated (based on the Price Index for Food Used in Schools and Institutions) to January 15 each year.

*Section 204. Food service management*

This section requires that the Secretary issue a request for information: on the role of food service management companies (FSMCs) in carrying out child nutrition programs, including contract practices; trends in compensation and benefits; participation of small, women, and minority owned businesses as FSMCs; and any practices undermining collective bargaining. This sections also requires the Secretary to issue a rule regarding the role of food service management companies.

*Section 205. Kitchen improvement and personnel training*

This section authorizes \$35,000,000 per year for FY 2024 through FY 2028 in discretionary appropriations to purchase kitchen equipment, improve kitchen infrastructure, purchase software and technology systems needed to serve healthy meals and promote food safety, support scratch cooking, and facilitate the use of salad bars in school meal programs. This section also establishes a grant program to support scratch cooking by promoting professional development and training for preparing, procuring, and serving scratch cooked meals and by providing student engagement activities. This section authorizes a technical assistance center on scratch cooking to support grantees and reserves 10 percent of the funding for this purpose.

*Section 206. Statewide online household applications*

This section allows state agencies to establish a statewide online application to determine the eligibility of children in households in that state to receive free or reduced price school meals. This section also requires that eligibility determinations be maintained when a student transfers to a new school in the state.

Subtitle B—Programs Under the Child Nutrition Act of 1966

*Section 211. Professional development and training*

This section requires that training for school food service personnel be scheduled during regular, paid working hours. If training is not done during paid working hours, then the time spent in training must be considered compensable at a rate not less than the individual's regular rate of pay. Any food service personnel who cannot attend such training may not be discharged.

*Section 212. Technology and infrastructure improvement*

This section extends the authorization of appropriations for Technology Infrastructure Grants through FY 2028.

*Section 213. State administrative expenses*

This section extends the authorization of appropriations for SAE funds through FY 2028.

TITLE III—MODERNIZING THE SPECIAL SUPPLEMENTAL NUTRITION PROGRAM FOR WOMEN, INFANTS, AND CHILDREN (WIC)

*Section 301. Adjunctive eligibility*

This section requires WIC to automatically certify infants born to a mother participating in WIC, and it extends adjunctive eligibility

to women, infants, or children under the age of six residing in a household in which a member participates in the Children's Health Insurance Program (CHIP), Head Start, Early Head Start, or the Food Distribution Program on Indian Reservations (FDPIR).

*Section 302. WIC eligibility and certification periods*

This section extends eligibility for WIC through a child's sixth birthday or the day they begin kindergarten, whichever is earlier. Additionally, this section requires WIC agencies to certify infants, children, breastfeeding women, and (non-breastfeeding) postpartum women for two-year periods. These changes in certification are mandatory beginning on October 1, 2026. This section also makes breastfeeding and (non-breastfeeding) post-partum women eligible for WIC for two years post-partum. This section allows WIC agencies to adjust certification periods for members of the same household in order to establish alignment of household members' certification periods. This section allows information provided by a health care provider to be used to establish nutrition risk for program eligibility. This section also provides a 90-day period of interim nutritional risk eligibility for all participants and allows 30-day temporary eligibility for all participants based on a signed self-attestation of eligibility. Finally, this section requires states to develop policies on eligibility for children in kinship care in alignment with the current statutory requirements for children in foster care.

*Section 303. Certification and recertification determinations and nutritional risk evaluations*

This section requires WIC clinics to offer applicants in-person, phone, and video options, as determined by the Secretary, for certification and recertification appointments, and for evaluation of nutritional risk. This section also allows state agencies to issue benefits remotely (such as by uploading them to a benefit card or by mail). This section authorizes \$90,000,000 in annual discretionary appropriations for investments in WIC technology, including the development of secure communication systems to share data between WIC clinics and other health care providers. This section requires the Secretary to collect data on the percentage of WIC-eligible SNAP recipients and the percentage of WIC-eligible Medicaid recipients certified in WIC and develop a plan across programs to increase these percentages.

*Section 304. Paperwork reduction*

This section allows a single document, including in electronic form or provided electronically, to provide all information required for certification or recertification.

*Section 305. Nutrition education materials related to food allergies*

This section allows the provision of nutrition education materials for WIC-eligible individuals with food allergies.

*Section 306. Breastfeeding supply coverage*

This section allows breastfeeding supplies to be purchased with funds available for the provision of food benefits.

*Section 307. Water benefits during disasters*

This section allows a state or local agency to purchase and distribute safe drinking water to WIC participants during an emergency period for preparation of infant formula.

*Section 308. Infant formula procurement online source of information*

This section requires the Secretary to create an online source of information pertaining to state agency infant formula bid solicitations.

*Section 309. Breastfeeding peer counselor program*

This section permanently authorizes the breastfeeding peer counselor program and increases the authorization of discretionary annual appropriations for breastfeeding peer counselors from \$90,000,000 to \$180,000,000 to be used for establishing and administering the breastfeeding peer counselor programs and providing breastfeeding support in health care settings outside of the WIC clinic, or in partnership with the Maternal, Infant, and Early Childhood Home Visiting program.

*Section 310. Product pricing*

This section makes a technical update to the way product prices are described and it brings it in alignment with modern retail systems.

*Section 311. WIC A50 stores*

This section allows stores that derive more than 50 percent of their food sales from WIC to receive a reimbursement rate that consists of the average reimbursement rate for the same food products at other stores within a 5 percent margin.

*Section 312. WIC EBT modernization*

This section makes statutory updates needed to permit online and mobile payments in WIC, and it prohibits interchange and transaction fees from being imposed on WIC vendors. This section requires each state agency to approve at least three vendors for online WIC purchases by October 1, 2025 and requires a report to Congress on the implementation of online and mobile payments in WIC. This section also sets aside \$40,000,000 in annual discretionary appropriations in FY 2023 through FY 2028 to support retailers, particularly small businesses, in modernization efforts.

*Section 313. Spend forward authorities*

This section increases WIC state agency back spending authority for food funds in a preceding fiscal year from 1 percent to 10 percent, and it increases WIC State agency back spending authority for NSA funds in a preceding fiscal year from 1 percent to 10 percent. This section also increases the percentage of NSA funding that can be spent in a subsequent fiscal year from 3 percent to 10 percent and allows up to 3 percent of WIC state funding to be spent in a subsequent fiscal year, provided that the funds go toward activities related to food delivery.

*Section 314. Administrative simplification*

This section streamlines the process for submitting state plans. This section also eliminates the National Advisory Council on Maternal, Infant, and Fetal Nutrition which is no longer in operation.

*Section 315. Authorization of appropriations*

This section amends the authorization of appropriations for WIC from FY 2010 through FY 2015 to FY 2023 through FY 2028.

*Section 316. WIC Farmers' Market Nutrition Program*

This section allows WIC FMNP benefits to be accepted by Community Supported Agriculture programs. This section also allows WIC FMNP benefits to be redeemed at a central point of sale, making it easier to redeem benefits at a farmers' market. This section further eliminates the state matching requirement for states and Tribal state agencies for FMNP. This section increases the minimum FMNP benefit level to \$20 and the maximum benefit level to \$100 and increases the percentage of funding states may use for administrative expenses.

*Section 317. Supporting healthy mothers and infants*

This section requires the Secretary, in collaboration with the Secretary of Health and Human Services, to develop and disseminate evidence-based WIC nutrition education materials for individuals impacted by a substance use disorder. This section also requires the Secretary to make available to state agencies an online clearinghouse with nutrition education and training materials for individuals impacted by a substance use disorder. To carry out this section, \$1,000,000 is authorized to be appropriated in FY 2024 and remains available until expended.

TITLE IV—MODERNIZING THE CHILD AND ADULT CARE FOOD PROGRAM  
(CACFP)

*Section 401. Eligibility certification criteria for proprietary child care centers*

This section allows CACFP eligibility for proprietary child care centers to be determined on an annual basis in alignment with other child care centers.

*Section 402. Automatic eligibility for children in supplemental nutrition assistance households*

This section allows a child to be automatically eligible for benefits if the child is a member of household that receives SNAP benefits.

*Section 403. Review of serious deficiency process*

This section requires the Secretary to review and issue guidance on the regulations regarding the serious deficiency process for CACFP not later than one year after the date of enactment of the bill.



*Section 404. Authorization of reimbursements for additional meal or snack*

This section allows reimbursement of up to two meals and two snacks or three meals and one snack per child per day for children in care for at least eight hours per day.

*Section 405. Adjustments*

This section allows annual adjustments to reflect the Consumer Price Index for food away from home to be used for reimbursements for food served in family or group day care homes.

*Section 406. Age limits in homeless shelters and emergency shelters*

This section increases the age limit for reimbursement for meals and supplements served in homeless shelters and emergency shelters to individuals who have not yet attained the age of 25.

*Section 407. Advisory committee on paperwork reduction*

This section establishes an advisory committee to examine the feasibility of reducing unnecessary or duplicative paperwork and provide recommendations to the Secretary to reduce paperwork. This section also requires the Secretary to issue guidance and, if appropriate, regulations, in response to these recommendations within three years of enactment.

TITLE V—ADDRESSING CHILD FOOD INSECURITY DURING THE SUMMER

*Section 501. Summer Food Service Program for children*

This section reduces the eligibility threshold for participation in the SFSP from 50 to 40 percent of the children residing in the area who have been determined to be eligible for free or reduced-price meals. This section allows schools operating the NSLP to continue operating the Seamless Summer Option for meals served during the summer and school vacation periods. This section creates an option for year-round meal service under SFSP for non-school meal providers during afterschool hours, weekends, and holidays. This section authorizes a competitive grant program to increase participation in SFSP at feeding sites through innovative approaches including transportation and mobile meal delivery and authorizes \$10,000,000 each fiscal year for such grants. This section allows meal service through SFSP during unanticipated closures for school sites. This section allows service institutions that participate in SFSP to serve up to three meals, or two meals and one snack, per child per day. This section also requires updated nutrition standards for SFSP and specifies that outreach materials for SFSP be culturally and linguistically appropriate. This section allows non-school sponsors under SFSP to utilize the offer versus serve provision to allow students to decline some of the foods offered to help prevent food waste. Finally, the section authorizes the SFSP through FY 2028.

*Section 502. Summer Electronic Benefit Transfer for children program*

This section authorizes a permanent nationwide Summer Electronic Benefit Transfer (Summer EBT) program to provide benefits at a rate of \$75 per child per month during the summer. This sec-

tion requires the Secretary to issue implementation grants to support Summer EBT.

#### TITLE VI—IMPROVING CAPACITY AND PROMOTING SUSTAINABILITY

##### *Section 601. Values-aligned procurement*

This section expands the list of criteria institutions may use to source agricultural products, including unprocessed food products that were locally grown and locally raised or produced by a socially disadvantaged or beginning farmer or rancher. This section also authorizes school districts to include certain values-aligned purchasing criteria as a specification in their competitive bids.

##### *Section 602. Procurement training*

This section extends an annual authorization of \$1,000,000 each year for procurement training for FY 2023 through FY 2028.

##### *Section 603. Buy American*

This section clarifies requirements for SFAs in assessing compliance with current Buy American requirements in the context of existing administrative review processes. This section enables the Secretary to receive information on the availability of domestically-produced products and where cost differentials between domestically-produced and foreign-produced goods are prohibitive. Additionally, the section requires the Secretary to add certain questions to assessments, including information on the use of foreign-produced goods.

##### *Section 604. Plant-based foods in schools*

This section establishes a pilot grant program to support the provision of plant-based foods in schools participating in NSLP. Grant funds may be used for professional development training for food service personnel, technical assistance, student engagement and education, outreach, and procurement costs associated with purchasing plant-based foods. To carry out this section, \$10,000,000 is authorized for FY 2024, to remain available through 2028.

##### *Section 605. Food waste and nutrition education*

This section establishes a grant program to carry out food waste measurement and reporting, prevention, education, and reduction projects in schools. Funds may be used to plan and carry out food waste measurement, prevention, and reduction projects; provide training; purchase equipment to support projects; and offer food waste education. To carry out this section, \$10,000,000 is authorized for FY 2024, to remain available through 2028.

##### *Section 606. Farm to School Grant Program*

This section makes updates to the Farm to School Program and changes the mandatory authorization of funds from \$5,000,000 per year to \$15,000,000 per year. This section also increases the maximum Farm to School grant award to \$500,000 and removes the matching funds requirement.

## TITLE VII—SUPPORTING TRIBES AND FREELY ASSOCIATED STATES

*Section 701. Tribally operated meal and snack pilot project*

This section creates a pilot project to allow for Indian tribes to assume responsibility for administering the School Breakfast Program, the National School Lunch Program, the Child and Adult Care Food Program, or the Summer Food Service Program in lieu of a state agency.

*Section 702. Island areas eligibility feasibility study under the Richard B. Russell National School Lunch Act*

This section directs the Secretary to complete a feasibility study within 12 months to assess the ability and preparedness of the freely associated states to operate child nutrition programs authorized under the *Richard B. Russell National School Lunch Act* and the *Child Nutrition Act of 1966*.

## TITLE VIII—ADDRESSING LUNCH SHAMING AND UNPAID MEAL DEBT

*Section 801. Unpaid meal debt*

This section prohibits school districts from publicly identifying students who have unpaid meal debts or hiring debt collectors to recover unpaid meal debts. Additionally, this section requires schools to attempt to directly certify a child with unpaid meal debt and allows schools to be retroactively reimbursed for meals served to a child who was unable to pay for them and is later deemed eligible for free or reduced price meals.

*Section 802. National advisory council on unpaid meal debt in child nutrition programs*

This section establishes an advisory council to provide recommendations to the Secretary pertaining to addressing unpaid meal debt that ensures that no student is stigmatized and that school food authorities can maintain fiscal solvency. This section also requires the Secretary to issue guidance based on these recommendations. To carry out this section, \$1,500,000 is authorized to be appropriated to remain available until after the submission of the report.

## TITLE IX—STRENGTHENING EVIDENCE-BASED NUTRITION STANDARDS

*Section 901. Updating Nutrition Standards for Meal Patterns*

This section requires the Secretary to promulgate regulations to update the nutrition standards for schools participating in the NSLP or SBP to align with the most recent DGAs not less than once every 10 years or not later than one year after two consecutive publications of the DGAs.

This section allows the Secretary to provide assistance to schools to improve school health environments and provide healthy meals. Assistance can include grants and monetary incentives to schools and entities working with schools to carry out NSLP and SBP. This section provides \$3,000,000 in grants for FY 2023 and \$3,000,000 for each following year to be adjusted for inflation, in addition to \$30,000,000 for grants and monetary incentives to improve the nutritional quality of school meals and support other healthy food initiatives in schools. This section also requires the Secretary to annu-

ally publish a list of schools that are in compliance with the updated nutrition standards on the Department’s website.

*Section 902. Non-nutritive sweeteners, synthetic dyes, and other potentially harmful substances in school meals*

This section requires the Secretary to establish an agreement with the National Academy of Sciences under which the National Academy will create and publish a report that includes recommendations on nutrition standards including the use of non-nutritive sweeteners, synthetic dyes, and other potentially harmful substances in school meals. Based on the recommendations, the Secretary may promulgate proposed regulations.

TITLE X—OTHER MATTERS

Subtitle A—Programs Under the Richard B. Russell National School Lunch Act

*Section 1001. Accommodating dietary requirements*

This section requires schools to provide a non-dairy fluid milk substitute to children with special dietary needs if a parent or guardian makes a written request to the school district. This section also allows schools to provide a non-dairy fluid milk substitute to any student as part of a reimbursable meal without a note. All non-dairy fluid milk substitutes must meet the nutrition standards established by the Secretary and be consistent with the most recent DGAs. This section also ensures that nutritionally equivalent food substitutions for religious dietary needs are permitted. This section provides \$2,000,000 in grants for FY 2024 to remain available for three years after the enactment of the section.

*Section 1002. Data protections for household applications*

This section requires the Secretary to establish requirements for the protection of school meal applicant data.

*Section 1003. Eating disorder prevention*

This section incorporates mental health promotion and education, including awareness of eating disorders, into local school wellness policies. This section increases the authorization for these activities from \$3,000,000 to \$5,000,000 for FY 2024 and allows those funds to remain available until expended.

*Section 1004. Compliance and accountability*

This section reauthorizes funding to support compliance and accountability activities through FY 2028.

*Section 1005. National Hunger Hotline and Clearinghouse*

This section increases the authorization for appropriations for the National Hunger Hotline and Clearinghouse from \$250,000 to \$500,000 for each year from FY 2023 through FY 2028.

*Section 1006. Ensuring adequate meal time*

This section requires the Secretary to enter into an agreement with an independent, nonpartisan, science-based research organization to carry out a study on the time lunches are served, recess is offered, and the duration of lunch periods. This section also directs

the Secretary to establish a task force in coordination with the Secretary of Education to review the study and other pertinent research and to develop best practices. This section further requires the Secretary to issue guidance on best practices developed by the task force. To carry out this section, \$1,000,000 is authorized for FY 2024 and allows those funds to remain available until expended.

#### Subtitle B—Programs Under the Child Nutrition Act of 1966

##### *Section 1011. Enhancing nutrition education*

This section adds scratch cooking training as part of the Team Nutrition program to promote nutritional health. This section also allows Team Nutrition funds to be used for hiring qualified, full-time food and nutrition educators to carry out nutrition education programs in schools.

#### Subtitle C—Improving Food Donations

##### *Section 1021. Food donation in schools*

This section updates terminology around food donation and permits school campuses to receive, store, and distribute donated food.

##### *Section 1022. Bill Emerson Good Samaritan Food Donation Act*

This section updates the *Bill Emerson Good Samaritan Food Donation Act*<sup>155</sup> by expanding liability protections for food that is apparently wholesome and sold at a price that is an amount not greater than the cost of handling, administering, and distributing the food; extending protections to food and supplies donated for pets; and providing liability protections for direct donations. This section also clarifies the application of food donation provisions to instances where donations are given to animal shelters.

##### *Section 1023. Regulations*

This section requires the Secretary to issue regulations regarding food donation.

#### Subtitle D—Miscellaneous

##### *Section 1031. Technical Amendments*

This section makes technical and conforming amendments to the *Child Nutrition Act* and the *National School Lunch Act*.

#### EXPLANATION OF AMENDMENTS

The amendments, including the amendment in the nature of a substitute, are explained in the descriptive portions of this report.

#### APPLICATION OF LAW TO THE LEGISLATIVE BRANCH

Pursuant to section 102(b)(3) of the *Congressional Accountability Act of 1995*, Pub. L. No. 104–1, H.R. 8450, as amended, does not apply to terms and conditions of employment or to access to public services or accommodations within the legislative branch.

<sup>155</sup> Bill Emerson Good Samaritan Food Donation Act, Pub. L. No. 104–210, 110 Stat. 3011 (1996) (codified at 42 U.S.C. § 1791).

## UNFUNDED MANDATE STATEMENT

Pursuant to Section 423 of the *Congressional Budget and Impoundment Control Act of 1974*, Pub. L. No. 93-344 (as amended by Section 101(a)(2) of the *Unfunded Mandates Reform Act of 1995*, Pub. L. No. 104-4), the Committee traditionally adopts as its own the cost estimate prepared by the Director of the Congressional Budget Office (CBO) pursuant to section 402 of the *Congressional Budget and Impoundment Control Act of 1974*. The Committee reports that because this cost estimate was not timely submitted to the Committee before the filing of this report, the Committee is not in a position to make a cost estimate for H.R. 8450, as amended.

## EARMARK STATEMENT

In accordance with clause 9 of rule XXI of the Rules of the House of Representatives, H.R. 8450 does not contain any congressional earmarks, limited tax benefits, or limited tariff benefits as described in clauses 9(e), 9(f), and 9(g) of rule XXI.

## ROLL CALL VOTES

In compliance with clause 3(b) of rule XIII of the Rules of the House of Representatives, the Committee advises that the following roll call votes occurred during the Committee's consideration of H.R. 8450:

Date: 7-27-2022

**COMMITTEE ON EDUCATION AND LABOR RECORD OF COMMITTEE VOTE**

Roll Call: 1

Bill: H.R. 8450

Amendment Number:

Disposition: Defeated by a roll call vote of 19-27

Sponsor/Amendment: En Bloc #1 (McClain / RAMD\_04, Harshbarger / RAMD\_07)

Name & State	Aye	No	Not Voting	Name & State	Aye	No	Not Voting
Mr. SCOTT (VA) (Chairman)		X		Mrs. FOXX (NC) (Ranking)	X		
Mr. GRIJALVA (AZ)			X	Mr. WILSON (SC)	X		
Mr. COURNTHEY (CT)		X		Mr. THOMPSON (PA)			X
Mr. SABLON (MP)		X		Mr. WALBERG (MI)	X		
Ms. WILSON (FL)		X		Mr. GROTHMAN (WI)	X		
Ms. BONAMICI (OR)		X		Ms. STEFANIK (NY)	X		
Mr. TAKANO (CA)		X		Mr. ALLEN (GA)	X		
Ms. ADAMS (NC)		X		Mr. BANKS (IN)	X		
Mr. DESAULNIER (CA)		X		Mr. COMER (KY)			X
Mr. NORCROSS (NJ)		X		Mr. FULCHER (ID)	X		
Ms. JAYAPAL (WA)		X		Mr. KELLER (PA)	X		
Mr. MORELLE (NY)		X		Mr. MURPHY (NC)	X		
Ms. WILD (PA)		X		Ms. MILLER-MEEKS (IA)	X		
Mrs. MCBATH (GA)		X		Mr. OWENS (UT)	X		
Mrs. HAYES (CT)		X		Mr. GOOD (VA)	X		
Mr. LEVIN (MI)		X		Mrs. MCCLAIN (MI)	X		
Ms. OMAR (MN)		X		Mrs. HARSHBARGER (TN)	X		
Ms. STEVENS (MI)		X		Mrs. MILLER (IL)	X		
Ms. LEGER FERNÁNDEZ (NM)		X		Mrs. SPARTZ (IN)			X
Mr. JONES (NY)		X		Mr. FITZGERALD (WI)	X		
Ms. MANNING (NC)		X		Mr. CAWTHORN (NC)	X		
Mr. MRVAN (IN)		X		Mrs. STEEL (CA)	X		
Mr. BOWMAN (NY)		X		Mr. JACOBS (NY)	X		
Mrs. SHERFILUS-MCCORMICK (FL)		X		Vacancy			
Mr. POCAN (WI)		X		Vacancy			
Mr. CASTRO (TX)		X					
Ms. SHERRILL (NJ)			X				
Mr. ESPAILLAT (NY)		X					
Mr. KWEISI MFUME (MD)		X					

TOTALS: Ayes: 19

Nos: 27

Not Voting: 5

Total: 53 / Quorum: / Report:

(29 D - 24 R)

\*Although not present for the recorded vote, Member expressed he/she would have voted AYE if present at time of vote.

\*Although not present for the recorded vote, Member expressed he/she would have voted NO if present at time of vote.

Date: 7-27-2022

## COMMITTEE ON EDUCATION AND LABOR RECORD OF COMMITTEE VOTE

Roll Call: 2

Bill: H.R. 8450

Amendment Number: 5

Disposition: Defeated by a roll call vote of 20-24

Sponsor/Amendment: Stefanik / RAMD\_01

Name & State	Aye	No	Not Voting	Name & State	Aye	No	Not Voting
Mr. SCOTT (VA) (Chairman)		X		Mrs. FOXX (NC) (Ranking)	X		
Mr. GRIJALVA (AZ)			X	Mr. WILSON (SC)	X		
Mr. COURNTHEY (CT)		X		Mr. THOMPSON (PA)			X
Mr. SABLON (MP)		X		Mr. WALBERG (MI)	X		
Ms. WILSON (FL)		X		Mr. GROTHMAN (WI)	X		
Ms. BONAMICI (OR)		X		Ms. STEFANIK (NY)	X		
Mr. TAKANO (CA)		X		Mr. ALLEN (GA)	X		
Ms. ADAMS (NC)		X		Mr. BANKS (IN)	X		
Mr. DESAULNIER (CA)		X		Mr. COMER (KY)			X
Mr. NORCROSS (NJ)		X		Mr. FULCHER (ID)	X		
Ms. JAYAPAL (WA)		X		Mr. KELLER (PA)	X		
Mr. MORELLE (NY)		X		Mr. MURPHY (NC)	X		
Ms. WILD (PA)		X		Ms. MILLER-MEEKS (IA)	X		
Mrs. MCBATH (GA)		X		Mr. OWENS (UT)	X		
Mrs. HAYES (CT)	X			Mr. GOOD (VA)	X		
Mr. LEVIN (MI)		X		Mrs. MCCLAIN (MI)	X		
Ms. OMAR (MN)			X	Mrs. HARSHBARGER (TN)	X		
Ms. STEVENS (MI)		X		Mrs. MILLER (IL)	X		
Ms. LEGER FERNÁNDEZ (NM)		X		Mrs. SPARTZ (IN)			X
Mr. JONES (NY)			X	Mr. FITZGERALD (WI)	X		
Ms. MANNING (NC)		X		Mr. CAWTHORN (NC)	X		
Mr. MRVAN (IN)		X		Mrs. STEEL (CA)	X		
Mr. BOWMAN (NY)		X		Mr. JACOBS (NY)	X		
Mrs. SHERFILUS-MCCORMICK (FL)		X		Vacancy			
Mr. POCAN (WI)		X		Vacancy			
Mr. CASTRO (TX)		X					
Ms. SHERRILL (NJ)			X				
Mr. ESPAILLAT (NY)		X					
Mr. KWEISI MFUME (MD)		X					

TOTALS: Ayes: 20

Nos: 24

Not Voting: 7

Total: 53 / Quorum: / Report:

(29 D - 24 R)

\*Although not present for the recorded vote, Member expressed he/she would have voted AYE if present at time of vote.

\*Although not present for the recorded vote, Member expressed he/she would have voted NO if present at time of vote.



Date: 7-27-2022

## COMMITTEE ON EDUCATION AND LABOR RECORD OF COMMITTEE VOTE

Roll Call: 3

Bill: H.R. 8450

Amendment Number:

Disposition: Defeated by a roll call vote of 20-25

Sponsor/Amendment: En Bloc #2 (Miller / RAMD\_11, Grothman / RAMD\_06)

Name & State	Aye	No	Not Voting	Name & State	Aye	No	Not Voting
Mr. SCOTT (VA) (Chairman)		X		Mrs. FOXX (NC) (Ranking)	X		
Mr. GRIJALVA (AZ)			X	Mr. WILSON (SC)	X		
Mr. COURNTEY (CT)		X		Mr. THOMPSON (PA)	X		
Mr. SABLON (MP)		X		Mr. WALBERG (MI)	X		
Ms. WILSON (FL)		X		Mr. GROTHMAN (WI)	X		
Ms. BONAMICI (OR)		X		Ms. STEFANIK (NY)	X		
Mr. TAKANO (CA)		X		Mr. ALLEN (GA)	X		
Ms. ADAMS (NC)		X		Mr. BANKS (IN)	X		
Mr. DESAULNIER (CA)		X		Mr. COMER (KY)			X
Mr. NORCROSS (NJ)		X		Mr. FULCHER (ID)	X		
Ms. JAYAPAL (WA)		X		Mr. KELLER (PA)	X		
Mr. MORELLE (NY)		X		Mr. MURPHY (NC)	X		
Ms. WILD (PA)		X		Ms. MILLER-MEEKS (IA)	X		
Mrs. MCBATH (GA)		X		Mr. OWENS (UT)	X		
Mrs. HAYES (CT)		X		Mr. GOOD (VA)	X		
Mr. LEVIN (MI)		X		Mrs. MCCLAIN (MI)	X		
Ms. OMAR (MN)			X	Mrs. HARSHBARGER (TN)	X		
Ms. STEVENS (MI)		X		Mrs. MILLER (IL)	X		
Ms. LEGER FERNÁNDEZ (NM)		X		Mrs. SPARTZ (IN)			X
Mr. JONES (NY)			X	Mr. FITZGERALD (WI)	X		
Ms. MANNING (NC)		X		Mr. CAWTHORN (NC)	X		
Mr. MRVAN (IN)		X		Mrs. STEEL (CA)	X		
Mr. BOWMAN (NY)		X		Mr. JACOBS (NY)	X		
Mrs. SHERFILUS-MCCORMICK (FL)		X		Vacancy			
Mr. POCAN (WI)		X		Vacancy			
Mr. CASTRO (TX)		X					
Ms. SHERRILL (NJ)			X				
Mr. ESPAILLAT (NY)		X					
Mr. KWEISI MFUME (MD)		X					

TOTALS: Ayes: 20

Nos: 25

Not Voting: 6

Total: 53 / Quorum: / Report:

(29 D - 24 R)

\*Although not present for the recorded vote, Member expressed he/she would have voted AYE if present at time of vote.

\*Although not present for the recorded vote, Member expressed he/she would have voted NO if present at time of vote.

Date: 7/27/22

## COMMITTEE ON EDUCATION AND LABOR RECORD OF COMMITTEE VOTE

Roll Call: 4

Bill: 8450

Amendment Number: Mtn

Disposition: Adopted by Full Committee Roll Call Vote

Sponsor/Amendment: Bonamici motion to report H.R. 8450 to the House with an amendment and with the recommendation that the amendment be agreed to, and the bill do pass

Name & State	Aye	No	Not Voting	Name & State	Aye	No	Not Voting
Mr. SCOTT (VA) (Chairman)	X			Mrs. FOXX (NC) (Ranking)		X	
Mr. GRIJALVA (AZ)			X	Mr. WILSON (SC)		X	
Mr. COURNTEY (CT)	X			Mr. THOMPSON (PA)		X	
Mr. SABLON (MP)	X			Mr. WALBERG (MI)		X	
Ms. WILSON (FL)	X			Mr. GROTHMAN (WI)		X	
Ms. BONAMICI (OR)	X			Ms. STEFANIK (NY)		X	
Mr. TAKANO (CA)	X			Mr. ALLEN (GA)		X	
Ms. ADAMS (NC)	X			Mr. BANKS (IN)		X	
Mr. DESAULNIER (CA)	X			Mr. COMER (KY)			X
Mr. NORCROSS (NJ)	X			Mr. FULCHER (ID)		X	
Ms. JAYAPAL (WA)	X			Mr. KELLER (PA)		X	
Mr. MORELLE (NY)	X			Mr. MURPHY (NC)		X	
Ms. WILD (PA)	X			Ms. MILLER-MEEKS (IA)		X	
Mrs. MCBATH (GA)	X			Mr. OWENS (UT)		X	
Mrs. HAYES (CT)	X			Mr. GOOD (VA)		X	
Mr. LEVIN (MI)	X			Mrs. MCCLAIN (MI)		X	
Ms. OMAR (MN)	X			Mrs. HARSHBARGER (TN)		X	
Ms. STEVENS (MI)	X			Mrs. MILLER (IL)		X	
Ms. LEGER FERNÁNDEZ (NM)	X			Mrs. SPARTZ (IN)			X
Mr. JONES (NY)	X			Mr. FITZGERALD (WI)		X	
Ms. MANNING (NC)	X			Mr. CAWTHORN (NC)		X	
Mr. MRVAN (IN)	X			Mrs. STEEL (CA)		X	
Mr. BOWMAN (NY)	X			Mr. JACOBS (NY)		X	
Mrs. SHERFILUS-MCCORMICK (FL)	X			Vacancy			
Mr. POCAN (WI)	X			Vacancy			
Mr. CASTRO (TX)	X						
Ms. SHERRILL (NJ)			X				
Mr. ESPAILLAT (NY)	X						
Mr. KWEISI MFUME (MD)	X						

TOTALS: Ayes: 27

Nos: 20

Not Voting: 4

Total: 53 / Quorum: / Report:

(29 D - 24 R)

\*Although not present for the recorded vote, Member expressed he/she would have voted AYE if present at time of vote.

\*Although not present for the recorded vote, Member expressed he/she would have voted NO if present at time of vote.

## STATEMENT OF PERFORMANCE GOALS AND OBJECTIVES

Pursuant to clause (3)(c) of rule XIII of the Rules of the House of Representatives, the goals of H.R. 8450 are to comprehensively update and improve the child nutrition programs under the *Richard B. Russell National School Lunch Act of 1946* and the *Child Nutrition Act of 1966* to better meet the needs of children and families.

## DUPLICATION OF FEDERAL PROGRAMS

Pursuant to clause 3(c)(5) of rule XIII of the Rules of the House of Representatives, the Committee states that no provision of H.R. 8450 is known to be duplicative of another federal program, including any program that was included in a report to Congress pursuant to section 21 of Pub. L. No. 111–139 or the most recent Catalog of Federal Domestic Assistance.

## HEARINGS

Pursuant to clause 3(c)(6) of rule XIII of the Rules of the House of Representatives, the Committee held four hearings that were used to develop H.R. 8450.

The CRHS Subcommittee held a hearing on May 12, 2021, titled “Examining the Policies and Priorities of the U.S. Department of Agriculture’s Food and Nutrition Service,” which was used to develop H.R. 8450. The Subcommittee heard testimony on President Biden’s FY 2022 Budget proposal for child nutrition programs under the Department of Agriculture’s Food and Nutrition Service (FNS) and the Biden Administration’s priorities for federal child nutrition programs. The Subcommittee heard testimony from Ms. Stacy Dean, Deputy Under Secretary for Food, Nutrition, and Consumer Services, U.S. Department of Agriculture, Washington, DC.

The CRHS Subcommittee held a hearing on June 10, 2021, titled “Ending Child Hunger: Priorities for Child Nutrition Reauthorization,” which was used to develop H.R. 8450. The Subcommittee heard testimony on ideas for Congressional action to end child hunger, including through the reauthorization of federal child nutrition programs and additional federal investment. The Subcommittee heard testimony from: Mr. Michael Wilson, Director, Maryland Hunger Solutions, Baltimore, MD; Ms. Crystal Cooper, Executive Director, Nutrition Support Services in Chicago Public Schools, Chicago, IL; Mr. Brandon Lipps, Principal, Caprock Strategies, Alexandria, VA; and Mr. Tom Colicchio, Chef and Owner, Crafted Hospitality, New York, NY.

The CRHS Subcommittee held a hearing on July 28, 2021, titled “Food for Thought: Examining Federal Nutrition Programs for Young Children and Infants,” which was used to develop H.R. 8450. The Subcommittee heard testimony on ways to improve and strengthen WIC and the CACFP. The Subcommittee heard testimony from: Ms. Teresa Turner, MS, RD, LDN, SNS, FAND, Nutritionist, Child and Youth Services, United States Army, Glen Burnie, MD; Ms. Paula Garrett, MS, RD, Division Director for Community Nutrition, Virginia Department of Health, Richmond, VA; Ms. Jessica Burris, North Carolina WIC Participant and Breastfeeding Peer Counselor, Montgomery County Department of Health, Troy, NC; and Mr. Trevor Farrell, Senior Vice President

and Chief Commercial Officer, Americas, Schreiber Foods, Inc., Green Bay, WI.

The CRHS Subcommittee held a hearing on June 23, 2022, titled “Examining the Policies and Priorities of the U.S. Department of Agriculture’s Food and Nutrition Service,” which was used to develop H.R. 8450. The Subcommittee heard testimony on President Biden’s FY 2023 Budget proposal for child nutrition programs under the Department of Agriculture’s Food and Nutrition Service (FNS) and the Biden Administration’s priorities for federal child nutrition programs. The Subcommittee heard testimony from Ms. Cindy Long, Administrator, Food and Nutrition Service, U.S. Department of Agriculture, Washington, DC.

#### STATEMENT OF OVERSIGHT FINDINGS AND RECOMMENDATIONS OF THE COMMITTEE

In compliance with clause 3(c)(1) of rule XIII and clause 2(b)(1) of rule X of the Rules of the House of Representatives, the Committee’s oversight findings and recommendations are reflected in the descriptive portions of this report.

#### NEW BUDGET AUTHORITY AND CBO COST ESTIMATE

Pursuant to clause 3(c)(2) of rule XIII of the Rules of the House of Representatives and section 308(a) of the *Congressional Budget and Impoundment Control Act of 1974*, and pursuant to clause 3(c)(3) of rule XIII of the Rules of the House of Representatives and section 402 of the *Congressional Budget and Impoundment Control Act of 1974*, the Committee has requested but not received a cost estimate for the bill from the Director of the Congressional Budget Office.

#### COMMITTEE COST ESTIMATE

Clause 3(d)(1) of rule XIII of the Rules of the House of Representatives requires an estimate and a comparison of the costs that would be incurred in carrying out H.R. 8450. However, clause 3(d)(2)(B) of that rule provides that this requirement does not apply when the committee has included in its report a timely submitted cost estimate of the bill prepared by the Director of the Congressional Budget Office under section 402 of the *Congressional Budget and Impoundment Control Act of 1974*. The Committee reports that because this cost estimate was not timely submitted to the Committee before the filing of this report, the Committee is not in a position to make a cost estimate for H.R. 8450, as amended.

#### CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, H.R. 8450, as reported, are shown as follows:

#### CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italics,

and existing law in which no change is proposed is shown in roman):

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

\* \* \* \* \*

### **APPORTIONMENTS TO STATES**

SEC. 4. (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

(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~~ *20.5 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 author-

ized 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]**

(i) IN GENERAL.—*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).

(ii) REPORT.—*The Secretary shall make publicly available on the website of the Department and update on an annual basis a list of school food authorities certified to be in compliance in accordance with clause (i).*

(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 assist-

ance, certification, *statewide technology solutions*, 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.

\* \* \* \* \*

#### DIRECT FEDERAL EXPENDITURES

SEC. 6. (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, other than section 3 thereof, 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; 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,

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, facilitating operations with respect to the purchase and disposition of surplus agricultural commodities under section 32 of the Act approved August 24, 1935, 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.]

*(b) The Secretary shall deliver, to each State participating in the school lunch program under this Act and the school breakfast program under section 4 of the Child Nutrition Act of 1966 (42 U.S.C. 1773), commodities valued at the total level of assistance authorized under subsections (c) and (d) for each school year for the school lunch and school breakfast programs 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.】

(c) NATIONAL SCHOOL LUNCH COMMODITY ASSISTANCE.—

(1)(A) *Not later than January 15 of each year after the date of the enactment of the Healthy Meals, Healthy Kids Act, the Secretary shall—*

*(i) calculate the national average value of donated foods for school lunch, or cash payments in lieu thereof, in accordance with subparagraph (B); and*

*(ii) adjust the amount calculated under clause (i) by the annual percentage change in the 3-month average value of the Producer Price Index for Foods Used in Schools and Institutions—*

*(I) for the preceding August, September, and October, computed to the nearest  $\frac{1}{4}$  cent;*

*(II) using 5 major food components in the Producer Price Index of the Bureau of Labor Statistics, which are—*

*(aa) cereal and bakery products;*

*(bb) meats, poultry, and fish;*

*(cc) dairy products;*

*(dd) processed fruits and vegetables; and*

*(ee) fats and oils; and*

*(III) weighing each such component using the same relative weight as determined by the Bureau of Labor Statistics.*

*(B) The national average value of donated foods, or cash payments in lieu thereof, shall be equal to 12 percent of the quotient obtained by dividing—*

*(i) the total assistance provided in the preceding school year under section 4, this section, and section 11; by*

*(ii) the number of lunches served in the preceding school year.*

*(C) Not later than January 15 of each year after the date of the enactment of the Healthy Meals, Healthy Kids Act, the Secretary shall calculate the total commodity assistance or cash payments in lieu thereof available to a State for the upcoming school year by multiplying the number of lunches served in the*

*most recent school year for which data are available by the rate established in subparagraph (A). The Secretary shall also annually reconcile the amount of commodity assistance or cash payments in lieu thereof made available under this subparagraph with the amount of assistance used by each State and increase or reduce subsequent commodity assistance or cash payments in lieu thereof 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.

[(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.】

(d) *SCHOOL BREAKFAST LEVEL OF COMMODITY ASSISTANCE.—*

*(1) IN GENERAL.—The national average value of donated foods for school breakfasts, or cash payments in lieu thereof, shall be 6 cents, adjusted in the same manner as the amount calculated under clause (i) of subparagraph (A) of subsection (c)(1) is adjusted under clause (ii) of such subparagraph.*

*(2) ALLOCATION.—Not later than January 15 of each year after the date of the enactment of the Healthy Meals, Healthy Kids Act, the Secretary shall—*

*(A) calculate the total commodity assistance or cash payments in lieu thereof available to a State for the upcoming school year by multiplying the number of breakfasts served*

*in the most recent school year for which data are available by the rate established in paragraph (1); and*

*(B) annually reconcile the amount of commodity assistance or cash payments in lieu thereof made available under this subparagraph with the amount of assistance used by each State and increase or reduce subsequent commodity assistance or cash payments in lieu thereof based on such reconciliation.*

**[(f)] (e) 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.

\* \* \* \* \*

#### NUTRITIONAL AND OTHER PROGRAM REQUIREMENTS

SEC. 9. (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】

(i) shall not—

(I) be construed to prohibit the substitution of foods to accommodate the medical needs of individual students; or

(II) be construed to prohibit the nutritionally-equivalent substitution of foods to accommodate religiously-based 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】 *foods that comply with the meal patterns prescribed by the Secretary*, 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.】

(iii) *as a reasonable accommodation under the Americans with Disabilities Act (42 U.S.C. 12101 et seq.) and section 504 of the Rehabilitation Act of 1973 (29*

*U.S.C. 794), shall provide a substitute for fluid milk for a student whose disability restricts their diet.*

**[(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.】

**(B) OTHER SUBSTITUTIONS.—**

**(i) STANDARDS FOR REQUIRED SUBSTITUTION.—**

**(I)** *A school shall substitute, for the fluid milk provided under subparagraph (A), a nondairy beverage that meets the nutritional needs of a student for whom fluid milk is not nutritionally appropriate due to a medical or other special dietary need other than a disability described in subparagraph (A)(iii), as determined by the school in consultation with the parent or legal guardian of such student.*

**(II)** *A school shall 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 if the substitution is requested by written statement by a parent or legal guardian of such student.*

**(ii) STANDARDS FOR DISCRETIONARY SUBSTITUTION.—**A school may offer all students a nondairy beverage as a substitute for fluid milk that is nutritionally equivalent to fluid milk and meets nutritional standards established by the Secretary.

**(iii) EXCESS EXPENSES.—**Except as provided in clause (iv), expenses incurred by providing substitutions under clauses (i) and (ii) that are in excess of

*expenses covered by reimbursements under this Act shall be paid by the school food authority.*

*(iv) PILOT PROGRAM.—*

*(I) PROGRAM AUTHORIZED.—Not later than 90 days after the date of the enactment of this subparagraph, the Secretary shall establish and carry out a pilot grant program to award grants to eligible school food authorities to carry out subclause (III).*

*(II) PRIORITY.—In awarding grants under this clause, the Secretary may give priority to—*

*(aa) an eligible school food authority that serves high proportions of children who demonstrate high rates of lactose intolerance; and*

*(bb) an eligible school food authority that—*

*(AA) submits, as part of the application for a grant, a need for nondairy beverages among its student population due to dietary reasons; and*

*(BB) demonstrates a need for providing nondairy beverages to children by serving a sufficient number (as determined by the Secretary) of such children.*

*(III) USE OF FUNDS.—A school food authority shall use grant funds awarded under this clause to reimburse the full cost of providing nondairy beverages as substitutes for fluid milk under clause (i)(I) incurred by such school food authority.*

*(IV) REPORTS.—*

*(aa) ANNUAL REPORT BY SCHOOL FOOD AUTHORITY.—Not later than 1 year after receiving a grant under this clause, and on an annual basis for the duration of the pilot program thereafter, a school food authority shall submit to the Secretary a report on the pilot grant program, including information with respect to—*

*(AA) the number of schools served by the school food authority pursuant to the grant; and*

*(BB) the number of students served by the school food authority pursuant to the grant.*

*(bb) FINAL REPORT BY SCHOOL FOOD AUTHORITY.—The report that is the final report submitted under item (aa) shall include, in addition to the information required under subitems (AA) and (BB) of such item—*

*(AA) the number of nondairy beverages as substitutes for fluid milk that the school food authority served during the grant period; compared with*

*(BB) the number of nondairy beverages as substitutes for fluid milk that the school food authority served during the*

*school year immediately preceding the start of the grant period.*

(cc) *REPORT BY THE SECRETARY.*—Not later than 6 months after the date described in subclause (V), the Secretary shall submit to Congress a report that includes a summary of the information included in the reports received under this subclause and any such information with respect to the pilot program the Secretary determines to be relevant.

(V) *SUNSET.*—The authority to carry out this clause shall terminate on the date that is 3 years after the date of the enactment of this subparagraph.

(VI) *ELIGIBLE SCHOOL FOOD AUTHORITY DEFINED.*—In this clause, the term “eligible school food authority” means a school food authority for which 50 percent or more of the students served by such school food authority are eligible for free or reduced price lunch under this Act or free or reduced price breakfast under section 4 of the Child Nutrition Act of 1966 (42 U.S.C. 1773).

(VII) *AUTHORIZATION OF APPROPRIATIONS.*—There is authorized to be appropriated to carry out this clause \$2,000,000 for fiscal year 2024, to remain available until the date described in subclause (V).

(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, ex-

pressed 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 established 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.

(iii) CONFIDENTIALITY STANDARDS.—*The confidentiality standards established by the Secretary shall ensure—*

*(I) the maintenance of reasonable and appropriate administrative, technical, and physical safeguards to ensure the integrity and confidentiality of information submitted through electronic applications described in clause (ii);*

*(II) protection against security threats or unauthorized uses or disclosures of the information submitted through such electronic applications; and*

*(III) that data collected by such electronic applications shall be used only as permitted under paragraph (6).*

(iv) TRANSFERRING ELIGIBILITY STATUS.—

(I) TRANSFERS TO A NEW LOCAL EDUCATIONAL AGENCY.—*When a child transfers to a new local educational agency, the new local educational agency shall obtain and accept the eligibility determination from the State or the child’s former local educational agency.*

(II) TRANSFERS OUT OF A LOCAL EDUCATIONAL AGENCY.—*When a child transfers out of a local educational agency, the local educational agency shall provide the child’s eligibility determination to the new local educational agency.*

*(III) COST OF MEALS.—When the former local educational agency is claiming meals under a special provision described in section 11, and the child does not have an individual eligibility determination, the new local educational agency shall serve the child meals at no cost and claim the child's meals at the free rate for up to 30 operating days, or until a new eligibility determination is made, whichever comes first.*

(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 recent 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 de-

scribed 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) or paragraph (16)(B)(iii); 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** *Committee on Education and Labor* 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 supplemental 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)(I)(aa); and

**[(bb)** \$2,000,000 to carry out clause (ii)(I)(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.】

**(E) PERFORMANCE IMPROVEMENT GRANTS.—**

(i) *IN GENERAL.*—For each school year beginning after July 1, 2023, the Secretary shall offer performance improvement grants and technical assistance to State agencies or Tribal organizations (as defined in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 5304)) to increase the percentage of children eligible for direct certification under this paragraph or paragraph (5) who are certified in accordance with this paragraph or paragraph (5).

(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);

(II) make performance improvement grants to States and Tribal organizations to increase the percentage of children eligible for direct certification under this paragraph or paragraph (5) who are certified in accordance with this paragraph or paragraph (5); and

(III) provide technical assistance to the recipients of grants under this subparagraph, and other eligible entities, as appropriate, in improving the rates of direct certification.

(iii) *USE OF FUNDS.*—An eligible entity that receives a grant under clause (i) shall use the grant funds to pay costs relating to improving the rate of direct certification in the State or Indian Tribe, as applicable, including the cost of—

(I) improving technology relating to direct certification;

(II) providing technical assistance to local educational agencies;

(III) implementing or improving a direct certification system or process in the State (including at local educational agencies in the State) or Indian Tribe, including the cost of equipment;

(IV) establishing or improving the rate of direct certification of children that are members of households receiving assistance under the food distribution program on Indian reservations under section 4(b) of the Food and Nutrition Act of 2008 (7 U.S.C. 2013(b)); and

(V) coordinating with multiple public benefits programs to increase the rate of direct certification, including by conducting feasibility studies and demonstration projects under section 18(c) of this Act.

(iv) *FUNDING.*—On October 1, 2022, and each subsequent October 1, out of any funds in the Treasury not

*otherwise appropriated, the Secretary of the Treasury shall transfer to the Secretary—*

*(I) \$15,000,000 to carry out clause (ii)(II); and*

*(II) \$500,000 to carry out clause (ii)(III).*

(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) 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)));

[(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

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

(5) DISCRETIONARY CERTIFICATION.—

(A) *FREE LUNCHES OR BREAKFASTS.*—*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—*

*(i) 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.);*

*(ii) 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)));*

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

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

*(v) an eligible child (as defined in paragraph (15)(A)); or*

(vi)(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) *REDUCED PRICE LUNCHES OR BREAKFASTS.*—Subject to paragraph (6), any local educational agency may certify any child who is not eligible for free lunches or breakfasts as eligible for reduced price 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 child eligible for reduced price meals (as defined in paragraph (15)(A)).

(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)] (5), or (15), 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)] (5), or (15);

(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]**

(i) *IN GENERAL.*—*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)]** *(I)* beginning on the date of eligibility approval for the current school year; and

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

(ii) *RETROACTIVITY.*—*A local educational agency shall revise a previously submitted meal claim to reflect the eligibility approval of a child for free or reduced price meals for the period that begins on the first day of the current school year.*

(iii) *MEAL CLAIM DEFINED.*—*In this subsection, the term “meal claim” means any documentation provided by a school food authority to a State agency in order to receive reimbursement for the cost of a meal served to a child by such school food authority.*

**[(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.】

(10) *REDUCING STIGMA ASSOCIATED WITH UNPAID SCHOOL MEAL FEES.*—

(A) *OVERT IDENTIFICATION PROHIBITED.*—A local educational agency or school food authority may not, based on the status of a child as a covered child—

(i) *physically segregate or otherwise discriminate against such covered child;*

(ii) *overtly identify such covered child—*

(I) *through the use of special tokens or tickets; or*

(II) *by an announcement or a published list of names; or*

(iii) *identify or stigmatize such covered child by any other means.*

(B) *ELIGIBILITY DETERMINATION BY LOCAL EDUCATIONAL AGENCY.*—For any covered child who is a member of a household that owes a week or more of unpaid school meal fees, a local educational agency shall—

(i) *attempt to directly certify such covered child for free meals under paragraph (4) or (5); or*

(ii) *in a case where the local educational agency is not able to directly certify such covered child under paragraph (4) or (5), provide to the household of such covered child—*

(I) *a household application and applicable descriptive material; and*

(II) *written and oral communications to encourage submission of the application.*

(C) *COLLECTION OF UNPAID SCHOOL MEAL FEES.*—In attempting to collect unpaid school meal fees from a household, a local educational agency or school food authority may not—

(i) *except as described in subparagraph (D), direct any communication regarding unpaid school meal fees to a covered child who is a member of such household;*

(ii) *withhold educational opportunities (including grades and participation in extracurricular activities or local educational agency programs or services) from, or otherwise stigmatize, a covered child due to the status of the covered child as a covered child; or*

(iii) *use a debt collector (as such term is defined in section 803 of the Consumer Credit Protection Act (15 U.S.C. 1692a)).*

(D) *LETTERS.*—A school food authority may require that a covered child deliver a sealed letter addressed to a parent or guardian of the covered child that contains a communication relating to unpaid school meal fees, subject to the condition that the letter shall not be distributed to the covered child in a manner that stigmatizes the covered child.

(E) *ELIMINATING STIGMA IN MEAL SERVICE.*—In providing a meal to a covered child, a local educational agency or school food authority may not, based on the status of the covered child as a covered child, dispose of or take away

*from the covered child any food that has already been served to such covered child.*

(F) *DEFINITIONS.—In this paragraph:*

(i) *COVERED CHILD.—The term “covered child” means a child who—*

(I) *is—*

(aa) *enrolled in a school that participates 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); and*

(bb) *is a member of a household that owes unpaid school meal fees; or*

(II) *is eligible for a free or reduced price lunch under this section.*

(ii) *UNPAID SCHOOL MEAL FEES.—The term “unpaid school meal fees” means outstanding fees owed by a household to a school food authority or local educational agency (or both) for lunches under this Act or breakfasts under section 4 of the Child Nutrition Act of 1966 (42 U.S.C. 1773).*

(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).]

(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 that does not exceed 133 percent of the poverty line (as determined under the poverty guidelines updated periodically in the Federal Register by the Department of Health and Human Services under the authority of 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;*

*(II) who is eligible for the Medicaid program because such child receives supplemental security income benefits under title XVI of the Social Security Act (42 U.S.C. 1381–1385) or State supplementary benefits of the type referred to in section 1616(a) of such Act (or payments of the type described in section 212(a) of Public Law 93–66);*

*(III) who is eligible for the Medicaid program because such child receives an adoption assistance payment made under section 473(a) of the Social Security Act (42 U.S.C. 673(a)) or under a similar State-funded or State-operated program, as determined by the Secretary;*

*(IV) who is eligible for the Medicaid program because such child receives a kinship guardianship assistance payment made under section 473(d) of the Social Security Act (42 U.S.C. 673(d)) or under a similar State-funded or State-operated program, as determined by the Secretary, without regard to*

*whether such child was previously in foster care;  
or*

*(V) 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), (III), or (IV).*

(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.).

(iii) **CHILD ELIGIBLE FOR REDUCED PRICE MEALS.**—The term “child eligible for reduced price meals” 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 that is greater than 133 percent but does not exceed 185 percent of the poverty line (as determined under the poverty guidelines updated periodically in the Federal Register by the Department of Health and Human Services under the authority of 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).*

[(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 subparagraph (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.】

**(B) AGREEMENTS TO CARRY OUT CERTIFICATION.—***To certify a child under subparagraph (A)(v) or (B) of paragraph (5), a State agency shall enter into an agreement with 1 or more State agencies conducting eligibility determinations for the Medicaid program.*

**(C) PROCEDURES.—***Subject to paragraph (6), an agreement under subparagraph (B) shall establish procedures under which—*

*(i) an eligible child may 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)); and*

*(ii) a child eligible for reduced price meals may be certified for reduced price lunches under this Act and reduced price 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)).*

**[(F)] (D) ACCESS TO DATA.—**For purposes of **[(conducting the demonstration project under this paragraph)]** *carrying out 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 pro-*

grams 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.】

(16) STATEWIDE ONLINE HOUSEHOLD APPLICATIONS.—

(A) *IN GENERAL.*—*Subject to subparagraphs (B) and (C), beginning in the first school year that begins after the date of the enactment of this paragraph, a State agency may elect to establish a Statewide online application to determine the eligibility of children in households in that State to receive free or reduced price meals.*

(B) *STATE AGENCY REQUIREMENTS.*—

(i) *HOUSEHOLD APPLICATION.*—*A Statewide online school meal application under this paragraph shall comply with the requirements of—*

*(I) this subsection; and*

*(II) paragraphs (1) through (5) of section 245.6(a)(1) of title 7, Code of Federal Regulations (or a successor regulation).*

(ii) *PROCESSING TIMELINE.*—*A State agency electing the option under this paragraph shall—*

*(I) determine the eligibility of a household applying for free or reduced price meals; and*

*(II) communicate that determination to the local educational agency and the household, within 10 operating days of the date on which the household submitted the application to the State agency.*

(iii) *VERIFICATION.*—*A State agency electing the option under this paragraph shall—*

*(I) select at random for verification 3 percent of all household applications approved by the State agency for the school year, as of October 1 of the school year;*



(II) directly verify the selected household applications under subclause (I) in a manner consistent with paragraph (3)(F); and

(III) prior to October 10 of the school year, communicate to the local educational agency which household applications have been selected for verification and the outcome of the direct verification conducted under paragraph (3)(F).

(C) LOCAL EDUCATIONAL AGENCY REQUIREMENTS.—

(i) *ELIGIBILITY DETERMINATION.*—A local educational agency in a State with a Statewide online household application established under this paragraph shall accept the eligibility determination made by the State agency for a household and provide an eligible child with free or reduced price meals beginning on the first day of the current school year.

(ii) *TRANSFERRING STUDENTS.*—When a student transfers to a new local educational agency, the new local educational agency shall obtain and accept the eligibility determination made by the State agency.

(iii) *USE OF STATE SCHOOL MEAL APPLICATION.*—A local educational agency in a State with a Statewide online household application established under this paragraph shall not use an alternative online household application unless the State agency has approved its use.

(iv) *PAPER APPLICATION.*—A local educational agency in a State with a Statewide online household application established under this paragraph shall—

(I) provide households with the option to submit a paper application to the local educational agency;

(II) communicate to households the availability of this option and the Statewide online household application; and

(III) make an eligibility determination for any paper application submitted.

(v) *VERIFICATION.*—A local educational agency shall verify the household applications selected by the State agency under subparagraph (B)(iii) that were not directly verified by the State agency under paragraph (3)(F) in a manner consistent with subparagraphs (G) through (J) of paragraph (3).

(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, 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 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 or *child eligible for reduced price meals* (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]

(A) *SCHOOLS PARTICIPATING IN MEAL PROGRAMS.*—

*Schools that are participating in the school lunch program*

or school breakfast program shall serve lunches and breakfasts that—

[(A)] (i) 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)] (ii) consider the [nutrient] dietary needs of children who may be at risk for inadequate food intake [and food insecurity], food and nutrition insecurity, or chronic disease.

(B) *UPDATING STANDARDS.*—Not later than 1 year after the first publication 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) that occurs after the date of the enactment of this subparagraph, and not less frequently than once every 10 years, or not later than 1 year after the publication of 2 consecutive updates to 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) thereafter, whichever occurs first, the Secretary shall:

(i) Enter into an agreement with the National Academies of Sciences, Engineering, and Medicine to—

(I) conduct a review of the nutrition standards and requirements under paragraph (1); and

(II) recommend updates to such requirements so that they are substantially similar to 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), taking into account the practical application for implementation.

(ii) Not later than 1 year after the conclusion of the review described in clause (i)(I), promulgate regulations to update the school nutrition standards and requirements pursuant to paragraph (1) to align with the recommendations under clause (i)(II).µ

(C) *AUTHORIZATION OF APPROPRIATIONS.*—There are authorized to be appropriated to carry out subparagraph (B), \$3,000,000, for the fiscal year in which the first publication 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) occurs after the date of the enactment of this Act, to remain available until expended.

(2) [To assist schools in meeting the requirements of this subsection, the Secretary] Assistance to schools.—

(A) [shall] ASSISTANCE REQUIRED.—To assist schools in meeting the requirements of this subsection, the Secretary 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**

(iii) *develop and provide to schools best practices, trainings (including peer-to-peer trainings), and other resources;*

(iv) *implement healthier school environment recognition programs; and*

(v) *work with food manufacturers and retailers to support development and increased availability and affordability of products that meet the nutrition standards; and*

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

**(B) ASSISTANCE PERMITTED.—**

(i) *IN GENERAL.—To assist schools in meeting the requirements of this subsection, the Secretary may—*

*(I) provide to schools information regarding other approaches, as determined by the Secretary; and*

*(II) award grants and monetary incentives to carry out 1 or more of the following:*

*(aa) Improving the nutritional quality of meals and snacks served under a child nutrition program.*

*(bb) Enhancing the nutrition and wellness environment of institutions participating in a child nutrition program, including by reducing the availability of less healthy foods during the school day.*

*(cc) Supporting food systems that supply nutritious foods and beverages for children in both schools and retail markets, including those in underserved communities.*

*(dd) Funding a statewide nutrition education coordinator to support individual school food authority nutrition education efforts and to facilitate collaboration with other nutrition education efforts in the State.*

(ii) *RECIPIENTS.—Grants provided pursuant to clause (i) may be made available to third party entities that have experience working with school food service personnel 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) to provide technical assistance to schools in meeting the goals of this subparagraph.*

(iii) *AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to carry out grants and monetary incentives pursuant to clause (i) \$30,000,000 for fiscal year 2024, to be available until expended.*

**[(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 2022, 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.

(4) AUDIT BY THE SECRETARY.—For fiscal year 2022, the Secretary shall annually audit State reports of food safety inspections of schools submitted under paragraph (3).

(5) SCHOOL FOOD SAFETY PROGRAM.—

(A) IN GENERAL.—Each school food authority shall implement a school food safety program, in the preparation and service of each meal served to children, that complies with any hazard analysis and critical control point system established by the Secretary.

(B) APPLICABILITY.—Subparagraph (A) shall apply to any facility or part of a facility in which food is stored, prepared, or served for the purposes of the school nutrition

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

(i) SINGLE PERMANENT AGREEMENT BETWEEN STATE AGENCY AND SCHOOL FOOD AUTHORITY; COMMON CLAIMS FORM.—

(1) IN GENERAL.—If a single State agency administers any combination of the school lunch program under this Act, the school breakfast program under section 4 of the Child Nutrition Act of 1966 (42 U.S.C. 1773), the summer food service program for children under section 13 of this Act, or the child and adult care food program under section 17 of this Act, the agency shall—

(A) require each school food authority to submit to the State agency a single agreement with respect to the operation by the authority of the programs administered by the State agency; and

(B) use a common claims form with respect to meals and supplements served under the programs administered by the State agency.

(2) ADDITIONAL REQUIREMENT.—The agreement described in paragraph (1)(A) shall be a permanent agreement that may be amended as necessary.

(j) PURCHASES OF LOCALLY PRODUCED FOODS.—The Secretary shall—

(1) encourage institutions receiving funds under this Act and the Child Nutrition Act of 1966 (42 U.S.C. 1771 et seq.) [to purchase unprocessed agricultural products, both locally grown and locally raised], to the maximum extent practicable and appropriate[;] , *to purchase unprocessed agricultural products that were—*

(A) *locally grown and locally raised;*

(B) *produced in an environmentally sustainable manner;*

(C) *produced by a certified organic farm or ranch;*

(D) *produced by an underserved or limited resource producer;*

(E) *produced by a small or mid-sized farm that is structured as a family farm;*

(F) *produced by a farm with employees who, as permitted by law, are represented by a collective bargaining agreement or memorandum of understanding;*

(G) *produced by a farm participating in a worker justice certification program; or*

(H) *produced by a farm participating in an independent animal welfare certification program;*

(2) advise institutions participating in a program described in paragraph (1) of the policy described in that paragraph and paragraph (3) and post information concerning the policy on the website maintained by the Secretary; and

[(3) allow institutions receiving funds under this Act and the Child Nutrition Act of 1966 (42 U.S.C. 1771 et seq.), including the Department of Defense Fresh Fruit and Vegetable Program, to use a geographic preference for the procurement of unprocessed agricultural products, both locally grown and locally raised.]

(3) *allow institutions receiving funds under this Act and the Child Nutrition Act of 1966 (42 U.S.C. 1771 et seq.), including*

*the Department of Defense Fresh Fruit and Vegetable Program, to—*

(A)(i) *use a geographic preference for the procurement of unprocessed agricultural products, both locally grown and locally raised; or*

(ii) *use locally grown, locally raised, or locally caught as a product specification; and*

(B) *procure unprocessed agricultural products that are produced—*

(i) *in an environmentally sustainable manner;*

(ii) *by a certified organic farm or ranch;*

(iii) *by an underserved or limited resource producer;*

(iv) *by a small or mid-sized farm that is structured as a family farm;*

(v) *by a farm with employees who, as permitted by law, are represented by a collective bargaining agreement or memorandum of understanding;*

(vi) *by a farm participating in a worker justice certification program; or*

(vii) *by a farm participating in an independent animal welfare certification program.*

(4) **DEFINITIONS.**—*In this subsection:*

(A) **BEGINNING FARMER OR RANCHER.**—*The term “beginning farmer or rancher” has the meaning given such term in section 343(a) of the Consolidated Farm and Rural Development Act (7 U.S.C. 1991(a)).*

(B) **FAMILY FARM.**—*The term “family farm” has the meaning given such term in section 4284.902 of title 7, Code of Federal Regulations (as in effect on the date of the enactment of this paragraph).*

(C) **UNDERSERVED PRODUCER.**—*The term “underserved producer” means an individual (including a member of an Indian Tribe) that is—*

(i) *a beginning farmer or rancher;*

(ii) *a veteran farmer or rancher; or*

(iii) *a socially disadvantaged farmer or rancher.*

(D) **VETERAN FARMER OR RANCHER.**—*The term “veteran farmer or rancher” has the meaning given such term in section 2501(a) of the Food, Agriculture, Conservation, and Trade Act of 1990 (7 U.S.C. 2279(a)).*

(k) **INFORMATION ON THE SCHOOL NUTRITION ENVIRONMENT.**—

(1) **IN GENERAL.**—*The Secretary shall—*

(A) *establish requirements for local educational agencies participating 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) 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.

(1) FOOD DONATION PROGRAM.—

(1) IN ~~GENERAL.~~—~~Each~~ *GENERAL.*—

(A) *FOOD DONATIONS PERMISSIBLE.*—*Each* school and ~~local educational agency~~ *school food authority* 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~~ *nonprofit organizations or individuals in need as determined by such school or school food authority.*

(B) *USE OF SCHOOL CAMPUS.*—*The food donated by a school through the school food authority serving such school pursuant to this paragraph may be received, stored, and distributed on the campus of such school.*

(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~~ *school food authorities* participating in the school lunch program under this Act to assist such schools and ~~local educational agencies~~ *school food authorities* in donating food under this subsection.

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

(3) LIABILITY.—Any school or ~~local educational agency~~ *school food authority* 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)).]~~

~~(4) DEFINITION.—In this subsection, the term “nonprofit organization” means an incorporated or unincorporated entity that—~~

~~(A) is operating for religious, charitable, or educational purposes; and~~

~~(B) does not provide net earnings to operate in any other manner that inures to the benefit of any officer, employee, or shareholder of the entity.~~



**SEC. 9A. 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, *mental health promotion and education, including awareness of eating disorders* 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】** *diet-related illnesses*;

(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, *school-based registered dietitians, school-based mental health services providers*, 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 *and the Administrator of the Substance Abuse and Mental Health Services Administration*, shall provide information and technical assistance to local educational agencies, school food authorities, *school health professionals (including school-based mental health services providers when available)*, 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]

(C) *includes such other technical assistance as is required to—*

(i) *promote sound nutrition and establish healthy school nutrition environments; and*

(ii) *promote mental health, encourage mental health assessments, and establish resilient school 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] *consultation* with the Director of the Centers for Disease Control and Prevention *and the Administrator of the Substance Abuse and Mental Health Services Administration*, 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,] *4 years after the date on which funds are first appropriated to carry out this section after the date of the enactment of the Healthy Meals, Healthy Kids Act*, 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]~~ \$5,000,000 for fiscal year ~~[2011]~~ 2024, to remain available until expended.

#### DISBURSEMENT TO SCHOOLS BY THE SECRETARY

SEC. 10. (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. (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 reapply 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.]

(vii) MULTIPLIER.—*For each school year beginning on or after July 1, 2023, the Secretary shall use a multiplier of 2.5.*

(viii) THRESHOLD.—*For each school year beginning on or after July 1, 2023, the threshold shall be not more than 25 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 subparagraph, 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.

(xiv) STATEWIDE COMMUNITY ELIGIBILITY.—*For each school year beginning on or after July 1, 2023, the Secretary shall establish an option for States to utilize a statewide community eligibility program under which, in the case of a State agency that agrees to provide funding from sources other than Federal funds to ensure that local educational agencies in the State receive the free reimbursement rate for 100 percent of the meals served at applicable schools—*

*(I) the multiplier described in clause (vii) shall apply;*

*(II) the threshold described in clause (viii) shall be applied by substituting “zero” for “25”; and*

*(III) the percentage of enrolled students who were identified students shall be calculated across all applicable schools in the State regardless of local educational agency.*

(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 ).

(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, 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 *ending on the preceding April 30* 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 *ending on April 30*.

(b) Except as provided in section 10 of the Child Nutrition Act of 1966, 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 number 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.

(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;

(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. (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) 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.).] *in section 7 of the Rehabilitation Act of 1973 (29 U.S.C. 705).*

(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) *SCRATCH COOKING.*—*The term "scratch cooking" means the preparation of food using ingredients that are unprocessed or minimally processed.*

[(7)] (8) "Secretary" means the Secretary of Agriculture.

[(8)] (9) "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)] (10) "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.

(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, 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, 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 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 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.

(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) *EMERGENCY WAIVERS OR MODIFICATIONS.*—

(1) *IN GENERAL.*—*Except as provided in paragraph (4), during an emergency period, the Secretary may waive (including by modifying) 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 States or eligible service providers on a multi-State, State, or eligible service provider basis if—*

*(A) the requirement cannot reasonably be implemented under the conditions which prompted the emergency period in the affected area;*

*(B) a State or eligible service provider requests a waiver in a format prescribed by the Secretary;*

*(C) in the case of a request by an eligible service provider under subparagraph (B), the State in which such eligible service provider is located includes a statement of support or opposition with respect to the request; and*

*(D) the Secretary determines that the waiver would—*

*(i) facilitate the ability of such States or eligible service providers to carry out the purpose of such Acts; and*

*(ii) not decrease access to, or eligibility for, any program under such Acts.*

(2) *NATIONWIDE, REGIONAL, AND STATE-WIDE BASIS.*—*Except as provided in paragraph (3), during an emergency period, the Secretary may waive (including by modifying) 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, on a nationwide, regional, or State-wide basis if the Secretary determines that the waiver would facilitate the ability of States or eligible service providers to carry out the purpose of such Acts.*

(3) *DURATION.*—*A waiver established under this subsection may be available for a period of not greater than the emergency period and the 90 days after the end of the emergency period.*

(4) *LIMITATIONS.*—*A waiver under this subsection is subject to the limitations in subsection (l)(4).*

(5) *DEFINITIONS.*—*In this subsection:*

*(A) ELIGIBLE SERVICE PROVIDER.*—*The term “eligible service provider” has the meaning given the term in subsection (l).*

*(B) EMERGENCY PERIOD.*—*The term “emergency period” means a period during which there exists—*

*(i) a major disaster declared by the President under section 401 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5170);*

(ii) *an emergency declared by the President under section 501 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5191);*

(iii) *a public health emergency declared by the Secretary of Health and Human Services under section 319 of the Public Health Service Act (42 U.S.C. 247d);*  
or

(iv) *any renewal of such a public health emergency pursuant to such section 319.*

(1)(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】** *Except as provided in paragraph (4), the Secretary may waive (including by modifying) 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, on a nationwide, State, multi-State, or eligible service provider basis if—*

*(i) a State or eligible service provider requests the waiver;*

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

**【(iii)】** *(iv) 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.】**

*(B) An application described in subparagraph (A) shall—*

*(i) be submitted in a format prescribed by the Secretary;*

*(ii) be completed by the State or eligible service provider;*

*(iii) be submitted to the Secretary by—*

- (I) the State; or
  - (II) an eligible service provider through the State; and
  - (iv) if submitted as described in clause (iii)(II), include a statement of support or opposition from 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】** standards;
  - (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 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.]]
  - (A) a local school food service authority, local educational agency, or school;*
  - (B) a service institution or private nonprofit organization described in section 13; or*
  - (C) institutions 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)]~~ *fiscal years 2023 through 2028*, 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).

(5) **ADMINISTRATIVE REVIEWS.**—

(A) **IN GENERAL.**—*In conducting the reviews required under section 22(b)(1)(C)(i) of the Richard B. Russell National School Lunch Act (42 U.S.C. 1769c(b)(1)(C)(i)), a State agency located in Puerto Rico, Hawaii, or the contiguous United States shall include the information described in subparagraph (B) regarding compliance with the requirements under this subsection.*

(B) **INFORMATION REQUIRED.**—*The information required under subparagraph (A) shall include, with respect to a school food authority served by the State agency—*

*(i) the 10 commodities or food products purchased by such school food authority that—*

*(I) are not domestic commodities or food products; and*

*(II) make up the largest share of the school food authority's spending with respect to commodities or food products; and*

*(ii) whether each such commodity or food product—*

*(I) is not produced domestically in sufficient quantities of satisfactory quality 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); and*

*(II) would be significantly higher in price if purchased domestically; and*

*(iii) whether the school food authority experienced suspected, alleged, or confirmed noncompliance on the part of a distributor in the last 12 months.*

(6) **ANNUAL NATIONALLY REPRESENTATIVE EVALUATION.**—

(A) **IN GENERAL.**—*The Secretary shall—*

*(i) annually evaluate in a nationally representative study the extent to which school food authorities are in*

*compliance with the requirements of this subsection; and*

*(ii) publish the findings of such evaluation on the publicly available website of the Department.*

*(B) REQUIREMENTS.—The Secretary shall require each school food authority that participates in the evaluation under subparagraph (A) to disclose, as part of such evaluation—*

*(i) the 10 commodities or food products purchased by such school food authority that—*

*(I) are not domestic commodities or food products; and*

*(II) make up the largest share of the school food authority's spending with respect to commodities or food products;*

*(ii) whether each such commodity or food product—*

*(I) is not produced domestically in sufficient quantities of satisfactory quality 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); and*

*(II) would be significantly higher in price if purchased domestically; and*

*(iii) whether the school food authority experienced suspected, alleged, or confirmed noncompliance on the part of a distributor in the last 12 months.*

*(7) STUDY AND REPORT.—The Secretary, in consultation with the Secretary of Labor and the heads of other Federal agencies determined by the Secretary to be necessary, shall conduct a study that examines whether the requirement under this subsection has an impact on the supply of commodities or food products in schools, including with respect to—*

*(A) the availability of domestic commodities or food products;*

*(B) the wages, occupational safety and health, and access to and quality of benefits of agricultural workers;*

*(C) the price of locally grown and locally raised domestic commodities or food products as compared to commodities or food products that are not domestic commodities or food products;*

*(D) the prevalence of seasonal foods in schools; and*

*(E) the extent to which schools rely on processed commodities and food products.*

*(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. 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~~ *40 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~~ *40 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~~ *40 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~~ *40 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~~ *40 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.

(6) GOVERNMENT INSTITUTIONS.—Service institutions that are local, municipal, or county governments shall be eligible for reimbursement for meals served in programs under this sec-

tion 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.】

(8) YEAR-ROUND MEAL SERVICE.—

(A) SEAMLESS SUMMER OPTION FOR SCHOOLS.—*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.).*

(B) YEAR-ROUND MEAL SERVICE FOR OTHER SERVICE INSTITUTIONS.—*Each service institution (other than a service institution described in subparagraph (A)), in addition to being eligible for reimbursement for meals described in subsection (b)(2) served during each day of operation during the periods described in subsection (c)(1), may be reimbursed for up to 1 meal and 1 snack per child served at sites that provide educational or enrichment activities during the regular school year during—*

*(i) afterschool hours;*

*(ii) weekends; and*

*(iii) school holidays.*

(9) IMPROVE NUTRITION IN UNDERSERVED, HARD-TO-REACH AREAS.—

(A) IN GENERAL.—*Subject to the availability of appropriations specifically for the purpose of carrying out this paragraph, the Secretary may award competitive grants to States to award subgrants to service institutions in accordance with subparagraph (B).*

(B) SUBGRANTS.—

(i) IN GENERAL.—*A State that receives a grant under subparagraph (A) shall use such grant funds to award competitive subgrants to service institutions selected by the State to increase participation in the program—*

*(I) at congregate feeding sites; and*

(II) through—

(aa) *innovative approaches to addressing barriers in transportation to such sites; and*  
 (bb) *mobile meal delivery.*

(ii) *ELIGIBILITY.—To be selected to receive a subgrant under this subparagraph, a service institution shall—*

(I) *be located in the State;*  
 (II) *submit to the State an application at such time, in such manner, and containing such information as the State may require;*  
 (III) *meet criteria established by the State; and*  
 (IV) *agree to the terms and conditions of the subgrant, as established by the State.*

(iii) *PRIORITY.—In awarding subgrants under this subparagraph, the State shall give priority to service institutions that—*

(I) *serve both breakfast and lunch; or*  
 (II) *offer educational or enrichment programs.*

(iv) *TRAVEL REIMBURSEMENT.—A service institution that receives a subgrant under this subparagraph may use subgrant funds to provide reimbursement for travel to satellite congregate feeding sites.*

(C) *AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Secretary to make competitive grants under this paragraph, \$10,000,000 for each fiscal year.*

**[(11)] (10) 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 culturally and linguistically appropriate 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 culturally and linguistically appropriate 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)] (11) 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) 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** *ending on the preceding October 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)—

(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] to a service institution for the meal.

(8) *Not later than 2 years after the date of the enactment of this paragraph and in accordance with paragraph (1), the Secretary shall promulgate proposed regulations to update the nutrition standards for the summer food service program authorized under this Act to be guided by 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), taking into account the structure of the Program.*

(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 authorized to donate to States, for distribution to service institutions, food available under section 416 of the Agricultural Act of 1949, or purchased under section 32 of the Act of August 24, 1935 or section 709 of the Food and Agriculture Act of 1965. Donated foods may be distributed only to service institutions that can use commodities efficiently and effectively, as determined by the Secretary.

(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.

(1)(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.

(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 here-

under. 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] 2028, there are hereby authorized to be appropriated such sums as are necessary to carry out the purposes of this section.

**SEC. 13A. SUMMER ELECTRONIC BENEFITS TRANSFER FOR CHILDREN PROGRAM.**

(a) **PROGRAM ESTABLISHED.**—*The Secretary shall establish a program under which States and covered Indian Tribal organizations participating in such program shall, beginning with summer 2024 and annually for each summer thereafter, issue to eligible households summer EBT benefits—*

*(1) in accordance with this section; and*

*(2) for the purpose of providing nutrition assistance through electronic benefits transfer during the summer months for eligible children, to ensure continued access to food when school is not in session for the summer.*

(b) **SUMMER EBT BENEFITS REQUIREMENTS.**—

(1) **PURCHASE OPTIONS.**—

(A) **BENEFITS ISSUED BY STATES.**—

*(i) WIC PARTICIPATION STATES.*—*In the case of a State that participated in a demonstration program under section 749(g) of the Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 2010 (Public Law 111–80;*



123 Stat. 2132) during calendar year 2018 using a WIC model, summer EBT benefits issued pursuant to subsection (a) by such a State may only be used by the eligible household that receives such summer EBT benefits to purchase—

(I) supplemental foods from retailers that have been approved for participation in—

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

(bb) the program under this section; or

(II) food (as defined in section 3(k) of the Food and Nutrition Act of 2008 (7 U.S.C. 2011(k))) from retail food stores that have been approved for participation in the supplemental nutrition assistance program established under such Act, in accordance with section 7(b) of such Act (7 U.S.C. 2016(b)).

(ii) *OTHER STATES.*—Summer EBT benefits issued pursuant to subsection (a) by a State not described in clause (i) may only be used by the eligible household that receives such summer EBT benefits to purchase food (as defined in section 3(k) of the Food and Nutrition Act of 2008 (7 U.S.C. 2011(k))) from retail food stores that have been approved for participation in the supplemental nutrition assistance program established under such Act, in accordance with section 7(b) of such Act (7 U.S.C. 2016(b)).

(B) *BENEFITS ISSUED BY COVERED INDIAN TRIBAL ORGANIZATIONS.*—Summer EBT benefits issued pursuant to subsection (a) by a covered Indian Tribal organization may only be used by the eligible household that receives such summer EBT benefits to purchase supplemental foods from retailers that have been approved for participation in—

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

(ii) the program under this section.

(2) *AMOUNT.*—Summer EBT benefits issued pursuant to subsection (a)—

(A) shall be—

(i) for calendar year 2024, in an amount equal to \$75 for each child in the eligible household per month during the summer; and

(ii) for calendar year 2025 and each year thereafter, in an amount equal to the amount described in clause (i), adjusted to the nearest lower dollar increment to reflect changes to the cost of the thrifty food plan (as defined in section 3(u) of the Food and Nutrition Act of 2008 (7 U.S.C. 2012(u)) for the 12-month period ending on November 30 of the preceding calendar year; and

(B) may be issued—

(i) in the form of an EBT card; or

(ii) through electronic delivery.

(c) *ENROLLMENT IN PROGRAM.*—

(1) *STATE REQUIREMENTS.*—*States participating in the program under this section—*

(A) *shall, with respect to summer, automatically enroll eligible children who, in the school year immediately preceding the summer, are directly certified, are identified students (as defined in section 11(a)(1)(F)(i)), or are otherwise determined by a local educational agency to be eligible to receive free or reduce price meals in the program under this section, without further application from households;*

(B) *may provide an application for children who do not meet the criteria specified in subparagraph (A) and make eligibility determinations using the same eligibility criteria for free or reduced price lunches under this Act;*

(C) *shall establish procedures to carry out the enrollment described in subparagraph (A); and*

(D) *shall require local educational agencies to allow eligible households to opt out of participation in the program under this section and establish procedures for opting out of such participation.*

(2) *COVERED INDIAN TRIBAL ORGANIZATION REQUIREMENTS.*—*Covered Indian Tribal organizations participating in the program under this section shall, to the maximum extent practicable, meet the requirements under subparagraphs (A) through (C) of paragraph (1).*

(d) *IMPLEMENTATION GRANTS.*—*Not later than October 1, 2022, the Secretary shall carry out a program to make grants to States and covered Indian Tribal organizations to build capacity for implementing the program under this section.*

(e) *ALTERNATE PLANS IN THE CASE OF CONTINUOUS SCHOOL CALENDAR.*—*The Secretary shall establish alternative plans for when summer EBT benefits may be issued pursuant to subsection (a) in the case of children who are under a continuous school calendar.*

(f) *DEFINITIONS.*—*In this section:*

(1) *COVERED INDIAN TRIBAL ORGANIZATION.*—*The term “covered Indian Tribal organization” means an Indian Tribal organization that participates in the special supplemental nutrition program for women, infants, and children under section 17 of the Child Nutrition Act of 1966 (42 U.S.C. 1786).*

(2) *ELIGIBLE CHILD.*—*The term “eligible child” means, with respect to a summer, a child who—*

(A) *was, during the school year immediately preceding such summer—*

(i) *certified to receive free or reduced price lunch under the school lunch program under this Act;*

(ii) *certified to receive free or reduced price breakfast under the school breakfast program under section 4 of the Child Nutrition Act of 1966 (42 U.S.C. 1773); or*

(iii) *certified by the State through the process described in subsection (c)(1)(B); or*

(B)(i) *was, during the school year immediately preceding such summer, enrolled in a school described in subparagraph (B), (C), (D), (E), or (F) of section 11(a)(1); and*

(ii) *either—*

(I) *is an identified student (as defined in section 11(a)(1)(F)(i)); or*

(II) otherwise meets the requirements to receive free or reduced price lunch as determined by a local educational agency through an application process using the same eligibility criteria for free or reduced price lunches under this Act.

(3) *ELIGIBLE HOUSEHOLD.*—The term “eligible household” means a household that includes at least 1 eligible child.

(4) *SUPPLEMENTAL FOODS.*—The term “supplemental foods”—  
(A) means foods—

(i) containing nutrients determined by nutritional research to be lacking in the diets of children; and

(ii) that promote the health of the population served by the program under this section, as indicated by relevant nutrition science, public health concerns, and cultural eating patterns, as determined by the Secretary; and

(B) includes foods not described in subparagraph (A) substituted by State agencies, with the approval of the Secretary, that—

(i) provide the nutritional equivalent of foods described in such subparagraph; and

(ii) allow for different cultural eating patterns than foods described in such subparagraph.

\* \* \* \* \*

#### **SEC. 17. 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:** *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, 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~~].~~; *and*

*(G) in the case of an institution described in paragraph (2)(B), the eligibility of such institution shall be determined on an annual basis in accordance with this section.*

(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.

(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 (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 supplements 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) 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.).

(7) *AUTOMATIC ELIGIBILITY FOR CHILDREN IN SUPPLEMENTAL NUTRITION ASSISTANCE HOUSEHOLDS.*—A child shall be considered automatically eligible for benefits under this section without further application or eligibility determination if the child is a member of a household receiving assistance under the supplemental nutrition assistance program established under the Food and Nutrition Act of 2008 (7 U.S.C. 2011 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;

(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 organizations 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 documentation 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.

**(F) SERIOUS DEFICIENCY PROCESS.—**

(i) *IN GENERAL.*—Not later than 1 year after the date of the enactment of this subparagraph, the Secretary shall review and issue guidance and, as appropriate, regulations regarding the serious deficiency process for the program under this section.

(ii) *REVIEW.*—In carrying out clause (i), the Secretary shall review, at a minimum, the processes involved in—

(I) determining when there is a serious deficiency with respect to an institution, facility, or a family or group day care home by a State agency, including—

(aa) what measures automatically result in a finding of serious deficiency; and

(bb) how to differentiate between—

(AA) a reasonable margin of human error and systematic or intentional non-compliance; and

(BB) State-specific requirements and Federal regulations;

(II) appealing and mediating a finding of serious deficiency with respect to an institution or a family or group day care home, including—

(aa) findings related to requirements and Federal regulations; and

(bb) processes for ensuring officials involved in appeals and mediation are fair and impartial;

(III) determining the circumstances under which a corrective action plan is acceptable;

(IV) termination and disqualification, including maintenance of the list under subparagraph (E); and

(V) determining opportunities for strengthening the processes intended to reduce additional State agency program requirements on institutions or family or group day care homes that are in addition to those required under Federal law, including—

(aa) State evaluation of practices used at the time of review;

(bb) regional approval of such additional State agency requirements; and

(cc) oversight through the management evaluation process.

**(iii) GUIDANCE AND REGULATIONS.—**

(I) *IN GENERAL.*—Not later than 1 year after conducting the review under clause (ii), the Secretary shall make findings from the information collected and issue guidance and, as appropriate, regulations from such findings that will—

(aa) streamline and modernize the program;  
and

(bb) assist sponsoring organizations, State agencies, and the Food and Nutrition Service in ensuring a fair, uniform, and effective administration of the serious deficiency process, while retaining program integrity.

(II) SCOPE.—The guidance or, as appropriate, regulations made or issued under subclause (I) shall include—

(aa) clarity on the required measures for noncompliance, including—

(AA) an allowance for a reasonable margin of human error; and

(BB) a distinction between a reasonable margin of human error and systematic or intentional noncompliance;

(bb) a formal appeals and mediation process that—

(AA) is conducted by a trained official who is independent from and not affiliated with any person or agency involved in the determination being appealed or mediated;

(BB) provides an opportunity for a fair hearing for any institution or family or group day care home determined to have a serious deficiency finding or inadequate corrective action plan; and

(CC) provides for the evaluation and resolution of disputes over State agency program requirements on institutions or family or group day care homes that are in addition to those required under Federal law;

(cc) timeframes for acceptable corrective action plans for group or family day care homes that are consistent with corrective action timeframes for child care centers; and

(dd) a process to dismiss a serious deficiency upon correction of such deficiency.

(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]

(2) DISBURSEMENTS.—

(A) IN GENERAL.—*Subject to subparagraph (B), 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 national 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.]

*(B) LIMITATION.—No reimbursement may be made to any institution under this paragraph, or to family or group day care home sponsoring organizations under paragraph (3), for more than—*

*(i) 2 meals and 1 supplement or 1 meal and 2 supplements per day per child; or*

*(ii) 3 meals and 1 supplement or 2 meals and 2 supplements per day per child, in the case of child care during which there are 8 or more hours between the beginning of the first meal service period and the beginning of the fourth meal service period.*

(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.]

*(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 away from home for the 12-month period ending on the preceding April 30. The reimbursement factors under this subparagraph shall be rounded to the nearest lower cent increment and based on the unrounded adjustment in effect on April 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.]

(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 away from home for the 12-month period ending on the preceding April 30. The reimbursement factors under this item shall be rounded down to the nearest lower cent increment and based on the unrounded adjustment in effect on April 30 of the preceding 12-month period.*

(cc) REIMBURSEMENT.—A family or group day care home shall be provided reimbursement 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.]

(ii) ANNUAL ADJUSTMENT.—*The administrative reimbursement levels specified in clause (i) shall be adjusted July 1 of each year to reflect changes in the 12-month period ending on 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.*

(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  $\frac{1}{2}$  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 custom-

arily 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 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, 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 reim-

bursement 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, 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.

(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).
    - (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 (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 *or individuals* residing at an emergency shelter, if the children *or individuals* are—
        - (I) not more than **[18 years of age]** *25 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.—

(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.

(v) ADVISORY COMMITTEE ON PAPERWORK REDUCTION.—

(1) ESTABLISHMENT.—*Not later than 180 days after the date of the enactment of this subsection, the Secretary shall establish an advisory committee (referred to in this subsection as the “Advisory Committee”) to carry out the duties described in paragraph (2).*

(2) DUTIES.—*The duties of the Advisory Committee shall be to—*

(A) *examine the feasibility of reducing unnecessary or duplicative paperwork resulting from regulations and record-keeping requirements, including paperwork resulting from additional State requirements, for those participating or seeking to participate in the program under this section, including State agencies, family child care homes, child care centers, and sponsoring organizations; and*

(B) *provide recommendations to the Secretary to reduce such paperwork for participants in the program under this section while ensuring that proper accountability and pro-*

*gram integrity are maintained and make such recommendations publicly available.*

(3) *MEMBERSHIP.—The Advisory Committee shall be composed of not fewer than 14 members, of whom:*

*(A) 1 shall be a representative of a public nonprofit center.*

*(B) 1 shall be a representative of a private nonprofit center.*

*(C) 1 shall be a representative of a family or group day care home.*

*(D) 1 shall be a representative of a Head Start center.*

*(E) 1 shall be a representative of a for-profit center.*

*(F) 1 shall be a representative of an emergency shelter.*

*(G) 1 shall be a representative of an adult day care center.*

*(H) 1 shall be a representative of a State agency.*

*(I) 1 shall be a representative of a sponsoring organization for the entities referred to in subparagraphs (A), (B), (D), (E), (F), and (G).*

*(J) 1 shall be a representative of a sponsoring organization of family or group day care homes.*

*(K) 1 shall be a representative of an anti-hunger advocacy organization.*

*(L) 1 shall be a representative of an at-risk, after school program.*

*(M) 1 shall be a representative of a child care advocacy organization.*

*(N) 1 shall be a representative of an advocacy organization representing parents with young children.*

(4) *CONSIDERATIONS.—In developing the recommendations described in paragraph (2)(B), the Advisory Committee shall consider—*

*(A) information, recommendations, and reports from the Paperwork Reduction Work Group established by the Food and Nutrition Service pursuant to section 119(i) of the Child Nutrition and WIC Reauthorization Act of 2004 (42 U.S.C. 1766);*

*(B) the use of electronic systems and recordkeeping technologies to reduce paperwork for program participants and program operators; and*

*(C) duplicative requirements across multiple Federal programs.*

(5) *GUIDANCE AND REGULATIONS.—Not later than 3 years after the date of the enactment of this subsection, the Secretary shall issue guidance and, as appropriate, regulations based on the recommendations described in paragraph (2)(B) for streamlined and consolidated paperwork and recordkeeping requirements for the program, including actions taken to reduce paperwork for parents and program operators by—*

*(A) streamlining and modernizing applications; and*

*(B) streamlining and modernizing the monitoring and auditing of programmatic documentation and recordkeeping, including—*

*(i) eliminating the use of the enrollment form for the purpose of claiming meals;*



(ii) allowing the use of direct certification in all States;

(iii) requiring States to accept as documentation digital forms, digitized and electronic signatures, and electronic records;

(iv) allowing the use of electronic data collection systems containing all required Federal child and adult care food program standards;

(v) addressing non-mandated State-specific requirements; and

(vi) requiring the adoption of generally accepted technologies for client-facing technology, virtual visits, and technology used for administrative functions by the child and adult care food program to reduce the burden on participants and program operators and administrators.

(6) **REPORT.**—

(A) **IN GENERAL.**—Not later than 180 days after issuing the guidance and, as appropriate, regulations described in paragraph (5), the Secretary shall submit a report to the Committee on Agriculture, Nutrition, and Forestry of the Senate and the Committee on Education and Labor of the House of Representatives containing the information described in subparagraph (B).

(B) **CONTENTS.**—The report under subparagraph (A) shall contain the following:

(i) With respect to each instance in which the Secretary did not implement a recommendation of the Advisory Committee, an explanation with respect to why such recommendation was not implemented.

(ii) Additional recommendations with respect to legislative action that may further strengthen and streamline the program application and monitoring process and reduce administrative burdens on grantees, program participants, and local, State, and Federal governments.

\* \* \* \* \*

PILOT PROJECTS

SEC. 18.

(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) *PILOT GRANT PROGRAM FOR 100 PERCENT PLANT-BASED FOOD OPTIONS.*—

(1) *PROGRAM AUTHORIZED.*—*The Secretary shall establish and carry out a pilot grant program to award grants to eligible school food authorities to carry out the activities described in paragraph (4).*

(2) *IN GENERAL.*—

(A) *TERM.*—*The term of a grant awarded under this subsection shall be 3 years.*

(B) *GRANT AMOUNT.*—*In awarding grants under this subsection, the Secretary shall, to the extent practicable, award grants of diverse amounts.*

(3) *APPLICATION.*—

(A) *IN GENERAL.*—*To be eligible to receive a grant under this subsection, an eligible school food authority shall submit to the Secretary an application at such time, in such manner, and containing such information as the Secretary may require, including—*

*(i) a participatory evaluation plan; and*

*(ii) a plan for providing culturally appropriate meals.*

(B) *PRIORITY.*—*To the maximum extent practicable, in awarding grants under this subsection, the Secretary shall give priority to an eligible school food authority that—*

*(i) will use the grant funds to—*

*(I) serve a high proportion of children who are eligible for free or reduced price meals;*

*(II) demonstrate collaboration with nongovernmental and community-based organizations, agricultural producers, and other community partners on the activities described in paragraph (4); and*

*(III) incorporate experiential and culturally appropriate food, nutrition, or agricultural education activities related to 100 percent plant-based food options in the classroom; and*

*(ii) meets any other criteria that the Secretary determines appropriate.*

(4) *USE OF FUNDS.*—*A grant awarded under this subsection may be used for any of the following activities:*

*(A) To contract with qualified third parties for professional development training for food service personnel on serving (including preparing, procuring, marketing, and creating menus) 100 percent plant-based food options.*

*(B) To provide compensation, for each employee who participates in the professional development training described in subparagraph (A), at the regular rate of pay of each such employee.*

*(C) To provide technical assistance and student engagement and education on 100 percent plant-based food op-*

tions, including providing taste tests, recipe development, and culinary education.

(D) To provide compensation for additional work relating to serving meals that include a 100 percent plant-based food option.

(E) To conduct outreach to, and cover costs of procurement of foods from, agricultural producers of 100 percent plant-based food options, including—

- (i) underserved or limited resource producers; and
- (ii) local farmers.

(5) **REPORTS.**—

(A) **RECORDKEEPING REQUIRED.**—Each eligible school food authority awarded a grant under this subsection shall keep records of the 100 percent plant-based food options served pursuant to this subsection as the Secretary determines appropriate.

(B) **REPORT REQUIRED BY SCHOOL FOOD AUTHORITIES.**—Not later than 1 year after receiving a grant under this subsection, and annually for the duration of the pilot grant program thereafter, a school food authority shall submit to the Secretary a report on the pilot grant program, including information on—

- (i) the number of 100 percent plant-based food options that the school food authority served during the grant period compared with the preceding school year;
- (ii) the number of schools served by the school food authority pursuant to the grant;
- (iii) the number of students served by the school food authority pursuant to the grant; and
- (iv) how the school food authority used the grant funds.

(C) **REPORT BY SECRETARY.**—Not later than 1 year after the end of a school year during which the Secretary receives reports required under subparagraph (B), the Secretary shall submit to Congress a report that includes a summary of such reports received and such information with respect to the pilot program as the Secretary determines to be relevant.

(6) **TECHNICAL ASSISTANCE.**—The Secretary shall provide technical assistance and information to assist school food authorities—

- (A) to facilitate the coordination and sharing of information and resources that may be applicable to the activities described in paragraph (4); and
- (B) to collect and share information on best practices.

(7) **AUTHORIZATION OF APPROPRIATIONS.**—There is authorized to be appropriated to carry out this subsection \$10,000,000 for fiscal year 2024, to remain available through fiscal year 2028.

(8) **DEFINITIONS.**—In this subsection:

(A) **100 PERCENT PLANT-BASED FOOD OPTION.**—The term “100 percent plant-based food option” means a breakfast or lunch meal option or component that—

- (i) includes a meat alternate as described in—

(I) section 210.10 of title 7, Code of Federal Regulations (or successor regulations); or

(II) appendix A to part 210 of 7, Code of Federal Regulations (or successor regulations); and

(ii) does not contain any animal products or byproducts, such as meat, poultry, honey, fish, dairy, or eggs.

(B) *BEGINNING FARMER OR RANCHER.*—The term “beginning farmer or rancher” has the meaning given such term in section 343(a) of the Consolidated Farm and Rural Development Act (7 U.S.C. 1991(a)).

(C) *ELIGIBLE SCHOOL FOOD AUTHORITY.*—The term “eligible school food authority” means a school food authority for which 50 percent or more of the students served by such school food authority are eligible for free or reduced price lunch under this Act or free or reduced price breakfast under section 4 of the Child Nutrition Act of 1966 (42 U.S.C. 1773).

(D) *UNDERSERVED PRODUCER.*—The term “underserved producer” means an individual (including a member of an Indian Tribe) that is—

(i) a beginning farmer or rancher;

(ii) a veteran farmer or rancher; or

(iii) a socially disadvantaged farmer or rancher.

(E) *VETERAN FARMER OR RANCHER.*—The term “veteran farmer or rancher” has the meaning given such term in section 2501(a) of the Food, Agriculture, Conservation, and Trade Act of 1990 (7 U.S.C. 2279(a)).

(e) *SCHOOL FOOD WASTE REDUCTION GRANT PROGRAM.*—

(1) *GRANT PROGRAM ESTABLISHED.*—

(A) *IN GENERAL.*—The Secretary shall carry out a program to award grants, on a competitive basis, to school food authorities to carry out food waste measurement and reporting, prevention, education, and reduction projects.

(B) *REGIONAL BALANCE.*—In awarding grants under this subsection, the Secretary shall, to the maximum extent practicable, ensure that—

(i) a grant is awarded to a school food authority in each region served by the Administrator of the Food and Nutrition Service; and

(ii) there is equitable treatment of rural, urban, and tribal communities.

(2) *APPLICATION.*—To be eligible to receive a grant under this subsection, a school food authority shall submit an application to the Secretary at such time, in such manner, and containing such information as the Secretary may require.

(3) *PRIORITY.*—In awarding grants under this subsection, the Secretary shall give priority to a school food authority that demonstrates in the application under paragraph (2) that such school food authority will use the grant to—

(A) carry out experiential education activities that encourage children served by such school food authority to participate in food waste measurement and reporting, prevention, education, and reduction projects;

(B) prioritize the best use of food in accordance with the Food Recovery Hierarchy published by the Administrator of the Environmental Protection Agency;

(C) with respect to food waste measurement and reporting, prevention, education, and reduction projects, collaborate with other school food authorities, tribes, nongovernmental and community-based organizations, and other community partners;

(D) make evaluation plans and evaluate the activities carried out using grant funds; and

(E) establish a food waste measurement and reporting, prevention, education, and reduction project with the goal of long-term project sustainability.

(4) *USE OF FUNDS.*—A school food authority that receives a grant under this section shall use funds under such grant to carry out at least one of the following:

(A) Planning and carrying out a food waste measurement and reporting, prevention, education, and reduction project.

(B) Providing training to support such a project.

(C) Purchasing equipment to support such a project.

(D) Offering food waste education to students served by such school food authority.

(5) *REQUIREMENT.*—A food waste measurement and reporting, prevention, education, and reduction project funded by a grant under this subsection shall comply with the 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), as applicable.

(6) *REPORTS.*—

(A) *SCHOOL FOOD AUTHORITY REPORT.*—Not later than 1 year after receiving a grant under this subsection, and on an annual basis thereafter, a school food authority shall submit to the Secretary a report that includes an evaluation of the outcomes of the projects carried out pursuant to such grant.

(B) *SECRETARY REPORT.*—Not later than 1 year after the end of a school year during which the Secretary receives reports required under subparagraph (B), the Secretary shall submit to Congress a report that includes a summary of the reports received under subparagraph (B) and such information with respect to the program as the Secretary determines to be relevant.

(7) *AUTHORIZATION OF APPROPRIATIONS.*—There is authorized to be appropriated to carry out this subsection \$10,000,000 for fiscal year 2024, to remain available through fiscal year 2028.

(f) *TRIBALLY OPERATED MEAL AND SNACK PILOT PROJECT.*—

(1) *IN GENERAL.*—The Secretary of Agriculture shall establish a pilot project to award grants to up to 10 eligible entities to prepare such entities to administer or operate and implement, in covered schools—

(A) the school lunch program authorized under this Act;

(B) the child and adult care food program established by section 17 of this Act;

(C) the summer food service program for children established by section 13 of this Act; and

(D) the school breakfast program established by section 4 of the Child Nutrition Act of 1966 (42 U.S.C. 1773).

(2) *APPLICATION.*—To be eligible to participate in the pilot project under this subsection, an eligible entity shall submit to the Secretary an application at such time, in such manner, and containing such information as the Secretary may require.

(3) *CRITERIA FOR SELECTION.*—In selecting participants under this subsection, the Secretary shall select up to 10 eligible entities that—

- (A) are located in diverse geographic areas; and
- (B) serve Indian tribes of varying population size.

(4) *GRANTS.*—

(A) *IN GENERAL.*—The Secretary shall award, to each eligible entity selected to participate in the project under this subsection, a grant, of an amount negotiated with such eligible entity, that is not less than \$10,000 and not more than \$200,000.

(B) *SUNSET.*—The authority of the Secretary to award grants under this subsection shall terminate on the date that is 5 years after the date on which the first grant is awarded under this subsection.

(5) *REIMBURSEMENTS.*—

(A) *IN GENERAL.*—Notwithstanding any other provision of law, an eligible entity participating in the project under this subsection—

(i) may carry out the programs referenced in subparagraphs (A) through (D) of paragraph (1);

(ii) with respect to the school lunch program authorized under this Act, shall be reimbursed as if it were a State under section 12(f);

(iii) with respect to the child and adult care food program established under this Act, shall be reimbursed as if it were a State under section 17, including audit funds under subsection (i) of such section;

(iv) with respect to the summer food service program for children established under this Act, shall be reimbursed as if it were a State under section 13, including administrative funds under subsection (k) of such section; and

(v) with respect to the school breakfast program established by section 4 of the Child Nutrition Act of 1966 (42 U.S.C. 1733), shall be reimbursed as if it were a State under such section.

(B) *ADMINISTRATIVE FUNDS.*—An eligible entity that participates in the project under this subsection may receive administrative funds at a rate that is consistent with the amount received by a State under section 7 of the Child Nutrition Act of 1966 (42 U.S.C. 1776).

(C) *TRIBAL OPERATORS.*—An eligible entity that is an Indian tribe that participates in the project under this subsection as direct program operators shall be reimbursed by the Department.

(6) *DEFINITIONS.*—In this subsection:

(A) *BUREAU-FUNDED SCHOOL.*—The term “Bureau-funded school” has the meaning given such term in section 1141 of the Education Amendments of 1978 (25 U.S.C. 2021).

(B) *COVERED SCHOOL.*—The term “covered school” means—

(i) a Bureau-funded school;

(ii) a school—

(I) on or in proximity to a reservation; or

(II) that primarily serves Native American students; and

(iii) early care and education facilities, including facilities that participate in a Head Start program authorized under the Head Start Act (42 U.S.C. 9831 et seq.).

(C) *ELIGIBLE ENTITY.*—The term “eligible entity” means—

(i) an Indian tribe or tribal organization approved by an Indian tribe;

(ii) a consortium of Indian tribes; and

(iii) a partnership between—

(I) an Indian tribe; and

(II) either—

(aa) a State educational agency;

(bb) a local educational agency;

(cc) a tribal educational agency; or

(dd) the Bureau of Indian Education.

(D) *INDIAN TRIBE.*—The term “Indian tribe” has the meaning given such term in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 5304).

(E) *SCHOOL.*—The term “school” has the meaning given such term in section 12(d) of the Richard B. Russell National School Lunch Act (42 U.S.C. 1760(d)).

(F) *TRIBAL EDUCATIONAL AGENCY.*—The term “tribal educational agency” has the meaning given such term in section 6132(b) of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 7452(b)).

(g) *ACCESS TO LOCAL FOODS: FARM TO SCHOOL PROGRAM.*—

[(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).]

(1) *DEFINITIONS.*—In this subsection:

(A) *AGRICULTURAL PRODUCER.*—The term “agricultural producer” means a farmer, rancher, or fisher (including of farm-raised fish).

(B) *BEGINNING FARMER OR RANCHER.*—The term “beginning farmer or rancher” has the meaning given such term in section 343(a) of the Consolidated Farm and Rural Development Act (7 U.S.C. 1991(a)).

(C) *ELIGIBLE INSTITUTION.*—The term “eligible institution” 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).

(D) *FARM TO SCHOOL PROGRAM.*—The term “farm to school program” means a program that—

(i) *benefits an eligible institution, as determined by the Secretary; and*

(ii) *carries out—*

(I) *planting and maintenance of farms or gardens;*

(II) *procurement from local agricultural producers; or*

(III) *educational activities relating to agriculture, nutrition, or food.*

(E) *UNDERSERVED PRODUCER.—The term “underserved producer” means an individual (including a member of an Indian Tribe) that is—*

(i) *a beginning farmer or rancher;*

(ii) *a veteran farmer or rancher; or*

(iii) *a socially disadvantaged farmer or rancher.*

(F) *VETERAN FARMER OR RANCHER.—The term “veteran farmer or rancher” has the meaning given such term in section 2501(a) of the Food, Agriculture, Conservation, and Trade Act of 1990 (7 U.S.C. 2279(a)).*

(2) *PROGRAM.—The Secretary shall carry out a program to assist eligible [schools] institutions, State and local agencies, Indian tribal organizations, agricultural producers or groups of agricultural producers, land-grant colleges and universities, and nonprofit entities through [grants and technical assistance] grants, technical assistance, research, and evaluation to implement farm to school programs that improve access to local foods in eligible [schools] institutions.*

(3) *GRANTS.—*

(A) *IN GENERAL.—The Secretary shall award competitive grants under this subsection to be used for—*

(i) *training and technical assistance;*

(ii) *supporting operations;*

(iii) *planning;*

(iv) *purchasing equipment;*

(v) *developing school gardens;*

(vi) *implementing educational activities relating to agriculture, nutrition, or food;*

(vii) *implementing innovative approaches to aggregation, processing, transportation, and distribution of food;*

[(vi)] (viii) *developing partnerships; and*

[(vii)] (ix) *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.*]

(C) *AWARDS.—*

(i) *MAXIMUM AMOUNT.—The total amount provided to a grant recipient under this subsection shall not exceed \$500,000.*



(ii) *TERM.*—*The term of an award shall not exceed 3 years.*

(iii) *PURPOSE AND SCOPE.*—*In making awards under this subsection, the Secretary shall, to the extent practicable, make awards of diverse amounts and duration in order to best match the award to the purpose and scope of the project to be funded.*

[(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]

(4) *PRIORITY.*—

(A) *IN GENERAL.*—*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)] (i) *make local food products available on the menu of the eligible [school] institution;*

[(B)] (ii) *serve a high proportion of children who are eligible for free or reduced price [lunches] meals;*

(iii) *incorporate experiential, traditional, and culturally appropriate food, nutrition, or agricultural education activities in curriculum planning;*

[(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)] (iv) *demonstrate collaboration between [eligible schools, nongovernmental and community-based organizations, agricultural producer groups, and other community partners] eligible institutions, State and local agencies, Tribal organizations and agencies, agricultural producers or groups of agricultural producers, land-grant colleges and universities, and nonprofit entities on the activities described in paragraph (3);*

[(E)] (v) *include adequate and participatory evaluation plans;*

[(F)] (vi) *demonstrate the potential for long-term program sustainability; [and]*

(vii) *expand the selection of local commodities for eligible institutions;*

(viii) *identify and address chronic diet-related health issues of children served by eligible institutions; and*

[(G)] (ix) *meet any other criteria that the Secretary determines appropriate.*

(B) *TRIBAL COMMUNITY PROJECTS.*—*In the case of projects serving Tribal communities, the Secretary shall, to the maximum extent practicable, give priority to projects that best utilize products, including traditional foods, from Tribal agricultural producers, as determined by the Secretary.*

[(6)] (5) *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)] (6) *TECHNICAL ASSISTANCE.*—*[The Secretary shall provide technical assistance and information to assist eligible schools, State and local agencies, Indian tribal organizations, and nonprofit entities]*

(A) *IN GENERAL.*—*The Secretary shall provide technical assistance and information to assist eligible institutions, State and local agencies, Indian Tribal organizations, agricultural producers or agricultural producer groups, and nonprofit entities —*

[(A)] (i) *to facilitate the coordination and sharing of information and resources in the Department that may be applicable to the farm to school program;*

[(B)] (ii) *to collect and share information on best practices; [and]*

[(C)] (iii) *to disseminate research and data on existing farm to school programs and the potential for programs in underserved areas[.]; and*

(iv) *to increase awareness of, and participation in, farm to school programs among agricultural producers or agricultural producer groups, including—*

(I) *underserved or limited resource producers; and*

(II) *local farmers.*

(B) *REVIEW.*—

(i) *IN GENERAL.*—*Not later than 1 year after the date of enactment of the Healthy Meals, Healthy Kids Act, and every 3 years thereafter, the Secretary shall submit to the Committee on Agriculture of the House of Representatives, 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 progress that has been made in identifying and eliminating barriers related to developing farm to school programs.*

(ii) *REQUIREMENTS.*—*In preparing the report, the Secretary shall examine—*

(I) *the direct and indirect regulatory compliance costs affecting the production and marketing of locally or regionally produced agricultural food products to child nutrition programs;*

(II) *barriers to local and regional child nutrition program market access for small-scale production;*

(III) *barriers to funding projects that meet the criteria described in paragraph (5)(A);*

*(IV) barriers to local and regional child nutrition market access for Tribal farmers and ranchers; and*

*(V) barriers to funding Tribal projects under farm to school programs.*

**[(8)] (7) 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]** *\$15,000,000*, 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.

(C) ADMINISTRATION.—*Of the funds provided to the Secretary under subparagraph (A), not more than 5 percent may be used to pay administrative costs incurred by the Secretary in carrying out this subsection.*

**[(9)] (8) 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]** *2023 through 2028*.

**(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 vacation, 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] *Committee on Education and Labor* 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 subsection 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.

(l) ISLAND AREAS ELIGIBILITY FEASIBILITY STUDY.—

(1) *IN GENERAL.*—Not later than 12 months after the date of the enactment of this subsection, the Secretary shall begin a feasibility study to assess the ability and preparedness of the freely associated States to operate—

(A) the school lunch program authorized under this Act;

(B) the child and adult care food program established by section 17 of this Act;

(C) the summer food service program for children established by section 13 of this Act; and

(D) the school breakfast program established by section 4 of the Child Nutrition Act of 1966 (42 U.S.C. 1773).

(2) *CONTENTS.*—In conducting the study described in paragraph (1), the Secretary shall consider—

(A) any new or additional administrative processes and technology needed to implement each program listed under paragraph (1);

(B) an assessment of preparedness to—

(i) comply with management evaluations conducted by the Secretary, acting through the Administrator of the Food and Nutrition Service; and

(ii) cooperate in Federal audits and evaluations;

(C) administrative and financial capability to meet the requirements of each program listed under paragraph (1);

(D) ability to oversee each program listed under paragraph (1);

(E) statutory requirements that require waiver or modification by the Secretary and the feasibility of carrying out such waivers or modifications; and

(F) any other relevant considerations, as determined by the Secretary.

(3) *SUBMISSION.*—Not later than 24 months after the date on which the Secretary begins the study under paragraph (1), the Secretary shall—

(A) complete such study; and

(B) submit the findings of such study to the Committee on Education and Labor of the House of Representatives and the Senate Committee on Agriculture, Nutrition, and Forestry.

(4) *FREELY ASSOCIATED STATE DEFINED.*—In this subsection, the term “freely associated State” means—

(A) the Federated States of Micronesia;

(B) the Republic of the Marshall Islands; and

(C) the Republic of Palau.

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**SEC. 21A. GRANTS TO SUPPORT SCRATCH COOKING.**

(a) *ESTABLISHMENT.*—Not later than 180 days after the date of the enactment of this section, the Secretary shall establish a program to award grants, on a competitive basis, to school food authorities to promote scratch cooking.

(b) *APPLICATION.*—To be eligible for a grant under this section, a school food authority shall submit to the Secretary an application at such time, in such manner, and containing such information as the Secretary may require.

(c) *GRANT AMOUNTS AND DURATION.*—

(1) *GRANT AMOUNT.*—The Secretary shall award a grant of not more than \$100,000 to each school food authority with an application selected under this subsection.

(2) *GRANT PERIOD.*—A grant awarded under this section shall be for a period of not more than 2 years.

(d) *GRANT USES.*—A school food authority that receives a grant under this section shall use such grant funds to promote scratch cooking, including by—

(1) offering professional development and training related to preparing, procuring, advertising, serving, and creating menus of meals made with scratch cooking;

(2) investing in software and technology systems for procurement to support scratch cooking;

(3) compensating employees for additional food preparation required for scratch cooking;

(4) providing technical assistance, student engagement, and education with respect to scratch cooking, including taste tests, recipe development, and culinary education; or

(5) carrying out any additional activities to promote scratch cooking that will help school food authorities meet or exceed the 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).

(e) *PRIORITY.*—In awarding grants under this section, the Secretary shall give priority to school food authorities—

(1) that serve the greatest proportion of students eligible for free or reduced price lunch under this Act; and

(2) that—

(A) are self-operated; or

(B) provide an assurance to the Secretary that the school food authority will be self-operated on or before the date that is 1 year before the last day of the grant period.

(f) *TECHNICAL ASSISTANCE CENTER.*—

(1) *IN GENERAL.*—The Secretary shall enter into an agreement with one or more eligible third-party institutions to establish and carry out a single technical assistance and resource center to provide technical assistance for school food service personnel.

(2) *COLLABORATION REQUIREMENT.*—As soon as practicable after receiving a grant under this section, a school food authority shall collaborate with the technical assistance and resource center established under paragraph (1) to—

(A) conduct a scratch cooking needs assessment to evaluate, with respect to such school food authority—

(i) equipment needs;

(ii) equipment utilization;



(iii) procurement processes; and

(iv) workforce capabilities; and

(B) establish a strategic plan based on such needs assessment to carry out the activities under subsection (d).

(3) *ELIGIBLE THIRD-PARTY INSTITUTIONS.*—

(A) *ELIGIBLE THIRD-PARTY INSTITUTION DEFINED.*—For purposes of this subsection, the term “eligible third-party institution” means—

(i) a nonprofit organization with demonstrated experience in food or nutrition services training and technical assistance;

(ii) an institution of higher education as defined in section 101 or 102(a)(1)(B) of the Higher Education Act of 1965 (20 U.S.C. 1001; 1002(a)(1)(B));

(iii) an area career and technical education school as defined in section 3 of the Carl D. Perkins Career and Technical Education Act of 2006 (20 U.S.C. 2302); or

(iv) a consortium of entities described in subclauses (I) through (III).

(B) *CRITERIA FOR ELIGIBLE THIRD-PARTY INSTITUTIONS.*—

The Secretary shall establish specific criteria that eligible third-party training institutions must meet to qualify to enter into an agreement under paragraph (1), which shall include—

(i) prior successful experience in providing or engaging in training and technical assistance programming or applied research activities involving eligible entities, school food service administrators, or school food service directors;

(ii) prior successful experience in developing relevant educational training tools or course materials or curricula on topics addressing child and school nutrition or the updated nutrition standards under section 4(b)(3); and

(iii) the ability to deliver effective and cost-efficient training and technical assistance programming to school food service personnel—

(I) at training sites that are located within a proximate geographic distance to schools, central kitchens, or other worksites; or

(II) through an online training and assistance program on topics that do not require in-person attendance.

(4) *FUNDING.*—Of the amounts made available under subsection (h) to carry out this section, not more than 10 percent may be used to carry out this subsection.

(g) *REPORT.*—Not later than 180 days after the conclusion of the grant period described in subsection (c)(2), each school food authority that receives a grant under this section shall submit to the Secretary a report that includes, with respect to such school food authority, the change at the end of the grant period, as compared with the school year immediately preceding the beginning of the grant period, in—

(1) the percentage of whole ingredients, raw ingredients, or both, used in school meals; and

(2) *the percentage of menu items prepared with scratch cooking.*

(h) *AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated \$20,000,000 to carry out this section for each of fiscal years 2024 through 2028.*

**SEC. 22. 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]** *fiscal years 2023 through 2028*.

(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.

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#### SEC. 26. 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 2023]~~ *\$500,000 for each of fiscal years 2023 through 2028*. The Secretary shall be entitled to receive the funds and shall accept the funds, without further appropriation.

**SEC. 27. GRANTS TO FINANCE CERTAIN IMPROVEMENTS TO SCHOOL LUNCH FACILITIES.**

(a) *IN GENERAL.*—*Beginning fiscal year 2024, the Secretary shall award grants to State agencies to carry out the activities described in subsection (b).*

(b) **SUBGRANTS.**—

(1) *IN GENERAL.*—*A State agency receiving a grant under this section shall use such grant funds to award subgrants, on a competitive basis, to school food authorities.*

(2) *APPLICATION.*—*A school food authority seeking a subgrant under this subsection shall submit to the State agency an application at such time, in such manner, and containing such information as the State agency may require.*

(3) *PRIORITY.*—*In awarding a subgrant under this subsection, the State agency shall give priority to a school food authority that serves, as determined by the State agency, schools with substantial or disproportionate—*

(A) *need for infrastructure improvement; or*

(B) *durable equipment need or impairment.*

(4) **SUBGRANT USES.**—*A school food authority receiving a subgrant under this subsection shall use such subgrant funds to support the establishment, maintenance, and expansion of 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) at schools served by the school food authority, including by—*

(A) *purchasing equipment, including software and technology systems, needed to serve healthy meals, improve food safety, promote scratch cooking, facilitate the use of salad bars; or*

(B) *improving or adapting equipment needed to serve healthy meals, including by retrofitting such equipment.*

(c) **AUTHORIZATION OF APPROPRIATIONS.**—

(1) *IN GENERAL.*—*There are authorized to be appropriated \$35,000,000 for each of fiscal years 2024 through 2028 to carry out this section.*

(2) **TECHNICAL ASSISTANCE.**—*The Secretary may use not more than 5 percent of the amounts made available to carry out this section for each fiscal year to provide technical assistance to applicants and prospective applicants in preparing applications.*



**SEC. 30. MEAL TIME STUDY AND GUIDANCE.**

(a) *STUDY.*—*The Secretary shall—*

(1) *not later than 1 year after the date on which funds are first appropriated under subsection (c), enter into an agreement with an independent, nonpartisan, science-based research organization to carry out a study on the time lunches are served, recess is offered, and the duration of lunch periods at schools participating in the school lunch program under this Act; and*

(2) *not later than 4 years after the date on which funds are first appropriated under subsection (c), publish on the publicly available website of the Department a report that includes the findings of the study required under paragraph (1).*

(b) *DEVELOPMENT AND DISSEMINATION OF BEST PRACTICES.*—*The Secretary shall—*

(1) *not later than 1 year after the date on which the report required under subsection (a)(2) is published, in coordination with the Secretary of Education, establish a task force to—*

(A) *review such report;*

(B) *review other research relating to the time lunches are served, recess is offered, and the duration of lunch periods in schools; and*

(C) *develop best practices with respect to the time lunches are served, recess is offered, and the duration of lunch periods in schools to ensure student health, including appropriate nutritional intake; and*

(2) *not later than 2 years after the date on which the report required under subsection (a)(2) is published—*

(A) *review the best practices developed under paragraph (1)(C); and*

(B) *issue guidance with respect to such best practices to schools participating in the school lunch program under this Act.*

(c) *AUTHORIZATION OF APPROPRIATIONS.*—*There is authorized to be appropriated to carry out this section \$1,000,000 for fiscal year 2024, to remain available until expended.*

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**CHILD NUTRITION ACT OF 1966**

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**SEC. 7. STATE ADMINISTRATIVE EXPENSES.**

(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 1½ percent of the Federal funds expended under sections 4, 11, and 17 of the Richard B. Russell National School Lunch Act 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 or under this Act, except for the programs authorized under section 13 or 17 of the Richard B. Russell National School Lunch Act or under section 17 of this Act, an amount equal to not less than 1 percent and not more than 1½ percent of the funds expended by each State under sections 4 and 11 of the Richard B. Russell National School Lunch Act 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), 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

(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 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) 2½ 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 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, 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 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 (except section 13 of that Act ), 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.—

(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.

(iv) AVAILABILITY AND APPROPRIATENESS OF TRAINING.—*Training carried out under this subparagraph shall be—*

(I) *scheduled primarily during regular, paid working hours;*

(II) *if such training is scheduled outside of such regular, paid working hours—*

(aa) efforts shall be made to inform food service personnel of the reasons requiring the training to be scheduled outside of such hours;

(bb) time spent participating in such training shall be considered compensable time and each individual who participates shall be paid no less than the individual's regular rate of pay; and

(cc) food service personnel shall not be discharged or in any other manner discriminated against for not being able to attend such training; and

(III) offered in-person and incorporate hands-on training techniques, when appropriate.

(v) *RELATIONSHIP TO OTHER LAWS.*—Nothing in this subparagraph may be construed to supersede or otherwise modify any Federal, State, or local law or legal obligation governing the relationship between an employee and employer.

(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 systems.

(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]** *2023 through 2028*, to remain available until expended.

(j) For the fiscal year beginning October 1, 1977, and each succeeding fiscal year ending before **[October 1, 2015]** *October 1, 2028*, there are hereby authorized to be appropriated such sums as may be necessary for the purposes of this section.

\* \* \* \* \*

#### **SEC. 10. 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, 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)] (b) PROPOSED REGULATIONS.—**

**[(A)] (1) IN GENERAL.**—The **[Secretary shall—]** *Secretary shall*

**[(i) establish science-based]** *establish science-based* nutrition standards *that 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)* 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)] (2) 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)] (3) 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.]

(4) *UPDATING STANDARDS.—Not later than 1 year after the first publication 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) that occurs after the date of the enactment of this subparagraph, and not less frequently than once every 10 years or not later than 1 year after the publication of 2 consecutive updates to 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), thereafter, whichever occurs first, the Secretary shall:*

*(A) Enter into an agreement with the National Academies of Sciences, Engineering, and Medicine to—*

*(i) conduct a review of the school nutrition standards and requirements established under this subsection; and*

*(ii) recommend updates to such standards and requirements so that they are substantially similar to 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), taking into account the practical application for implementation.*

*(B) Not later than 1 year after the conclusion of the review described in subparagraph (A)(i), promulgate regulations to update the school nutrition standards and requirements established under this subsection to align with the recommendations under subparagraph (A)(ii).*

(5) *AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out paragraph (4), \$3,000,000, for the fiscal year in which the first publication 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) occurs after the date of the enactment of this Act, to remain available until expended.*

(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.

\* \* \* \* \*

#### SPECIAL SUPPLEMENTAL NUTRITION PROGRAM FOR WOMEN, INFANTS, AND CHILDREN

SEC. 17. (a) Congress finds that substantial numbers of pregnant, postpartum, and breastfeeding women, infants, and young children from families with inadequate income are at special risk with respect to their physical and mental health by reason of inadequate nutrition or health care, or both. It is, therefore, the purpose of the program authorized by this section to provide, up to the authorization levels set forth in subsection (g) of this section, supplemental foods and nutrition education, including breastfeeding promotion and support, through any eligible local agency that applies for participation in the program. The program shall serve as an adjunct to good health care, during critical times of growth and development, to prevent the occurrence of health problems, including **[drug abuse]** *substance use disorder*, and improve the health status of these persons.

(b) As used in this section—

**[(1) “Breastfeeding women” means women up to one year postpartum who are breastfeeding their infants.**

**[(2) “Children” means persons who have had their first birthday but have not yet attained their fifth birthday.]**

(1) *BREASTFEEDING WOMAN.*—*The term “breastfeeding woman” means—*

*(A) before October 1, 2026, an individual up to one year postpartum who is breastfeeding the infant of the individual; and*

*(B) on and after October 1, 2026, an individual who is not more than 2 years postpartum and is breastfeeding the infant of the individual.*

(2) *CHILD.*—*The term “child” means—*

*(A) before October 1, 2026, an individual who—*

*(i) has attained a first birthday but has not yet attained a fifth birthday; or*

*(ii)(I) has attained a fifth birthday but has not yet attained a sixth birthday;*

*(II) does not attend full-day kindergarten; and*

*(III) is certified before such date by a State agency under subsection (d)(3)(A)(iii)(II); and*

*(B) on and after October 1, 2026, an individual who—*

*(i) has attained a first birthday but has not yet attained a sixth birthday; and*

*(ii) does not attend full day kindergarten.*

(3) “Competent professional authority” means physicians, nutritionists, registered nurses, dietitians, or State or local medically trained health officials, or persons designated by physicians or State or local medically trained health officials, in accordance with standards prescribed by the Secretary, as being competent professionally to evaluate nutritional risk.

(4) “Costs of nutrition services and administration” or “nutrition services and administration” means costs that shall include, but not be limited to, costs for certification of eligibility of persons for participation in the program (including centrifuges, measuring boards, spectrophotometers, and scales used for the certification), food delivery, monitoring, nutrition education, breastfeeding support and promotion, outreach, startup costs, and general administration applicable to implementation of the program under this section, such as the cost of staff, transportation, insurance, developing and printing food instruments, and administration of State and local agency offices.

(5) “Infants” means persons under one year of age.

(6) “Local agency” means a public health or welfare agency or a private nonprofit health or welfare agency, which, directly or through an agency or physician with which it has contracted, provides health services. The term shall include an Indian tribe, band, or group recognized by the Department of the Interior, the Indian Health Service of the Department of Health and Human Services, or an intertribal council or group that is an authorized representative of Indian tribes, bands, or groups recognized by the Department of the Interior.

(7) NUTRITION EDUCATION.—The term “nutrition education” means individual and group sessions and the provision of material that are designed to improve health status and achieve positive change in dietary and physical activity habits, and that emphasize the relationship between nutrition, physical activity, and health, all in keeping with the personal and cultural preferences of the individual.

(8) “Nutritional risk” means (A) detrimental or abnormal nutritional conditions detectable by biochemical or anthropometric measurements, (B) other documented nutritionally related medical conditions, (C) dietary deficiencies that impair or endanger health, (D) conditions that directly affect the nutritional health of a person, such as alcoholism or **[drug abuse]** *substance use disorder*, or (E) conditions that predispose persons to inadequate nutritional patterns or nutritionally related medical conditions, including, but not limited to, homelessness and migrancy.

(9) “Plan of operation and administration” means a document that describes the manner in which the State agency intends to implement and operate the program.

**[(10) “Postpartum women” means women up to six months after termination of pregnancy.]**

**[(11) “Pregnant women” means women determined to have one or more fetuses in utero.]**

(10) POSTPARTUM WOMAN.—The term “postpartum woman” means—

(A) *before October 1, 2026, an individual up to six months after termination of pregnancy; and*

(B) *on and after October 1, 2026, an individual up to 2 years after termination of pregnancy.*

(11) **PREGNANT WOMAN.**—*The term “pregnant woman” means an individual determined to have one or more fetuses in utero.*

(12) **“Secretary”** means the Secretary of Agriculture.

(13) **“State agency”** means the health department or comparable agency of each State; an Indian tribe, band, or group recognized by the Department of the Interior; an intertribal council or group that is the authorized representative of Indian tribes, bands, or groups recognized by the Department of the Interior; or the Indian Health Service of the Department of Health and Human Services.

(14) **“Supplemental foods”** means those foods containing nutrients determined by nutritional research to be lacking in the diets of pregnant, breastfeeding, and postpartum women, infants, and children and foods that promote the health of the population served by the program authorized by this section, as indicated by relevant nutrition science, public health concerns, and cultural eating patterns, as prescribed by the Secretary. State agencies may, with the approval of the Secretary, substitute different foods providing the nutritional equivalent of foods prescribed by the Secretary, to allow for different cultural eating patterns.

(15) **“Homeless individual”** means—

(A) an individual who lacks a fixed and regular nighttime residence; or

(B) an individual whose primary nighttime residence is—

(i) a supervised publicly or privately operated shelter (including a welfare hotel or congregate shelter) designed to provide temporary living accommodations;

(ii) an institution that provides a temporary residence for individuals intended to be institutionalized;

(iii) a temporary accommodation of not more than 365 days in the residence of another individual; or

(iv) a public or private place not designed for, or ordinarily used as, a regular sleeping accommodation for human beings.

(16) **“ [Drug abuse education] Substance use disorder education”** means—

(A) the provision of information concerning the [ dangers of drug abuse] *harm of substance use on pregnancy and lactation*; and

(B) the referral of participants who [are suspected drug abusers] *may have a substance use disorder* to [drug abuse clinics,] treatment programs, counselors, or other [drug abuse professionals] *resources*.

(17) **“Competitive bidding”** means a procurement process under which the Secretary or a State agency selects a single source (a single infant formula manufacturer) offering the lowest price, as determined by the submission of sealed bids, for a product for which bids are sought for use in the program authorized by this section.

(18) “Rebate” means the amount of money refunded under cost containment procedures to any State agency from the manufacturer or other supplier of the particular food product as the result of the purchase of the supplemental food with a voucher or other purchase instrument by a participant in each such agency’s program established under this section.

(19) “Discount” means, with respect to a State agency that provides program foods to participants without the use of retail grocery stores (such as a State that provides for the home delivery or direct distribution of supplemental food), the amount of the price reduction or other price concession provided to any State agency by the manufacturer or other supplier of the particular food product as the result of the purchase of program food by each such State agency, or its representative, from the supplier.

(20) “Net price” means the difference between the manufacturer’s wholesale price for infant formula and the rebate level or the discount offered or provided by the manufacturer under a cost containment contract entered into with the pertinent State agency.

(21) REMOTE INDIAN OR NATIVE VILLAGE.—The term “remote Indian or Native village” means an Indian or Native village that—

(A) is located in a rural area;

(B) has a population of less than 5,000 inhabitants; and

(C) is not accessible year-around by means of a public road (as defined in section 101 of title 23, United States Code).”

(22) PRIMARY CONTRACT INFANT FORMULA.—The term “primary contract infant formula” means the specific infant formula for which manufacturers submit a bid to a State agency in response to a rebate solicitation under this section and for which a contract is awarded by the State agency as a result of that bid.

(23) STATE ALLIANCE.—The term “State alliance” means 2 or more State agencies that join together for the purpose of procuring infant formula under the program by soliciting competitive bids for infant formula.

(24) SUPPLY CHAIN DISRUPTION.—The term “supply chain disruption” means a shortage of supplemental foods that impedes the redemption of food instruments, as determined by the Secretary.

(25) BREASTFEEDING PEER COUNSELOR.—*The term “breastfeeding peer counselor” means an individual who is recruited and hired from the adult population described in subsection (d)(1) who has—*

*(A) previous experience with breastfeeding, including experience having breastfed at least one infant; and*

*(B) provides mother-to-mother support to prenatal and postpartum women under the program.*

(c)(1) The Secretary may carry out a special supplemental nutrition program to assist State agencies through grants-in-aid and other means to provide, through local agencies, at no cost, supplemental foods, nutrition education, and breastfeeding support and promotion to low-income pregnant, postpartum, and breastfeeding

women, infants, and children who satisfy the eligibility requirements specified in subsection (d) of this section. The program shall be supplementary to—

(A) the supplemental nutrition assistance program;

(B) any program under which foods are distributed to needy families in lieu of supplemental nutrition assistance program benefits; and

(C) receipt of food or meals from soup kitchens, or shelters, or other forms of emergency food assistance.

(2) Subject to amounts appropriated to carry out this section under subsection (g)—

(A) the Secretary shall make cash grants to State agencies for the purpose of administering the program, and

(B) any State agency approved eligible local agency that applies to participate in or expand the program under this section shall immediately be provided with the necessary funds to carry out the program.

(3) Nothing in this subsection shall be construed to permit the Secretary to reduce ratably the amount of foods that an eligible local agency shall distribute under the program to participants. The Secretary shall take affirmative action to ensure that the program is instituted in areas most in need of supplemental foods. The existence of a commodity supplemental food program under section 4 of the Agriculture and Consumer Protection Act of 1973 shall not preclude the approval of an application from an eligible local agency to participate in the program under this section nor the operation of such program within the same geographic area as that of the commodity supplemental food program, but the Secretary shall issue such regulations as are necessary to prevent dual receipt of benefits under the commodity supplemental food program and the program under this section.

(4) A State shall be ineligible to participate in programs authorized under this section if the Secretary determines that State or local sales taxes are collected within the State on purchases of food made to carry out this section.

(d)(1) Participation in the program under this section shall be limited to pregnant, postpartum, and breastfeeding women, infants, and children from low-income families who are determined by a competent professional authority to be at nutritional risk.

(2)(A) The Secretary shall establish income eligibility standards to be used in conjunction with the nutritional risk criteria in determining eligibility of individuals for participation in the program. Any individual at nutritional risk shall be eligible for the program under this section only if such individual—

(i) is a member of a family with an income that is less than the maximum income limit prescribed under section 9(b) of the Richard B. Russell National School Lunch Act for free and reduced price meals;

(ii)(I) *resides in a household (as such term is defined in section 3 of the Food and Nutrition Act of 2008 (7 U.S.C. 2012)) that includes an individual who receives supplemental nutrition assistance program benefits under the Food and Nutrition Act of 2008; or*

(II) is a member of a family that receives assistance under the State program funded established 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【; or】;

【(iii)(I) receives medical assistance under title XIX of the Social Security Act; or

【(II) is a member of a family in which a pregnant woman or an infant receives such assistance.】

*(iii)(I) receives medical assistance under title XIX of the Social Security Act (42 U.S.C. 1396 et seq.) or child health assistance under title XXI of such Act (42 U.S.C.1397aa et seq.); or*

*(II) is a member of a family in which a pregnant woman, postpartum woman, infant, or child receives assistance or is enrolled as described in subclause (I);*

*(iv) is enrolled as a participant in a Head Start program authorized under the Head Start Act (42 U.S.C. 9831 et seq.) or resides in a household in which one or more children is enrolled as a participant in such a Head Start program;*

*(v) resides in a household that includes an individual who receives assistance under 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)); or*

*(vi) resides in a household that includes an individual who receives assistance from a nutrition assistance program funded by the consolidated block grants for Puerto Rico and the American Samoa under section 19 of the Food and Nutrition Act of 2008 (7 U.S.C. 2028) or funded by a block grant for the Commonwealth of the Northern Mariana Islands pursuant to section 601 of Public Law 96-597 (48 U.S.C. 1469d(c)).*

(B) For the purpose of determining income eligibility under this section, any State agency may choose to exclude from income—

(i) any basic allowance—

(I) for housing received by military service personnel residing off military installations; or

(II) provided under section 403 of title 37, United States Code, 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; and

(ii) any cost-of-living allowance provided under section 405 of title 37, United States Code, to a member of a uniformed service who is on duty outside the contiguous States of the United States.

(C) COMBAT PAY.—For the purpose of determining income eligibility under this section, a State agency shall exclude from income 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 subparagraph, 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.



(D) In the case of a pregnant woman who is otherwise ineligible for participation in the program because the family of the woman is of insufficient size to meet the income eligibility standards of the program, the pregnant woman shall be considered to have satisfied the income eligibility standards if, by increasing the number of individuals in the family of the woman by 1 individual, the income eligibility standards would be met.

(3) CERTIFICATION.—

(A) PROCEDURES.—

(i) IN GENERAL.—Subject to **[clause (ii)] clauses (ii) through (viii)**, a person shall be certified or recertified for participation in accordance with general procedures prescribed by the Secretary.

**[(ii) BREASTFEEDING WOMEN.—**A State may elect to certify a breastfeeding woman for a period of 1 year postpartum or until a woman discontinues breastfeeding, whichever is earlier.

**[(iii) CHILDREN.—**A State may elect to certify participant children for a period of up to 1 year, if the State electing the option provided under this clause ensures that participant children receive required health and nutrition assessments.]

(ii) *BREASTFEEDING WOMEN.—With respect to a breastfeeding woman, a State—*

*(I) before October 1, 2026, may elect to certify such breastfeeding woman for a period of 2 years postpartum; and*

*(II) on and after October 1, 2026, a State shall certify a postpartum woman for a period of 2 years postpartum.*

(iii) *CHILDREN.—*

*(I) CHILDREN UNDER 5.—With respect to a participant child who has not had a fifth birthday—*

*(aa) before October 1, 2026, a State may elect to certify a participant child for a period of 2 years, if the State electing the option provided under this clause ensures that a participant child receives the required health and nutrition assessments; and*

*(bb) on and after October 1, 2026 a State shall—*

*(AA) certify a participant child for a period of 2 years; and*

*(BB) ensure that a participant child receives the required health and nutrition assessments, as determined by the Secretary under clause (ix).*

*(II) 5-YEAR-OLD CHILDREN.—*

*(aa) IN GENERAL.—Beginning not later than October 1, 2026, a State shall certify a participant child who has had a fifth birthday but has not yet attained a sixth birthday, for the period that ends on the earlier of—*

*(AA) the sixth birthday of the participant child; and*

(BB) the first date on which the participant child attends full-day kindergarten.

(bb) REQUIREMENTS.—Each State that certifies a participant child under item (aa) shall—

(AA) ensure that such participant child receives required health and nutrition assessments, as determined by the Secretary under clause (ix); and

(BB) establish a method to determine the first date on which such participant child attends full-day kindergarten.

(iv) INFANTS.—

(I) IN GENERAL.—With respect to an infant, a State—

(aa) before October 1, 2026, may elect to certify an infant for participation in the program for a period of 2 years; and

(bb) on and after October 1, 2026, shall certify an infant for participation in the program for a period of 2 years.

(II) ASSESSMENTS.—In certifying an infant under subclause (I), a State shall ensure that the infant receives required health and nutrition assessments, as determined by the Secretary under clause (ix).

(III) INFANTS BORN TO PARTICIPANT MOTHERS.—For purposes of subclause (I), an infant born to a pregnant woman who is participating in the program shall be certified for participation without further application.

(IV) CLARIFICATION RELATING TO AGE.—An infant may be certified for participation in the program for a period of 2 years, regardless of whether such infant will become a child during such period.

(v) POSTPARTUM WOMEN.—With respect to a postpartum woman, a State—

(I) before October 1, 2026, may elect to certify such postpartum woman for a period of 2 years after the termination of the pregnancy of the postpartum woman; and

(II) on and after October 1, 2026, a State shall certify a postpartum woman for a period of 2 years after the termination of pregnancy of the postpartum woman.

(vi) PREGNANT WOMEN.—With respect to a pregnant woman, a State—

(I) before October 1, 2026, may elect to certify a pregnant woman for the duration of the pregnancy and for the 90 days after the termination of pregnancy; and

(II) on and after October 1, 2026, shall certify a pregnant woman for the duration of the pregnancy

and for the 90 days after the termination of pregnancy.

(vii) *CERTIFICATION WITHIN ONE HOUSEHOLD FAMILY.*—In order to align certification periods or recertification appointments, when a State or local agency certifies an individual based on income documentation under subparagraph (D) or adjunct documentation under subparagraph (E), a new certification period that otherwise meets the requirements of the program may be initiated for eligible family members of such individual.

(viii) *RECERTIFICATION.*—Before requesting new income documentation for purposes of recertifying an individual under the program, a State shall—

(I) determine whether such individual is eligible for recertification under subparagraph (E); and

(II) if such individual is so eligible—

(aa) recertify such individual; and

(bb) notify such individual of such recertification.

(ix) *NUTRITION RISK.*—

(I) *IN GENERAL.*—The Secretary may require nutrition risk evaluations within a single certification period for the purposes of identifying specific risk factors.

(II) *INFORMATION PROVIDED BY A HEALTH CARE PROVIDER.*—Information provided by a health care provider shall be sufficient to establish nutrition risk for the purposes of program eligibility under this section.

(III) *DETERMINATION.*—If it is determined that the individual does not meet any nutritional risk criteria, the certification of the individual shall terminate on the date of determination.

[(B) A State may consider pregnant women who meet the income eligibility standards to be presumptively eligible to participate in the program and may certify the women for participation immediately, without delaying certification until an evaluation is made concerning nutritional risk. A nutritional risk evaluation of such a woman shall be completed not later than 60 days after the woman is certified for participation. If it is subsequently determined that the woman does not meet nutritional risk criteria, the certification of the woman shall terminate on the date of the determination.

[(C) *PHYSICAL PRESENCE.*—

[(i) *IN GENERAL.*—Except as provided in clause (ii) and subject to the requirements of the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et seq.) and section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), each individual seeking certification or recertification for participation in the program shall be physically present at each certification or recertification determination in order to determine eligibility under the program.

[(ii) *WAIVERS.*—If the agency determines that the requirement of clause (i) would present an unreason-

able barrier to participation, a local agency may waive the requirement of clause (i) with respect to—

- [(I) an infant or child who—
  - [(aa) was present at the initial certification visit; and
  - [(bb) is receiving ongoing health care;
- [(II) an infant or child who—
  - [(aa) was present at the initial certification visit;
  - [(bb) was present at a certification or recertification determination within the 1-year period ending on the date of the certification or recertification determination described in clause (i); and
  - [(cc) has one or more parents who work; and
- [(III) an infant under 8 weeks of age—
  - [(aa) who cannot be present at certification for a reason determined appropriate by the local agency; and
  - [(bb) for whom all necessary certification information is provided.]]

(B) *INTERIM ELIGIBILITY.*—

(i) *TEMPORARY CERTIFICATION.*—

(I) *IN GENERAL.*—*In the case of a pregnant woman, breastfeeding woman, postpartum woman, infant, or child who is not otherwise determined eligible under this section to participate in the program due to lack of documentation at the time of application, a State agency shall consider such a pregnant woman, breastfeeding woman, postpartum woman, infant, or child to be temporarily eligible to participate in the program based on a signed statement by the applicant.*

(II) *30-DAY PERIOD.*—*With respect to an individual that is temporarily eligible under subclause (I), the State agency shall—*

*(aa) provide food instruments for a single 30-day period; and*

*(bb) require that documentation for purposes of certifying such individual in accordance with this paragraph be provided not later than 30 days after the first day such individual is deemed temporarily eligible under subclause (I).*

(III) *DOCUMENTATION DEMONSTRATING ELIGIBILITY.*—*If an individual provides documentation in accordance with subclause (II) that demonstrates eligibility for the program, the individual shall be certified in accordance with this paragraph beginning on the first day the individual was deemed temporarily eligible under subclause (I).*

(IV) *DOCUMENTATION FAILING TO DEMONSTRATE ELIGIBILITY.*—*If an individual does not provide*

*documentation in accordance with subclause (II), or provides documentation that does not demonstrate eligibility for the program—*

*(aa) the individual shall be determined ineligible to participate in the program; and*

*(bb) the temporary eligibility with respect to such individual shall terminate at the end of the single 30-day period described in subclause (II)(aa).*

*(ii) NUTRITIONAL RISK.—A State may consider a pregnant woman, breastfeeding woman, postpartum woman, infant, or child applicant who meets the income eligibility standards to be temporarily eligible on an interim basis to participate in the program and may certify any such individual for participation immediately, without delaying certification until an evaluation is made concerning nutritional risk. A nutritional risk evaluation of such an individual shall be completed not later than 90 days after the individual is certified for participation. If it is subsequently determined that the individual does not meet nutritional risk criteria, the certification of the individual shall terminate on the date of the determination.*

**(C) PRESENCE WITH RESPECT TO CERTAIN DETERMINATIONS AND EVALUATIONS.—**

*(i) IN GENERAL.—Each individual seeking certification, recertification, or a nutritional risk evaluation for participation in the program shall be offered an appointment—*

*(I) in-person, through video technology permitting 2-way, real-time interactive communications, by telephone, and in such other format as the Secretary determines appropriate in order to determine eligibility under the program, provided that such format permits 2-way, real-time interactive communications; and*

*(II) that occurs in a format, setting, or platform that is accessible to the individual in accordance with the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et seq.) and section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794).*

*(ii) ANTHROPOMETRIC DATA FOR REMOTE CERTIFICATION.—If an individual meets the certification presence requirement through technology permitting 2-way, real-time interactive communications or other methods described in clause (i)(I), the anthropometric data with respect to such individual shall be obtained within 90 days.*

**(D) INCOME DOCUMENTATION.—**

*(i) IN GENERAL.—Except as provided in clause (ii), in order to participate in the program pursuant to clause (i) of paragraph (2)(A), an individual seeking certification or recertification for participation in the program shall provide documentation of family income.*

(ii) **WAIVERS.**—A State agency may waive the documentation requirement of clause (i), in accordance with criteria established by the Secretary, with respect to—

(I) an individual for whom the necessary documentation is not available; or

(II) an individual, such as a homeless woman or child, for whom the agency determines the requirement of clause (i) would present an unreasonable barrier to participation.

[(E) **ADJUNCT DOCUMENTATION.**—In order to participate in the program pursuant to clause (ii) or (iii) of paragraph (2)(A), an individual seeking certification or recertification for participation in the program shall provide documentation of receipt of assistance described in that clause.]

*(E) ADJUNCT DOCUMENTATION.—In order to participate in the program under this section pursuant to clause (ii) through (vi) of paragraph (2)(A), not earlier than 90 days prior to the date on which the certification or recertification for participation in the program is made—*

*(i) an individual shall provide documentation of receipt of assistance described in such clause; or*

*(ii) a State agency shall use available documentation to show receipt of such assistance.*

(F) **PROOF OF RESIDENCY.**—An individual residing in a remote Indian or Native village or an individual served by an Indian tribal organization and residing on a reservation or pueblo may, under standards established by the Secretary, establish proof of residency under this section by providing to the State agency the mailing address of the individual and the name of the remote Indian or Native village.

(G) **PAPERWORK REDUCTION.**—

*(i) IN GENERAL.—A State agency shall accept a single document that provides all of the information required under this paragraph unless the State agency determines there is a sufficient reason to doubt the authenticity of such document.*

*(ii) ELECTRONIC FORM.—A State agency shall accept documentation under this paragraph in support of a household's application in electronic form or provided electronically unless the State agency determines there is a sufficient reason to doubt the authenticity of such electronically provided document.*

(e)(1) The State agency shall ensure that nutrition education and [drug abuse] *substance use disorder* education is provided to all pregnant, postpartum, and breastfeeding participants in the program and to parents or caretakers of infant and child participants in the program. The State agency may also provide nutrition education and [drug abuse] *substance use disorder* education to pregnant, postpartum, and breastfeeding women and to parents or caretakers of infants and children enrolled at local agencies operating the program under this section who do not participate in the program. A local agency participating in the program shall provide education or educational materials relating to the [effects of drug

and alcohol use by] *effects of a substance use disorder of a pregnant, postpartum, or breastfeeding woman on the developing child of the woman.*

(2) The Secretary shall prescribe standards to ensure that adequate nutrition education services and breastfeeding promotion and support are provided. The State agency shall provide training to persons providing nutrition education, including breastfeeding support and education, under this section.

(3) NUTRITION EDUCATION MATERIALS.—

(A) IN GENERAL.—The Secretary shall, after submitting proposed nutrition education materials to the Secretary of Health and Human Services for comment, issue such materials for use in the program under this section.

(B) SHARING OF MATERIALS WITH OTHER PROGRAMS.—

(i) COMMODITY SUPPLEMENTAL FOOD PROGRAM.—The Secretary may provide, in bulk quantity, nutrition education materials (including materials promoting breastfeeding) developed with funds made available for the program authorized under this section to State agencies administering the commodity supplemental food program established under section 5 of the Agriculture and Consumer Protection Act of 1973 (7 U.S.C. 612c note; Public Law 93–86) at no cost to that program.

(ii) CHILD AND ADULT CARE FOOD PROGRAM.—A State agency may allow the local agencies or clinics under the State agency to share nutrition educational materials with institutions participating in the child and adult care food program established under section 17 of the Richard B. Russell National School Lunch Act (42 U.S.C. 1766) at no cost to that program, if a written materials sharing agreement exists between the relevant agencies.

(C) NUTRITION EDUCATION MATERIALS RELATED TO FOOD ALLERGIES.—*The nutrition education materials issued under subparagraph (A) shall include nutrition education materials with respect to—*

*(i) individuals with food allergies during pregnancy and in the postpartum period;*

*(ii) infants impacted by prenatal food allergy exposure;*

*(iii) introducing potential food allergens to infants; and*

*(iv) children with food allergies.*

(4) The State agency—

(A) shall provide each local agency with materials showing the maximum income limits, according to family size, applicable to pregnant women, infants, and children [up to age 5] under the medical assistance program established under title XIX of the Social Security Act (in this section referred to as the “medicaid program”);

(B) shall provide to individuals applying for the program under this section, or reapplying at the end of their certification period, written information about the medicaid program and referral to such program or to agencies authorized to de-

termine presumptive eligibility for such program, if such individuals are not participating in such program and appear to have family income below the applicable maximum income limits for such program; and

(C) may provide a local agency with materials describing other programs for which a participant in the program may be eligible.

(5) Each local agency shall maintain and make available for distribution a list of local resources for ~~substance abuse~~ *substance use disorder* counseling and treatment.

(f)(1)~~[(A) Each State agency shall submit to the Secretary, by a date specified by the Secretary, an initial date specified by the Secretary, a plan of operation and administration for a fiscal year. After submitting the initial plan, a State shall be required to submit to the Secretary for approval only a substantive change in the plan.]~~*(A) Each State agency shall submit to the Secretary a plan of operation and administration. A State shall be required to submit to the Secretary for approval any substantive change in the plan and annual requirements as specified by the Secretary.*

(B) To be eligible to receive funds under this section for a fiscal year, a State agency must receive the approval of the Secretary for the plan submitted for the fiscal year.

(C) The plan shall include—

(i) a description of the food delivery system of the State agency and the method of enabling participants to receive supplemental foods under the program at any of the authorized retail stores under the program, to be administered in accordance with standards developed by the Secretary, including a description of the State agency's vendor peer group system, competitive price criteria, and allowable reimbursement levels that demonstrate that the State is in compliance with the cost-containment provisions in subsection (h)(11);

(ii) procedures for accepting and processing vendor applications outside of the established timeframes if the State agency determines there will be inadequate access to the program, including in a case in which a previously authorized vendor sells a store under circumstances that do not permit timely notification to the State agency of the change in ownership;

(iii) a description of the financial management system of the State agency;

(iv) a plan to coordinate operations under the program with other services or programs that may benefit participants in, and applicants for, the program;

(v) a plan to provide program benefits under this section to, and to meet the special nutrition education needs of, eligible migrants, homeless individuals, and Indians;

(vi) a plan to expend funds to carry out the program during the relevant fiscal year;

(vii) a plan to provide program benefits under this section to unserved and underserved areas in the State (including a plan to improve access to the program for participants and prospective applicants who are employed, or who reside in rural areas), if sufficient funds are available to carry out this clause;



(viii) a plan for reaching and enrolling eligible women in the early months of pregnancy, including provisions to reach and enroll eligible migrants;

(ix) a plan to provide program benefits under this section to unserved infants and children under the care of a *kinship family*, foster parents, protective services, or child welfare authorities, including infants exposed to **[drugs]** *illicit or other harmful substances* perinatally;

(x) a plan to provide nutrition education and promote breastfeeding; and

(xi) such other information as the Secretary may reasonably require.

(D) The Secretary may not approve any plan that permits a person to participate simultaneously in both the program authorized under this section and the commodity supplemental food program authorized under sections 4 and 5 of the Agriculture and Consumer Protection Act of 1973 (7 U.S.C. 612c note).

(2) A State agency shall establish a procedure under which members of the general public are provided an opportunity to comment on the development of the State agency plan.

(3) The Secretary shall establish procedures under which eligible migrants may, to the maximum extent feasible, continue to participate in the program under this section when they are present in States other than the State in which they were originally certified for participation in the program and shall ensure that local programs provide priority consideration to serving migrant participants who are residing in the State for a limited period of time. Each State agency shall be responsible for administering the program for migrant populations within its jurisdiction.

(4) State agencies shall submit monthly financial reports and participation data to the Secretary.

(5) State and local agencies operating under the program shall keep such accounts and records, including medical records, as may be necessary to enable the Secretary to determine whether there has been compliance with this section and to determine and evaluate the benefits of the nutritional assistance provided under this section. 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.

(6)(A) Local agencies participating in the program under this section shall notify persons of their eligibility or ineligibility for the program within twenty days of the date that the household, during office hours of a local agency, personally makes an oral or written request to participate in the program. The Secretary shall establish a shorter notification period for categories of persons who, due to special nutritional risk conditions, must receive benefits more expeditiously.

**[(B) State agencies may provide for the delivery of vouchers to any participant who is not scheduled for nutrition education and breastfeeding counseling or a recertification interview through means, such as mailing, that do not require the participant to travel to the local agency to obtain vouchers.]**

**(B) DELIVERY OF FOOD INSTRUMENTS.—**

(i) *IN GENERAL.*—State agencies may provide for the delivery of food instruments, including electronic benefit transfer cards, to any participant through means that do not require the participant to travel to the local agency to obtain food instruments, such as through mailing or remote issuance. **[The State]**

(ii) *STATE PLAN.*—The State agency shall describe any plans for issuance of **[vouchers by mail in its plan]** food instruments by mail, remote issuance, or other means in the State plan submitted under paragraph (1). **[The Secretary]**

(iii) *DISAPPROVAL OF STATE PLAN.*—The Secretary may disapprove a State plan with respect to the issuance of **[vouchers by mail]** food instruments by mail, remote issuance, or other means in any specified jurisdiction or part of a jurisdiction within a State only if the Secretary finds that such issuance would pose a significant threat to the integrity of the program under this section in such jurisdiction or part of a jurisdiction.

(7)(A) The State agency shall, in cooperation with participating local agencies, publicly announce and distribute information on the availability of program benefits (including the eligibility criteria for participation and the location of local agencies operating the program) to offices and organizations that deal with significant numbers of potentially eligible individuals (including health and medical organizations, hospitals and clinics, welfare and unemployment offices, social service agencies, farmworker organizations, Indian tribal organizations, organizations and agencies serving homeless individuals and shelters for victims of domestic violence, and religious and community organizations in low income areas).

(B) The information shall be publicly announced by the State agency and by local agencies at least annually.

(C) The State agency and local agencies shall distribute the information in a manner designed to provide the information to potentially eligible individuals who are most in need of the benefits, including pregnant women in the early months of pregnancy.

(D) Each local agency operating the program within a hospital and each local agency operating the program that has a cooperative arrangement with a hospital shall—

(i) advise potentially eligible individuals that receive inpatient or outpatient prenatal, maternity, or postpartum services, or accompany a child **[under the age of 5]** who receives well-child services, of the availability of program benefits; and

(ii) to the extent feasible, provide an opportunity for individuals who may be eligible to be certified within the hospital for participation in such program.

(8)(A) The State agency shall grant a fair hearing, and a prompt determination thereafter, in accordance with regulations issued by the Secretary, to any applicant, participant, or local agency aggrieved by the action of a State or local agency as it affects participation.

(B) Any State agency that must suspend or terminate benefits to any participant during the participant's certification period due to a shortage of funds for the program shall first issue a notice to such participant.

(9) If an individual certified as eligible for participation in the program under this section in one area moves to another area in which the program is operating, that individual's certification of

eligibility shall remain valid for the period for which the individual was originally certified.

(10) The Secretary shall establish standards for the proper, efficient, and effective administration of the program. If the Secretary determines that a State agency has failed without good cause to administer the program in a manner consistent with this section or to implement the approved plan of operation and administration under this subsection, the Secretary may withhold such amounts of the State agency's funds for nutrition services and administration as the Secretary deems appropriate. Upon correction of such failure during a fiscal year by a State agency, any funds so withheld for such fiscal year shall be provided the State agency.

(11) SUPPLEMENTAL FOODS.—

(A) IN GENERAL.—The Secretary shall prescribe by regulation the supplemental foods to be made available in the program under this section.

(B) APPROPRIATE CONTENT.—To the degree possible, the Secretary shall assure that the fat, sugar, and salt content of the prescribed foods is appropriate.

(C) REVIEW OF AVAILABLE SUPPLEMENTAL FOODS.—As frequently as determined by the Secretary to be necessary to reflect the most recent scientific knowledge, but not less than every 10 years, the Secretary shall—

(i) conduct a scientific review of the supplemental foods available under the program; and

(ii) amend the supplemental foods available, as necessary, to reflect nutrition science, public health concerns, and cultural eating patterns.

(12) A competent professional authority shall be responsible for prescribing the appropriate supplemental foods, taking into account medical and nutritional conditions and cultural eating patterns, and, in the case of homeless individuals, the special needs and problems of such individuals.

(13) The State agency may (A) provide nutrition education, breastfeeding promotion, and [drug abuse education] *substance use disorder education* materials and instruction in languages other than English and (B) use appropriate foreign language materials in the administration of the program, in areas in which a substantial number of low-income households speak a language other than English.

(14) If a State agency determines that a member of a family has received an overissuance of food benefits under the program authorized by this section as the result of such member intentionally making a false or misleading statement or intentionally misrepresenting, concealing, or withholding facts, the State agency shall recover, in cash, from such member an amount that the State agency determines is equal to the value of the overissued food benefits, unless the State agency determines that the recovery of the benefits would not be cost effective.

(15) To be eligible to participate in the program authorized by this section, a manufacturer of infant formula that supplies formula for the program shall—

(A) register with the Secretary of Health and Human Services under the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321 et seq.); and

(B) before bidding for a State contract to supply infant formula for the program, certify with the State health department that the formula complies with such Act and regulations issued pursuant to such Act.

(16) The State agency may adopt methods of delivering benefits to accommodate the special needs and problems of homeless individuals.

(17) Notwithstanding subsection (d)(2)(A)(i), not later than July 1 of each year, a State agency may implement income eligibility guidelines under this section concurrently with the implementation of income eligibility guidelines under the medicaid program established under title XIX of the Social Security Act (42 U.S.C. 1396 et seq.).

(18) Each local agency participating in the program under this section may provide information about other potential sources of food assistance in the local area to individuals who apply in person to participate in the program under this section, but who cannot be served because the program is operating at capacity in the local area.

(19) The State agency shall adopt policies that—

(A) require each local agency to attempt to contact each pregnant woman who misses an appointment to apply for participation in the program under this section, in order to reschedule the appointment, unless the phone number and the address of the woman are unavailable to such local agency; and

(B) in the case of local agencies that do not routinely schedule appointments for individuals seeking to apply or be recertified for participation in the program under this section, require each such local agency to schedule appointments for each employed individual seeking to apply or be recertified for participation in such program so as to minimize the time each such individual is absent from the workplace due to such application or request for recertification.

(20) Each State agency shall conduct monitoring reviews of each local agency at least biennially.

(21) **USE OF CLAIMS FROM LOCAL AGENCIES, VENDORS, AND PARTICIPANTS.**—A State agency may use funds recovered from local agencies, vendors, and participants, as a result of a claim arising under the program, to carry out the program during—

(A) the fiscal year in which the claim arises;

(B) the fiscal year in which the funds are collected; and

(C) the fiscal year following the fiscal year in which the funds are collected.

(22) The Secretary and the Secretary of Health and Human Services shall carry out an initiative to assure that, in a case in which a State medicaid program uses coordinated care providers under a contract entered into under section 1903(m), or a waiver granted under section 1915(b), of the Social Security Act (42 U.S.C. 1396b(m) or 1396n(b)), coordination between the program authorized by this section and the medicaid program is continued, including—

(A) the referral of potentially eligible women, infants, and children between the 2 programs; and

(B) the timely provision of medical information related to the program authorized by this section to agencies carrying out the program.

(23) INDIVIDUALS PARTICIPATING AT MORE THAN ONE SITE.—Each State agency shall implement a system designed by the State agency to identify individuals who are participating at more than one site under the program.

(24) HIGH RISK VENDORS.—Each State agency shall—

(A) identify vendors that have a high probability of program abuse; and

(B) conduct compliance investigations of the vendors.

(25) INFANT FORMULA BENEFITS.—A State agency may round up to the next whole can of infant formula to allow all participants under the program to receive the full-authorized nutritional benefit specified by regulation.

(26) NOTIFICATION OF VIOLATIONS.—If a State agency finds that a vendor has committed a violation that requires a pattern of occurrences in order to impose a penalty or sanction, the State agency shall notify the vendor of the initial violation in writing prior to documentation of another violation, unless the State agency determines that notifying the vendor would compromise an investigation.

(g) AUTHORIZATION OF APPROPRIATIONS.—

(1) IN GENERAL.—

(A) AUTHORIZATION.—There are authorized to be appropriated to carry out this section such sums as are necessary for each of fiscal years [2010 through 2015] 2023 through 2028.

(B) ADVANCE APPROPRIATIONS; AVAILABILITY.—As authorized by section 3 of the Richard B. Russell National School Lunch Act, appropriations to carry out the provisions of this section may be made not more than 1 year in advance of the beginning of the fiscal year in which the funds will become available for disbursement to the States, and shall remain available for the purposes for which appropriated until expended.

(2)(A) Notwithstanding any other provision of law, unless enacted in express limitation of this subparagraph, the Secretary—

(i) in the case of legislation providing funds through the end of a fiscal year, shall issue—

(I) an initial allocation of funds provided by the enactment of such legislation not later than the expiration of the 15-day period beginning on the date of the enactment of such legislation; and

(II) subsequent allocations of funds provided by the enactment of such legislation not later than the beginning of each of the second, third, and fourth quarters of the fiscal year; and

(ii) in the case of legislation providing funds for a period that ends prior to the end of a fiscal year, shall issue an initial allocation of funds provided by the enactment of such legislation not later than the expiration of the 10-day period beginning on the date of the enactment of such legislation.

(B) In any fiscal year—

(i) unused amounts from a prior fiscal year that are identified by the end of the first quarter of the fiscal year shall be recovered and reallocated not later than the beginning of the second quarter of the fiscal year; and

(ii) unused amounts from a prior fiscal year that are identified after the end of the first quarter of the fiscal year shall be recovered and reallocated on a timely basis.

(3) Notwithstanding any other provision of law, unless enacted in express limitation of this paragraph—

(A) the allocation of funds required by paragraph (2)(A)(i)(I) shall include not less than  $\frac{1}{3}$  of the amounts appropriated by the legislation described in such paragraph;

(B) the allocations of funds required by paragraph (2)(A)(i)(II) to be made not later than the beginning of the second and third quarters of the fiscal year shall each include not less than  $\frac{1}{4}$  of the amounts appropriated by the legislation described in such paragraph; and

(C) in the case of the enactment of legislation providing appropriations for a period of not more than 4 months, the allocation of funds required by paragraph (2)(A)(ii) shall include all amounts appropriated by such legislation except amounts reserved by the Secretary for purposes of carrying out paragraph (5).

(4) Of the sums appropriated for any fiscal year for programs authorized under this section, not less than nine-tenths of 1 percent shall be available first for services to eligible members of migrant populations. The migrant services shall be provided in a manner consistent with the priority system of a State for program participation.

(5) Of the sums appropriated for any fiscal year for the program under this section, one-half of 1 percent, not to exceed \$15,000,000, shall be available to the Secretary for the purpose of evaluating program performance, evaluating health benefits, preparing reports on program participant characteristics, providing technical assistance to improve State agency administrative systems, administration of pilot projects, including projects designed to meet the special needs of migrants, Indians, and rural populations, and carrying out technical assistance and research evaluation projects of the programs under this section.

(h)(1)(A) Each fiscal year, the Secretary shall make available, from amounts appropriated for such fiscal year under subsection (g)(1) and amounts remaining from amounts appropriated under such subsection for the preceding fiscal year, an amount sufficient to guarantee a national average per participant grant to be allocated among State agencies for costs of nutrition services and administration incurred by State and local agencies for such year.

(B)(i) The amount of the national average per participant grant for nutrition services and administration for any fiscal year shall be an amount equal to the amount of the national average per participant grant for nutrition services and administration issued the preceding fiscal year, as adjusted.

(ii) Such adjustment, for any fiscal year, shall be made by revising the national average per participant grant for nutrition services and administration for the preceding fiscal year 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

(II) the best estimate that is available as of the start of the fiscal year of the value of such index for the 12-month period ending June 30 of the previous fiscal year.

(C) REMAINING AMOUNTS.—

(i) IN GENERAL.—Except as provided in clause (ii), in any fiscal year, amounts remaining from amounts appropriated for such fiscal year under subsection (g)(1) and from amounts appropriated under such section for the preceding fiscal year, after carrying out subparagraph (A), shall be made available for food benefits under this section, except to the extent that such amounts are needed to carry out the purposes of subsections (g)(4) and (g)(5).

(ii) BREAST PUMPS AND BREASTFEEDING SUPPLIES.—A State agency may use amounts made available under clause (i) for the purchase of breast pumps and additional breastfeeding supplies.

(iii) WATER BENEFITS DURING DISASTERS.—

(I) IN GENERAL.—*During an emergency period for which the Secretary determines that, with respect to a State, access to safe drinking water is impacted and provision of safe drinking water is reasonably necessary to ensure safe preparation of infant formula, a State or local agency may use amounts made available under clause (i) to purchase and distribute safe drinking water to program participants.*

(II) EMERGENCY PERIOD DEFINED.—*In this clause, the term “emergency period” means a period during which there exists—*

*(aa) a major disaster declared by the President under section 401 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5170);*

*(bb) an emergency declared by the President under section 501 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5191);*

*(cc) a public health emergency declared by the Secretary of Health and Human Services pursuant to section 319 of the Public Health Service Act (42 U.S.C. 247d); or*

*(dd) any renewal of such a public health emergency pursuant to such section 319.*

(2)(A) The Secretary shall allocate to each State agency from the amount described in paragraph (1)(A) an amount for costs of nutrition services and administration on the basis of a formula prescribed by the Secretary. Such formula—

(i) shall be designed to take into account—

(I) the varying needs of each State;

- (II) the number of individuals participating in each State; and
  - (III) other factors which serve to promote the proper, efficient, and effective administration of the program under this section;
  - (ii) shall provide for each State agency—
    - (I) an estimate of the number of participants for the fiscal year involved; and
    - (II) a per participant grant for nutrition services and administration for such year;
  - (iii) shall provide for a minimum grant amount for State agencies; and
  - (iv) may provide funds to help defray reasonable anticipated expenses associated with innovations in cost containment or associated with procedures that tend to enhance competition.
- (B) **[(i) Except as provided in clause (ii) and]** *Except as provided in* subparagraph (C), in any fiscal year, the total amount allocated to a State agency for costs of nutrition services and administration under the formula prescribed by the Secretary under subparagraph (A) shall constitute the State agency's operational level for such costs for such year even if the number of participants in the program at such agency is lower than the estimate provided under subparagraph (A)(ii)(I).
- [(ii) If a State agency's per participant expenditure for nutrition services and administration is more than 10 percent (except that the Secretary may establish a higher percentage for State agencies that are small) higher than its per participant grant for nutrition services and administration without good cause, the Secretary may reduce such State agency's operational level for costs of nutrition services and administration.]**
- (C) In any fiscal year, the Secretary may reallocate amounts provided to State agencies under subparagraph (A) for such fiscal year. When reallocating amounts under the preceding sentence, the Secretary may provide additional amounts to, or recover amounts from, any State agency.
- (3)(A) Except as provided in subparagraphs (B) and (C), in each fiscal year, each State agency shall expend—
- (i) for nutrition education activities and breastfeeding promotion and support activities, an aggregate amount that is not less than the sum of—
    - (I)  $\frac{1}{6}$  of the amounts expended by the State for costs of nutrition services and administration; and
    - (II) except as otherwise provided in subparagraphs (F) and (G), an amount equal to a proportionate share of the national minimum breastfeeding promotion expenditure, as described in subparagraph (E), with each State's share determined on the basis of the number of pregnant women and breastfeeding women in the program in the State as a percentage of the number of pregnant women and breastfeeding women in the program in all States; and
  - (ii) for breastfeeding promotion and support activities an amount that is not less than the amount determined for such State under clause (i)(II).



(B) The Secretary may authorize a State agency to expend an amount less than the amount described in subparagraph (A)(ii) for purposes of breastfeeding promotion and support activities if—

- (i) the State agency so requests; and
- (ii) the request is accompanied by documentation that other funds will be used to conduct nutrition education activities at a level commensurate with the level at which such activities would be conducted if the amount described in subparagraph (A)(ii) were expended for such activities.

(C) The Secretary may authorize a State agency to expend for purposes of nutrition education an amount that is less than the difference between the aggregate amount described in subparagraph (A) and the amount expended by the State for breastfeeding promotion and support programs if—

- (i) the State agency so requests; and
- (ii) the request is accompanied by documentation that other funds will be used to conduct such activities.

(D) The Secretary shall limit to a minimal level any documentation required under this paragraph.

(E) For each fiscal year, the national minimum breastfeeding promotion expenditure means an amount that is—

- (i) equal to \$21 multiplied by the number of pregnant women and breastfeeding women participating in the program nationwide, based on the average number of pregnant women and breastfeeding women so participating during the last 3 months for which the Secretary has final data; and
- (ii) adjusted for inflation on October 1, 1996, and each October 1 thereafter, in accordance with paragraph (1)(B)(ii).

(4) REQUIREMENTS.—

(A) IN GENERAL.—The Secretary shall—

- (i) in consultation with the Secretary of Health and Human Services, develop a definition of breastfeeding for the purposes of the program under this section;
- (ii) authorize the purchase of breastfeeding aids by State and local agencies as an allowable expense under nutrition services and administration;
- (iii) require each State agency to designate an agency staff member to coordinate breastfeeding promotion efforts identified in the State plan of operation and administration;
- (iv) require the State agency to provide training on the promotion and management of breastfeeding to staff members of local agencies who are responsible for counseling participants in the program under this section concerning breastfeeding;
- (v) not later than 1 year after the date of enactment of this subparagraph, develop uniform requirements for the collection of data regarding the incidence and duration of breastfeeding among participants in the program;
- (vi) partner with communities, State and local agencies, employers, health care professionals, and other entities in the private sector to build a supportive breastfeeding environment for women participating in the program under this section to support the

breastfeeding goals of the Healthy People initiative;  
[and]

(vii) annually compile and publish breastfeeding performance measurements based on program participant data on the number of partially and fully breast-fed infants, including breastfeeding performance measurements for—

(I) each State agency; and

(II) each local agency;

(viii) in accordance with subparagraph (B), implement a program to recognize exemplary breastfeeding support practices at local agencies or clinics participating in the special supplemental nutrition program established under this section; and

(ix) in accordance with subparagraph (C), implement a program to provide performance bonuses to State agencies.

(B) EXEMPLARY BREASTFEEDING SUPPORT PRACTICES.—

(i) IN GENERAL.—In evaluating exemplary practices under subparagraph (A)(viii), the Secretary shall consider—

(I) performance measurements of breastfeeding;

(II) the effectiveness of a peer counselor program;

(III) the extent to which the agency or clinic has partnered with other entities to build a supportive breastfeeding environment for women participating in the program; and

(IV) such other criteria as the Secretary considers appropriate after consultation with State and local program agencies.

(ii) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to carry out the activities described in clause (viii) of subparagraph (A) such sums as are necessary.

(C) PERFORMANCE BONUSES.—

(i) IN GENERAL.—Following the publication of breastfeeding performance measurements under subparagraph (A)(vii), the Secretary shall provide performance bonus payments to not more than 15 State agencies that demonstrate, as compared to other State agencies participating in the program—

(I) the highest proportion of breast-fed infants;

or

(II) the greatest improvement in proportion of breast-fed infants.

(ii) CONSIDERATION.—In providing performance bonus payments to State agencies under this subparagraph, the Secretary shall consider the proportion of fully breast-fed infants in the States.

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

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

(II) may transfer the funds to local agencies for use in carrying out the program.

(iv) IMPLEMENTATION.—The Secretary shall provide the first performance bonuses not later than 1 year after the date of enactment of this clause and may subsequently revise the criteria for awarding performance bonuses; and

(5)(A) Subject to subparagraph (B), in any fiscal year that a State agency submits a plan to reduce average food costs per participant and to increase participation above the level estimated for the State agency, the State agency may, with the approval of the Secretary, convert amounts allocated for food benefits for such fiscal year for costs of nutrition services and administration to the extent that such conversion is necessary—

(i) to cover allowable expenditures in such fiscal year; and

(ii) to ensure that the State agency maintains the level established for the per participant grant for nutrition services and administration for such fiscal year.

(B) If a State agency increases its participation level through measures that are not in the nutritional interests of participants or not otherwise allowable (such as reducing the quantities of foods provided for reasons not related to nutritional need), the Secretary may refuse to allow the State agency to convert amounts allocated for food benefits to defray costs of nutrition services and administration.

(C) For the purposes of this paragraph, the term “acceptable measures” includes use of cost containment measures, curtailment of vendor abuse, and breastfeeding promotion activities.

(D) REMOTE INDIAN OR NATIVE VILLAGES.—For noncontiguous States containing a significant number of remote Indian or Native villages, a State agency may convert amounts allocated for food benefits for a fiscal year to the costs of nutrition services and administration to the extent that the conversion is necessary to cover expenditures incurred in providing services (including the full cost of air transportation and other transportation) to remote Indian or Native villages and to provide breastfeeding support in remote Indian or Native villages.

(6) In each fiscal year, each State agency shall provide, from the amounts allocated to such agency for such year for costs of nutrition services and administration, an amount to each local agency for its costs of nutrition services and administration. The amount to be provided to each local agency under the preceding sentence shall be determined under allocation standards developed by the State agency in cooperation with the several local agencies, taking into account factors deemed appropriate to further proper, efficient, and effective administration of the program, such as—

(A) local agency staffing needs;

(B) density of population;

(C) number of individuals served; and

(D) availability of administrative support from other sources.

(7) The State agency may provide in advance to any local agency any amounts for nutrition services and administration deemed necessary for successful commencement or significant expansion of program operations during a reasonable period following approval of—

(A) a new local agency;

(B) a new cost containment measure; or

(C) a significant change in an existing cost containment measure.

(8)(A)(i) Except as provided in subparagraphs (B) and (C)(iii), any State that provides for the purchase of foods under the program at retail grocery stores shall, with respect to the procurement of infant formula, use—

(I) a competitive bidding system; or

(II) any other cost containment measure that yields savings equal to or greater than savings generated by a competitive bidding system when such savings are determined by comparing the amounts of savings that would be provided over the full term of contracts offered in response to a single invitation to submit both competitive bids and bids for other cost containment systems for the sale of infant formula.

(ii) In determining whether a cost containment measure other than competitive bidding yields equal or greater savings, the State, in accordance with regulations issued by the Secretary, may take into account other cost factors (in addition to rebate levels and procedures for adjusting rebate levels when wholesale price levels change), such as—

(I) the number of infants who would not be expected to receive the primary contract infant formula under a competitive bidding system;

(II) the number of cans of infant formula for which no rebate would be provided under another rebate system; and

(III) differences in administrative costs relating to the implementation of the various cost containment systems (such as costs of converting a computer system for the purpose of operating a cost containment system and costs of preparing participants for conversion to a new or alternate cost containment system).

(iii) **COMPETITIVE BIDDING SYSTEM.**—A State agency using a competitive bidding system for infant formula shall award contracts to bidders offering the lowest net price for a specific infant formula for which manufacturers submit a bid unless the State agency demonstrates to the satisfaction of the Secretary that the weighted average retail price for different brands of infant formula in the State does not vary by more than 5 percent.

(iv) **SIZE OF STATE ALLIANCES.**—

(I) **IN GENERAL.**—Except as provided in subclauses (II) through (IV), no State alliance may exist among States if the total number of infants served by States participating in the alliance as of October 1, 2003, or such subsequent date determined by the Secretary for which data is available, would exceed 100,000.

(II) **ADDITION OF INFANT PARTICIPANTS.**—In the case of a State alliance that exists on the date of enactment of this clause, the alliance may continue and may expand to serve more than 100,000 infants but, except as provided in subclause (III), may not expand to include any additional State agency.

(III) **ADDITION OF SMALL STATE AGENCIES AND INDIAN STATE AGENCIES.**—Except as provided in paragraph (9)(B)(i)(II), any State alliance may expand to

include any State agency that served less than 5,000 infant participants as of October 1, 2003, or such subsequent date determined by the Secretary for which data is available, or any Indian State agency, if the State agency or Indian State agency requests to join the State alliance.

(IV) SECRETARIAL WAIVER.—The Secretary may waive the requirements of this clause not earlier than 30 days after submitting to the [Committee on Education and the Workforce] *Committee on Education and Labor* of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate a written report that describes the cost-containment and competitive benefits of the proposed waiver.

(v) FIRST CHOICE OF ISSUANCE.—The State agency shall use the primary contract infant formula as the first choice of issuance (by formula type), with all other infant formulas issued as an alternative to the primary contract infant formula.

(vi) REBATE INVOICES.—Effective beginning October 1, 2004, each State agency shall have a system to ensure that infant formula rebate invoices, under competitive bidding, provide a reasonable estimate or an actual count of the number of units sold to participants in the program under this section.

(vii) SEPARATE SOLICITATIONS.—In soliciting bids for infant formula under a competitive bidding system, any State agency, or State alliance, that served under the program a monthly average of more than 100,000 infants during the preceding 12-month period shall solicit bids from infant formula manufacturers under procedures that require that bids for rebates or discounts are solicited for milk-based and soy-based infant formula separately.

(viii) CENT-FOR-CENT ADJUSTMENTS.—A bid solicitation for infant formula under the program shall require the manufacturer to adjust for price changes subsequent to the opening of the bidding process in a manner that requires—

(I) a cent-for-cent increase in the rebate amounts if there is an increase in the lowest national wholesale price for a full truckload of the particular infant formula; and

(II) a cent-for-cent decrease in the rebate amounts if there is a decrease in the lowest national wholesale price for a full truckload of the particular infant formula.

(ix) LIST OF INFANT FORMULA WHOLESALERS, DISTRIBUTORS, RETAILERS, AND MANUFACTURERS.—The State agency shall maintain a list of—

(I) infant formula wholesalers, distributors, and retailers licensed in the State in accordance with State law (including regulations); and

(II) infant formula manufacturers registered with the Food and Drug Administration that provide infant formula.

(x) **PURCHASE REQUIREMENT.**—A vendor authorized to participate in the program under this section shall only purchase infant formula from the list described in clause (ix).

(xi) **INFANT FORMULA PROCUREMENT ONLINE SOURCE OF INFORMATION.**—

(I) **IN GENERAL.**—Not later than 180 days after the date of enactment of this clause, the Secretary shall make available to the public on a website of the Department of Agriculture the information described in items (aa) through (dd) of subclause (II) relating to bid solicitations of State agencies for infant formula under the program.

(II) **STATE AGENCIES.**—In soliciting bids for infant formula under the program, a State agency shall submit to the Secretary, not later than 5 business days after the date of the bid solicitation, a description of the bid solicitation, including—

(aa) the title of the bid solicitation and the State agency administering the bid solicitation;

(bb) the website hyperlink and other information needed for the purpose of submitting a bid in response to the bid solicitation;

(cc) the contact information and website hyperlink for the State agency administering the bid solicitation, for the purpose of gathering additional information relating to the bid solicitation; and

(dd) the period during which bids are accepted or the due date for bids, as applicable, under the bid solicitation.

(III) **PUBLICATION.**—Not later than 5 business days after receiving a description of a bid solicitation under subclause (II), the Secretary shall publish the information described in subclause (I).

(B)(i) The Secretary shall waive the requirement of subparagraph (A) in the case of any State that demonstrates to the Secretary that—

(I) compliance with subparagraph (A) would be inconsistent with efficient or effective operation of the program operated by such State under this section; or

(II) the amount by which the savings yielded by an alternative cost containment system would be less than the savings yielded by a competitive bidding system is sufficiently minimal that the difference is not significant.

(ii) The Secretary shall prescribe criteria under which a waiver may be granted pursuant to clause (i).

(iii) The Secretary shall provide information on a timely basis to the Committee on Education and Labor of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate on waivers that have been granted under clause (i).

(C)(i) The Secretary shall provide technical assistance to small Indian State agencies carrying out this paragraph in order to assist such agencies to achieve the maximum cost containment savings feasible.

(ii) The Secretary shall also provide technical assistance, on request, to State agencies that desire to consider a cost containment system that covers more than 1 State agency.

(iii) The Secretary may waive the requirement of subparagraph (A) in the case of any Indian State agency that has not more than 1,000 participants.

(D) No State may enter into a cost containment contract (in this subparagraph referred to as the original contract") that prescribes conditions that would void, reduce the savings under, or otherwise limit the original contract if the State solicited or secured bids for, or entered into, a subsequent cost containment contract to take effect after the expiration of the original contract.

(E) The Secretary shall offer to solicit bids on behalf of State agencies regarding cost-containment contracts to be entered into by infant formula manufacturers and State agencies. The Secretary shall make the offer to State agencies once every 12 months. Each such bid solicitation shall only take place if two or more State agencies request the Secretary to perform the solicitation. For such State agencies, the Secretary shall solicit bids and select the winning bidder for a cost containment contract to be entered into by State agencies and infant formula manufacturers or suppliers.

(F) In soliciting bids for contracts for infant formula for the program authorized by this section, the Secretary shall solicit bids from infant formula manufacturers under procedures in which bids for rebates or discounts are solicited for milk-based and soy-based infant formula, separately, except where the Secretary determines that such solicitation procedures are not in the best interest of the program.

(G) To reduce the costs of any supplemental foods, the Secretary may make available additional funds to State agencies out of the funds otherwise available under paragraph (1)(A) for nutrition services and administration in an amount not exceeding one half of 1 percent of the amounts to help defray reasonable anticipated expenses associated with innovations in cost containment or associated with procedures that tend to enhance competition.

(H)(i) Any person, company, corporation, or other legal entity that submits a bid to supply infant formula to carry out the program authorized by this section and announces or otherwise discloses the amount of the bid, or the rebate or discount practices of such entities, in advance of the time the bids are opened by the Secretary or the State agency, or any person, company, corporation, or other legal entity that makes a statement (prior to the opening of bids) relating to levels of rebates or discounts, for the purpose of influencing a bid submitted by any other person, shall be ineligible to submit bids to supply infant formula to the program for the bidding in progress for up to 2 years from the date the bids are opened and shall be subject to a civil penalty of up to \$100,000,000, as determined by the Secretary to provide restitution to the program for harm done to the program. The Secretary shall issue regulations providing such person, company, corporation, or other legal entity appropriate notice, and an opportunity to be heard and to respond to charges.

(ii) The Secretary shall determine the length of the disqualification, and the amount of the civil penalty referred to in clause (i)

based on such factors as the Secretary by regulation determines appropriate.

(iii) Any person, company, corporation, or other legal entity disqualified under clause (i) shall remain obligated to perform any requirements under any contract to supply infant formula existing at the time of the disqualification and until each such contract expires by its terms.

(I) Not later than the expiration of the 180-day period beginning on the date of enactment of this subparagraph, the Secretary shall prescribe regulations to carry out this paragraph.

(J) A State shall not incur any interest liability to the Federal Government on rebate funds for infant formula and other foods if all interest earned by the State on the funds is used for program purposes.

(K) REPORTING.—Effective beginning October 1, 2011, each State agency shall report rebate payments received from manufacturers in the month in which the payments are received, rather than in the month in which the payments were earned.

(L) INFANT FORMULA COST CONTAINMENT CONTRACT REQUIREMENT.—

(i) IN GENERAL.—The Secretary shall require that each infant formula cost containment contract renewed or entered into on or after the date of the enactment of the Access to Baby Formula Act of 2022 includes remedies in the event of an infant formula recall, including how an infant formula manufacturer would protect against disruption to program participants in the State.

(ii) REBATES.—In the case of an infant formula recall, an infant formula manufacturer contracted to provide infant formula under this section shall comply with the contract requirements under clause (i).

(M) MEMORANDUM OF UNDERSTANDING.—Not later than 30 days after the date of the enactment of the Access to Baby Formula Act of 2022, the Secretary shall ensure there is a memorandum of understanding between the Secretary and the Secretary of Health and Human Services that includes procedures to promote coordination and information sharing between the Department of Agriculture and the Department of Health and Human Services regarding any supply chain disruption, including a supplemental food recall.

(9) COST CONTAINMENT MEASURE.—

(A) DEFINITION OF COST CONTAINMENT MEASURE.—In this subsection, the term “cost containment measure” means a competitive bidding, rebate, direct distribution, or home delivery system implemented by a State agency as described in the approved State plan of operation and administration of the State agency.

(B) SOLICITATION AND REBATE BILLING REQUIREMENTS.—Any State agency instituting a cost containment measure for any authorized food, including infant formula, shall—

(i) in the bid solicitation—

(I) identify the composition of State alliances for the purposes of a cost containment measure; and



(II) verify that no additional States shall be added to the State alliance between the date of the bid solicitation and the end of the contract;

(ii) have a system to ensure that rebate invoices under competitive bidding provide a reasonable estimate or an actual count of the number of units sold to participants in the program under this section;

(iii) open and read aloud all bids at a public proceeding on the day on which the bids are due; and

(iv) unless otherwise exempted by the Secretary, provide a minimum of 30 days between the publication of the solicitation and the date on which the bids are due.

(C) STATE ALLIANCES FOR AUTHORIZED FOODS OTHER THAN INFANT FORMULA.—Program requirements relating to the size of State alliances under paragraph (8)(A)(iv) shall apply to cost containment measures established for any authorized food under this section.

(10) FUNDS FOR INFRASTRUCTURE, MANAGEMENT INFORMATION SYSTEMS, AND SPECIAL NUTRITION EDUCATION.—

(A) IN GENERAL.—For each of fiscal years **2010 through 2015** *2023 through 2028*, the Secretary shall use for the purposes specified in subparagraph (B) **[\$139,000,000]** *\$324,000,000* (as adjusted annually for inflation by the same factor used to determine the national average per participant grant for nutrition services and administration for the fiscal year under paragraph (1)(B)).

(B) PURPOSES.—Subject to subparagraph (C), of the amount made available under subparagraph (A) for a fiscal year—

(i) \$14,000,000 shall be used for—

(I) infrastructure for the program under this section;

(II) special projects to promote breastfeeding, including projects to assess the effectiveness of particular breastfeeding promotion strategies; and

(III) special State projects of regional or national significance to improve the services of the program;

**[(ii) \$35,000,000 shall be used to establish, improve, or administer management information systems for the program, including changes necessary to meet new legislative or regulatory requirements of the program, of which up to \$5,000,000 may be used for Federal administrative costs; and**

**[(iii) \$90,000,000 shall be used for special nutrition education (such as breastfeeding peer counselors and other related activities), of which not more than \$10,000,000 of any funding provided in excess of \$50,000,000 shall be used to make performance bonus payments under paragraph (4)(C).]**

*(ii)(I) \$90,000,000 shall be used to—*

*(aa) establish, develop, improve, replace, or administer technology platforms, including management information systems, that enhance the serv-*

*ices of, access to, or redemption of benefits under the program;*

*(bb) establish, develop, improve, replace, or administer a system that allows for secure communication of information between health care providers and program clinics in order to facilitate sharing of information necessary for certification, establishing nutrition risk, or for the provision of health care services; and*

*(cc) carry out paragraph (15); and*

*(II) of which up to \$8,000,000 may be used for Federal administrative costs; and*

*(iii) \$180,000,000 shall be used to—*

*(I) establish State agency Breastfeeding Peer Counseling programs, which shall be administered as determined by the Secretary;*

*(II) provide performance bonus payments under paragraph (4)(C); and*

*(III) establish State and local partnerships to provide such education at locations—*

*(aa) outside of the clinic, such as hospitals or physicians' offices; or*

*(bb) in partnership with eligible entities that deliver services under early childhood home visitation programs pursuant to a grant under section 511 of the Social Security Act (42 U.S.C. 711).*

*(iv) \$40,000,000 shall be used by State or local agencies to enhance vendor partnerships and streamline the shopping experience of participants, including by establishing and administering vendor liaison programs to support participants and vendor staff at retail grocery locations.*

(C) ADJUSTMENT.—Each of the amounts referred to in clauses (i), (ii), and (iii) of subparagraph (B) shall be adjusted annually for inflation by the same factor used to determine the national average per participant grant for nutrition services and administration for the fiscal year under paragraph (1)(B).

(D) PROPORTIONAL DISTRIBUTION.—The Secretary shall distribute funds made available under subparagraph (A) in accordance with the proportional distribution described in subparagraphs (B) and (C).

(11) VENDOR COST CONTAINMENT.—

(A) PEER GROUPS.—

(i) IN GENERAL.—The State agency shall—

(I) establish a vendor peer group system;

(II) in accordance with subparagraphs (B) and (C), establish competitive price criteria and allowable reimbursement levels for each vendor peer group; and

(III) if the State agency elects to authorize any types of vendors described in subparagraph (D)(ii)(I)—

(aa) distinguish between vendors described in subparagraph (D)(ii)(I) and other vendors by establishing—

(AA) separate peer groups for vendors described in subparagraph (D)(ii)(I); or

(BB) distinct competitive price criteria and allowable reimbursement levels for vendors described in subparagraph (D)(ii)(I) within a peer group that contains both vendors described in subparagraph (D)(ii)(I) and other vendors; and

(bb) establish competitive price criteria and allowable reimbursement levels that comply with subparagraphs (B) and (C), respectively, and that do not result in higher food costs if program participants redeem supplemental food vouchers at vendors described in subparagraph (D)(ii)(I) rather than at vendors other than vendors described in subparagraph (D)(ii)(I).

Nothing in this paragraph shall be construed to compel a State agency to achieve lower food costs if program participants redeem supplemental food vouchers at vendors described in subparagraph (D)(ii)(I) rather than at vendors other than vendors described in subparagraph (D)(ii)(I).

(ii) EXEMPTIONS.—The Secretary may exempt from the requirements of clause (i)—

(I) a State agency that elects not to authorize any types of vendors described in subparagraph (D)(ii)(I) and that demonstrates to the Secretary that—

(aa) compliance with clause (i) would be inconsistent with efficient and effective operation of the program administered by the State under this section; or

(bb) an alternative cost-containment system would be as effective as a vendor peer group system; or

(II) a State agency—

(aa) in which the sale of supplemental foods that are obtained with food instruments from vendors described in subparagraph (D)(ii)(I) constituted less than 5 percent of total sales of supplemental foods that were obtained with food instruments in the State in the year preceding a year in which the exemption is effective; and

(bb) that demonstrates to the Secretary that an alternative cost-containment system would be as effective as the vendor peer group system and would not result in higher food costs if program participants redeem supplemental food vouchers at vendors described in subparagraph (D)(ii)(I) rather than at vendors

other than vendors described in subparagraph (D)(ii)(I).

(B) COMPETITIVE PRICING.—

(i) IN GENERAL.—The State agency shall establish competitive price criteria for each peer group for the selection of vendors for participation in the program that—

(I) ensure that the retail prices charged by vendor applicants for the program are competitive with the prices charged by other vendors; and

(II) consider—

(aa) ~~the shelf prices of the vendor for all buyers~~ *the prices the vendor charges other customers*; or

(bb) the prices that the vendor bid for supplemental foods, which shall not exceed the shelf prices of the vendor for all buyers.

(ii) PARTICIPANT ACCESS.—In establishing competitive price criteria, the State agency shall consider participant access by geographic area.

(iii) SUBSEQUENT PRICE INCREASES.—The State agency shall establish procedures to ensure that a retail store selected for participation in the program does not, subsequent to selection, increase prices to levels that would make the store ineligible for selection to participate in the program.

(C) ALLOWABLE REIMBURSEMENT LEVELS.—

(i) IN GENERAL.—The State agency shall establish allowable reimbursement levels for supplemental foods for each vendor peer group that ensure—

(I) that payments to vendors in the vendor peer group reflect competitive retail prices; and

(II) that the State agency does not reimburse a vendor for supplemental foods at a level that would make the vendor ineligible for authorization under the criteria established under subparagraph (B).

(ii) PRICE FLUCTUATIONS.—The allowable reimbursement levels may include a factor to reflect fluctuations in wholesale prices.

(iii) PARTICIPANT ACCESS.—In establishing allowable reimbursement levels, the State agency shall consider participant access in a geographic area.

(D) EXEMPTIONS.—The State agency may exempt from competitive price criteria and allowable reimbursement levels established under this paragraph—

(i) pharmacy vendors that supply only exempt infant formula or medical foods that are eligible under the program; and

(ii) vendors—

(I)(aa) for which more than 50 percent of the annual revenue of the vendor from the sale of food items consists of revenue from the sale of supplemental foods that are obtained with food instruments; or

(bb) who are new applicants likely to meet the criteria of item (aa) under criteria approved by the Secretary; and

(II) that are nonprofit.

(E) COST CONTAINMENT.—If a State agency elects to authorize any types of vendors described in subparagraph (D)(ii)(I), the State agency shall demonstrate to the Secretary, and the Secretary shall certify, that the competitive price criteria and allowable reimbursement levels established under this paragraph for vendors described in subparagraph (D)(ii)(I) do not result in average payments per voucher to vendors described in subparagraph (D)(ii)(I) that are *more than 5 percent* higher than average payments per voucher to comparable vendors other than vendors described in subparagraph (D)(ii)(I).

(F) LIMITATION ON PRIVATE RIGHTS OF ACTION.—Nothing in this paragraph may be construed as creating a private right of action.

(G) IMPLEMENTATION.—A State agency shall comply with this paragraph not later than 18 months after the date of enactment of this paragraph.

(12) ELECTRONIC BENEFIT TRANSFER.—

(A) DEFINITIONS.—In this paragraph:

(i) ELECTRONIC BENEFIT TRANSFER.—The term “electronic benefit transfer” means a [food delivery system that provides benefits using a card or other access device] *benefit delivery method* approved by the Secretary that permits electronic access to program benefits.

(ii) PROGRAM.—The term “program” means the special supplemental nutrition program established by this section.

(B) REQUIREMENTS.—

(i) IN GENERAL.—Not later than October 1, 2020, each State agency shall be required to implement electronic benefit transfer systems throughout the State, unless the Secretary grants an exemption under [subparagraph (C)] *subparagraph (C)(i)* for a State agency that is facing unusual barriers to implement an electronic benefit transfer system.

(ii) RESPONSIBILITY.—The State agency shall be responsible for the coordination and management of the electronic benefit transfer system of the agency.

(iii) VENDOR REQUIREMENTS.—*Except in the case of an exemption granted with respect to a State agency under subparagraph (C)(iii), not later than October 1, 2025, each State agency shall authorize at least three vendors to process online payments under the electronic benefit systems in the State.*

(C) EXEMPTIONS.—

(i) IN GENERAL.—To be eligible for an exemption from the statewide implementation requirements of subparagraph (B)(i), a State agency shall demonstrate to the satisfaction of the Secretary 1 or more of the following:

(I) There are unusual technological barriers to implementation.

(II) Operational costs are not affordable within the nutrition services and administration grant of the State agency.

(III) It is in the best interest of the program to grant the exemption.

(ii) SPECIFIC DATE.—A State agency requesting an exemption under clause (i) shall specify a date by which the State agency anticipates statewide implementation described in subparagraph (B)(i).

(iii) *VENDOR REQUIREMENTS EXEMPTION.—To be eligible for an exemption from the vendor requirements of subparagraph (B)(iii), a State agency shall demonstrate to the satisfaction of the Secretary that the State agency is facing unusual barriers to implementing additional changes to the electronic benefit transfer system.*

(D) REPORTING.—

(i) IN GENERAL.—Each State agency shall submit to the Secretary electronic benefit transfer project status reports to demonstrate the progress of the State toward statewide implementation.

(ii) CONSULTATION.—If a State agency plans to incorporate additional programs in the electronic benefit transfer system of the State, the State agency shall consult with the State agency officials responsible for administering the programs prior to submitting the planning documents to the Secretary for approval.

(iii) REQUIREMENTS.—At a minimum, a status report submitted under clause (i) shall contain—

(I) an annual outline of the electronic benefit transfer implementation goals and objectives of the State;

(II) appropriate updates in accordance with approval requirements for active electronic benefit transfer State agencies; and

(III) such other information as the Secretary may require.

(E) IMPOSITION OF COSTS ON VENDORS.—

(i) COST PROHIBITION.—Except as otherwise provided in this paragraph, the Secretary may not impose, or allow a State agency to impose, the costs of any equipment or system required for electronic benefit transfers on any authorized vendor in order to transact electronic benefit transfers if the vendor equipment or system is used solely to support the program.

(ii) COST-SHARING.—The Secretary shall establish criteria for cost-sharing by State agencies and vendors of costs associated with any equipment or system that is not solely dedicated to transacting electronic benefit transfers for the program.

(iii) FEES.—

(I) IN GENERAL.—A vendor that elects to accept electronic benefit transfers using multifunction

equipment shall pay commercial transaction processing costs and fees imposed by a third-party processor that the vendor elects to use to connect to the electronic benefit transfer system of the State.

(II) INTERCHANGE FEES.—No interchange fees shall apply to electronic benefit transfer transactions under this paragraph.

(iv) STATEWIDE OPERATIONS.—After completion of statewide expansion of a system for transaction of electronic benefit transfers—

(I) a State agency may not be required to incur ongoing maintenance costs for vendors using multifunction systems and equipment to support electronic benefit transfers; and

(II) any retail store in the State that applies for authorization to become a program vendor shall be required to demonstrate the capability to accept program benefits electronically prior to authorization, unless the State agency determines that the vendor is necessary for participant access.

(F) MINIMUM LANE COVERAGE.—

(i) IN GENERAL.—The Secretary shall establish minimum lane coverage guidelines for vendor equipment and systems used to support electronic benefit transfers.

(ii) PROVISION OF EQUIPMENT.—If a vendor does not elect to accept electronic benefit transfers using its own multifunction equipment, the State agency shall provide such equipment as is necessary to solely support the program to meet the established minimum lane coverage guidelines.

(G) TECHNICAL STANDARDS.—The Secretary shall—

(i) establish technical standards and operating rules for electronic benefit transfer systems; and

(ii) require each State agency, contractor, and authorized vendor participating in the program to demonstrate compliance with the technical standards and operating rules.

(H) *EQUITABLE ACCESS FOR WIC SHOPPERS.—To facilitate the use of online payments under an electronic benefit transfer system, a State agency shall—*

*(i) with respect to such electronic benefit transfer system, allow—*

*(I) transactions to be conducted without the presence of a cashier;*

*(II) additional methods of authentication other than signature or entry of a personal identification number to be used; and*

*(III) participants to receive supplemental foods after an electronic benefit transfer transaction has been processed;*

*(ii) ensure that no interchange or related transaction fees are collected from vendors;*

- (iii) *issue program benefits remotely without receiving a participant signature;*
- (iv) *authorize vendors that do not have a single, fixed location; and*
- (v) *authorize vendors for a period not to exceed 5 years.*

[(13) UNIVERSAL PRODUCT CODES DATABASE.—

[(A) IN GENERAL.—Not later than 2 years after the date of enactment of the Healthy, Hunger-Free Kids Act of 2010, the Secretary shall establish a national universal product code database to be used by all State agencies in carrying out the requirements of paragraph (12).

[(B) FUNDING.—

[(i) IN GENERAL.—On October 1, 2010, 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 to carry out this paragraph \$1,000,000, 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 paragraph the funds transferred under clause (i), without further appropriation.

[(iii) USE OF FUNDS.—The Secretary shall use the funds provided under clause (i) for development, hosting, hardware and software configuration, and support of the database required under subparagraph (A).]

(14) INCENTIVE ITEMS.—A State agency shall not authorize or make payments to a vendor described in paragraph (11)(D)(ii)(I) that provides incentive items or other free merchandise, except **[food or merchandise]** *food, merchandise, or food delivery* of nominal value (as determined by the Secretary), to program participants unless the vendor provides to the State agency proof that the vendor obtained the incentive items or merchandise at no cost.

(15) STATE EFFORTS TO ENHANCE CROSS-ENROLLMENT WITH MEDICAID AND THE SUPPLEMENTAL NUTRITION ASSISTANCE PROGRAM.—

(A) PARTICIPATION DATA.—*The Secretary shall annually collect data from State agencies and make publicly available on the website of the Department State-level estimates of the percentage of pregnant women, postpartum women, infants, and children under age five—*

*(i) who are enrolled in the program under this section and the supplemental nutrition assistance program under the Food and Nutrition Act of 2008 (7 U.S.C. 2011 et seq.); and*

*(ii) who are—*

*(I) enrolled in the program under this section and the Medicaid program established under title XIX of the Social Security Act (42 U.S.C. 1396 et seq.); and*

*(II) a member of a family described in subsection (d)(2)(A)(i).*



(B) *BEST PRACTICES.*—*The Secretary shall—*

(i) *in addition to the information made available under subparagraph (A), also publish on the website of the Department best practices for increasing the percentages described in such subparagraph; and*

(ii) *evaluate the number and types of referrals to the program under this section made by—*

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

(II) *administrators of the Medicaid program established under title XIX of the Social Security Act (42 U.S.C. 1396 et seq.).*

(C) *CROSS-ENROLLMENT PLAN.*—*Not later than 1 year after the date of the enactment of this paragraph and annually thereafter, each State shall—*

(i) *submit to the Secretary an annual cross-enrollment plan that—*

(I) *is developed across the programs described in subparagraph (A) that includes goals, specific measures, and a timeline for increasing the percentages described in such subparagraph; and*

(II) *includes policies to refer to the program under this section participants in the programs described in such subparagraph who are not certified for the program under this section; and*

(ii) *if such plan is approved by the Secretary, implement such plan.*

(D) *GRANT PROGRAM.*—*The Secretary shall provide technical assistance and award competitive grants to State agencies to—*

(i) *increase the percentages described in subparagraph (A); and*

(ii) *implement measures pursuant to an annual cross-enrollment plan under subparagraph (C), including—*

(I) *improving technology;*

(II) *establishing more robust referral systems;*

(III) *conducting targeted outreach to potential participants in the program under this section;*

(IV) *enhancing State capacity to share and analyze data across the programs described in subparagraph (A); and*

(V) *providing training or technical assistance to local agencies.*

(E) *LIMITATION ON DATA.*—*Any data collected under this paragraph shall be—*

(i) *used only for the purposes of certifying eligible persons for the program under this section; and*

(ii) *subject to the confidentiality provisions described in section 246.26(d) of title 7, Code of Federal Regulations (or successor regulations).*

(i)(1) By the beginning of each fiscal year, the Secretary shall divide, among the State agencies, the amounts made available for

food benefits under subsection (h)(1)(C) on the basis of a formula determined by the Secretary.

(2) Each State agency's allocation, as so determined, shall constitute the State agency's authorized operational level for that year, except that the Secretary shall reallocate funds periodically if the Secretary determines that a State agency is unable to spend its allocation.

(3)(A) Notwithstanding paragraph (2) and subject to subparagraph (B)—

(i)(I) not more than **[1 percent (except as provided in subparagraph (C))]** *10 percent* of the amount of funds allocated to a State agency under this section for supplemental foods for a fiscal year may be expended by the State agency for allowable expenses incurred under this section for supplemental foods during the preceding fiscal year; and

(II) not more than **[1 percent]** *10 percent* of the amount of funds allocated to a State agency under this section for nutrition services and administration for a fiscal year may be expended by the State agency for allowable expenses incurred under this section for supplemental foods and nutrition services and administration during the preceding fiscal year; and

(ii)(I) for each fiscal year, of the amounts allocated to a State agency for nutrition services and administration, an amount equal to not more than **[3 percent]** *10 percent* of the amount allocated to the State agency *for nutrition services and administration* under this section for the fiscal year may be expended by the State agency for allowable expenses incurred under this section for nutrition services and administration during the subsequent fiscal year; and

(II) for each fiscal year, of the amounts allocated to a State agency **[for nutrition services and administration]** *to carry out this section*, an amount equal to **[not more than ½ of 1 percent]** *not more than 3 percent* of the amount allocated to the State agency under this section for the fiscal year may be expended by the State agency, with the prior approval of the Secretary, for **[the development of a management information system, including an electronic benefit transfer system]** *purposes related to food delivery, including breastfeeding services and supplies, electronic benefit transfer systems, and other technologies*, during the subsequent fiscal year.

(B) Any funds made available to a State agency in accordance with subparagraph (A)(ii) for a fiscal year shall not affect the amount of funds allocated to the State agency for such year.

**[(C) The Secretary may authorize a State agency to expend not more than 3 percent of the amount of funds allocated to a State under this section for supplemental foods for a fiscal year for expenses incurred under this section for supplemental foods during the preceding fiscal year, if the Secretary determines that there has been a significant reduction in infant formula cost containment savings provided to the State agency that would affect the ability of the State agency to at least maintain the level of participation by eligible participants served by the State agency.]**

(4) For purposes of the formula, if Indians are served by the health department of a State, the formula shall be based on the

State population inclusive of the Indians within the State boundaries.

(5) If Indians residing in the State are served by a State agency other than the health department of the State, the population of the tribes within the jurisdiction of the State being so served shall not be included in the formula for such State, and shall instead be included in the formula for the State agency serving the Indians.

(6) Notwithstanding any other provision of this section, the Secretary may use a portion of a State agency's allocation to purchase supplemental foods for donation to the State agency under this section.

(7) In addition to any amounts expended under paragraph (3)(A)(i), any State agency using cost containment measures as defined in subsection (h)(9) may temporarily use amounts made available to such agency for the first quarter of a fiscal year to defray expenses for costs incurred during the final quarter of the preceding fiscal year. In any fiscal year, any State agency that uses amounts made available for a succeeding fiscal year under the authority of the preceding sentence shall restore or reimburse such amounts when such agency receives payment as a result of its cost containment measures for such expenses.

(8) TEMPORARY SPENDING AUTHORITY.—During each of fiscal years 2012 and 2013, the Secretary may authorize a State agency to expend more than the amount otherwise authorized under paragraph (3)(C) for expenses incurred under this section for supplemental foods during the preceding fiscal year, if the Secretary determines that—

(A) there has been a significant reduction in reported infant formula cost containment savings for the preceding fiscal year due to the implementation of subsection (h)(8)(K); and

(B) the reduction would affect the ability of the State agency to serve all eligible participants.

(j)(1) The Secretary and the Secretary of Health and Human Services (referred to in this subsection as the “Secretaries”) shall jointly establish and carry out an initiative for the purpose of providing both supplemental foods, nutrition education, and breastfeeding support and promotion under the special supplemental nutrition program and health care services to low-income pregnant, postpartum, and breastfeeding women, infants, and children at substantially more community health centers and migrant health centers.

(2) The initiative shall also include—

(A) activities to improve the coordination of the provision of supplemental foods, nutrition education, and breastfeeding support and promotion under the special supplemental nutrition program and health care services at facilities funded by the Indian Health Service; and

(B) the development and implementation of strategies to ensure that, to the maximum extent feasible, new community health centers, migrant health centers, and other federally supported health care facilities established in medically underserved areas provide supplemental foods, nutrition education, and breastfeeding support and promotion under the special supplemental nutrition program.

(3) The initiative may include—

(A) outreach and technical assistance for State and local agencies and the facilities described in paragraph (2)(A) and the health centers and facilities described in paragraph (2)(B);

(B) demonstration projects in selected State or local areas; and

(C) such other activities as the Secretaries find are appropriate.

(4) As used in this subsection:

(A) The term “community health center” has the meaning given the term in section 330(a) of the Public Health Service Act (42 U.S.C. 254c(a)).

(B) The term “migrant health center” has the meaning given the term in section 329(a)(1) of such Act (42 U.S.C. 254b(a)(1)).

[(k)(1) There is hereby established a National Advisory Council on Maternal, Infant, and Fetal Nutrition (referred to in this subsection as the “Council”) composed of 24 members appointed by the Secretary. One member shall be a State director of a program under this section; one member shall be a State official responsible for a commodity supplemental food program under section 1304 of the Food and Agriculture Act of 1977; one member shall be a State fiscal officer of a program under this section (or the equivalent thereof); one member shall be a State health officer (or the equivalent thereof); one member shall be a local agency director of a program under this section in an urban area; one member shall be a local agency director of a program under this section in a rural area; one member shall be a project director of a commodity supplemental food program; one member shall be a State public health nutrition director (or the equivalent thereof); one member shall be a representative of an organization serving migrants; one member shall be an official from a State agency predominantly serving Indians; three members shall be parent participants of a program under this section or of a commodity supplemental food program; one member shall be a pediatrician; one member shall be an obstetrician; one member shall be a representative of a nonprofit public interest organization that has experience with and knowledge of the special supplemental nutrition program; one member shall be a person involved at the retail sales level of food in the special supplemental nutrition program; two members shall be officials of the Department of Health and Human Services appointed by the Secretary of Health and Human Services; two members shall be officials of the Department of Agriculture appointed by the Secretary; 1 member shall be an expert in the promotion of breast feeding; one member shall be an expert in drug abuse education and prevention; and one member shall be an expert in alcohol abuse education and prevention.]

[(2) Members of the Council appointed from outside the Department of Agriculture and the Department of Health and Human Services shall be appointed for terms not exceeding three years. State and local officials shall serve only during their official tenure, and the tenure of parent participants shall not exceed two years. Persons appointed to complete an unexpired term shall serve only for the remainder of such term.]

[(3) The Council shall elect a Chairman and a Vice Chairman. The Council shall meet at the call of the Chairman, but shall meet at least once a year. Eleven members shall constitute a quorum.]

[(4) The Secretary shall provide the Council with such technical and other assistance, including secretarial and clerical assistance, as may be required to carry out its functions.]

[(5) Members of the Council shall serve without compensation but shall be reimbursed for necessary travel and subsistence expenses incurred by them in the performance of the duties of the Council. Parent participant members of the Council, in addition to reimbursement for necessary travel and subsistence, shall, at the discretion of the Secretary, be compensated in advance for other personal expenses related to participation on the Council, such as child care expenses and lost wages during scheduled Council meetings.]

(l) Foods available under section 416 of the Agriculture Act of 1949, including, but not limited to, dry milk, or purchased under section 32 of the Act of August 24, 1935 may be donated by the Secretary, at the request of a State agency, for distribution to programs conducted under this section. The Secretary may purchase and distribute, at the request of a State agency, supplemental foods for donation to programs conducted under this section, with appropriated funds, including funds appropriated under this section.

(m)(1) Subject to the availability of funds appropriated for the purposes of this subsection, and as specified in this subsection, the Secretary shall award grants to States that submit State plans that are approved for the establishment or maintenance of programs designed to provide recipients of assistance under subsection (c), or those who are on the waiting list to receive the assistance, with coupons that may be exchanged for fresh, nutritious, unprepared foods at farmers' markets and (at the option of a State) roadside stands *and community supported agriculture programs*, as defined in the State plans submitted under this subsection.

(2) A grant provided to any State under this subsection shall be provided to the chief executive officer of the State, who shall—

(A) designate the appropriate State agency or agencies to administer the program in conjunction with the appropriate non-profit organizations; and

(B) ensure coordination of the program among the appropriate agencies and organizations.

[(3) The Secretary shall not make a grant to any State under this subsection unless the State agrees to provide State, local, or private funds for the program in an amount that is equal to not less than 30 percent of the administrative cost of the program, which may be satisfied from program income or State contributions that are made for similar programs. The Secretary may negotiate with an Indian State agency a lower percentage of matching funds than is required under the preceding sentence, but not lower than 10 percent of the administrative cost of the program, if the Indian State agency demonstrates to the Secretary financial hardship for the affected Indian tribe, band, group, or council.]

[(4)] (3) Subject to [(paragraph (6))] *paragraph (5)*, the Secretary shall establish a formula for determining the amount of the grant to be awarded under this subsection to each State for which a State plan is approved under [(paragraph (6))] *paragraph (5)*, according to

the number of recipients proposed to participate as specified in the State plan. In determining the amount to be awarded to new States, the Secretary shall rank order the State plans according to the criteria of operation set forth in this subsection, and award grants accordingly. The Secretary shall take into consideration the minimum amount needed to fund each approved State plan, and need not award grants to each State that submits a State plan.

[(5)] (4) Each State that receives a grant under this subsection shall ensure that the program for which the grant is received complies with the following requirements:

(A) Individuals who are eligible to receive Federal benefits under the program shall only be individuals who are receiving assistance under subsection (c), or who are on the waiting list to receive the assistance.

(B) Construction or operation of a farmers' market may not be carried out [using funds—]

[(i) provided under the grant; or]

[(ii) required to be provided by the State under paragraph (3).] *using funds provided under the grant.*

(C) The value of the Federal share of the benefits received by any recipient under the program [may not be—]

[(i) less than \$10 per year; or]

[(ii) more than \$30 per year.] *may not be less than \$20 per year or more than \$100 per year.*

(D) The coupon issuance process under the program shall be designed to ensure that coupons are targeted to areas with—

(i) the highest concentration of eligible individuals;

(ii) the greatest access to farmers' markets; and

(iii) certain characteristics, in addition to those described in clauses (i) and (ii), that are determined to be relevant by the Secretary and that maximize the availability of benefits to eligible individuals.

[(E)] (E) The coupon redemption process under the program shall be designed to ensure that the coupons may be—

[(i) redeemed only by producers authorized by the State to participate in the program; and]

[(ii) redeemed only to purchase fresh nutritious unprepared food for human consumption.]

(E) *The coupon redemption process under the program shall be designed to ensure that the coupon may be redeemed—*

(i) *either—*

(I) *by producers authorized by the State to participate in the program; or*

(II) *through a central point of sale at a farmers' market authorized by the State to participate in the program; and*

(ii) *only to purchase fresh nutritious unprepared food for human consumption.*

(F)(i) Except as provided in [clauses (ii) and (iii)] *clause (ii)*, the State may use for administration of the program in any fiscal year not more than 17 percent of the total amount of program funds.

(ii) During any fiscal year for which a State receives assistance under this subsection, the Secretary shall permit the State to use not more than [2 percent] *3 percent* of total pro-

gram funds for market development or technical assistance to farmers' markets if the Secretary determines that *such market development or technical assistance will advance State efforts to develop efficient and appropriate electronic benefits systems* or the State intends to promote the development of farmers' markets in socially or economically disadvantaged areas, or remote rural areas, where individuals eligible for participation in the program have limited access to locally grown fruits and vegetables.

[(iii) The provisions of clauses (i) and (ii) with respect to the use of program funds shall not apply to any funds that a State may contribute in excess of the funds used by the State to meet the requirements of paragraph (3).]

(G) The State shall ensure that no State or local taxes are collected within the State on purchases of food with coupons distributed under the program.

[(6)] (5)(A) The Secretary shall give the same preference for funding under this subsection to eligible States that participated in the program under this subsection in a prior fiscal year as to States that participated in the program in the most recent fiscal year. The Secretary shall inform each State of the award of funds as prescribed by [subparagraph (G)] *paragraph (8)* by February 15 of each year.

(B)(i) Subject to the availability of appropriations, [if a State provides the amount of matching funds required under paragraph (3),] the State shall receive assistance under this subsection in an amount that is not less than the amount of such assistance that the State received in the most recent fiscal year in which it received such assistance.

(ii) If amounts appropriated for any fiscal year pursuant to the authorization contained in [paragraph (10)] *paragraph (8)* for grants under this subsection are not sufficient to pay to each State for which a State plan is approved under [paragraph (6)] *paragraph (5)* the amount that the Secretary determines each such State is entitled to under this subsection, each State's grant shall be ratably reduced, except that (if sufficient funds are available) each State shall receive at least \$75,000 or the amount that the State received for the prior fiscal year if that amount is less than \$75,000.

(C) In providing funds to a State that received assistance under this subsection in the previous fiscal year, the Secretary shall consider—

(i) the availability of any such assistance not spent by the State during the program year for which the assistance was received;

(ii) documentation that demonstrates that—

(I) there is a need for an increase in funds; and

(II) the use of the increased funding will be consistent with serving nutritionally at-risk persons and expanding the awareness and use of farmers' markets;

(iii) demonstrated ability to satisfactorily operate the existing program; and

(iv) whether, in the case of a State that intends to use any funding provided under [subparagraph (G)(i)] *paragraph (8)* to increase the value of the Federal share of the benefits received

by a recipient, the funding provided under **[(subparagraph (G)(i)) paragraph (8)]** will increase the rate of coupon redemption.

(D)(i) A State that desires to receive a grant under this subsection shall submit, for each fiscal year, a State plan to the Secretary by November 15 of each year.

(ii) Each State plan submitted under this paragraph shall contain—

(I) the estimated cost of the program and the estimated number of individuals to be served by the program;

(II) a description of the State plan for complying with the requirements established in **[(paragraph (5)) paragraph (4)]**; and

(III) criteria developed by the State with respect to authorization of producers to participate in the program.

(iii) The criteria developed by the State as required by clause (ii)(III) shall require any authorized producer to sell fresh nutritious unprepared foods (such as fruits and vegetables) to recipients, in exchange for coupons distributed under the program.

(E) The Secretary shall establish objective criteria for the approval and ranking of State plans submitted under this paragraph.

(F)(i) An amount equal to 75 percent of the funds available after satisfying the requirements of subparagraph (B) shall be made available to States participating in the program whose State plan is approved by the Secretary. If this amount is greater than that necessary to satisfy the approved State plans, the unallocated amount shall be applied toward satisfying any unmet need of States that have not participated in the program in the prior fiscal year, and whose State plans have been approved.

(ii) An amount equal to 25 percent of the funds available after satisfying the requirements of subparagraph (B) shall be made available to States that have not participated in the program in the prior fiscal year, and whose State plans have been approved by the Secretary. If this amount is greater than that necessary to satisfy the approved State plans for new States, the unallocated amount shall be applied toward satisfying any unmet need of States whose State plans have been approved.

(iii) In any fiscal year, any funds that remain unallocated after satisfying the requirements of clauses (i) and (ii) shall be reallocated in the following fiscal year according to procedures established pursuant to **[(paragraph (10)(B)(ii)) paragraph (8)(B)(ii)]**.

**[(7)] (6)(A)** The value of the benefit received by any recipient under any program for which a grant is received under this subsection may not affect the eligibility or benefit levels for assistance under other Federal or State programs.

(B) Any programs for which a grant is received under this subsection shall be supplementary to the supplemental nutrition assistance program carried out under the Food and Nutrition Act of 2008 (7 U.S.C. 2011 et seq.) and to any other Federal or State program under which foods are distributed to needy families in lieu of supplemental nutrition assistance program benefits.

**[(8)] (7)** For each fiscal year, the Secretary shall collect from each State that receives a grant under this subsection information relating to—



(A) the number and type of recipients served by both Federal and non-Federal benefits under the program for which the grant is received;

(B) the rate of redemption of coupons distributed under the program;

(C) the average amount distributed in coupons to each recipient;

[(D)] (D) the change in consumption of fresh fruits and vegetables by recipients, if the information is available;]

[(E)] (E) the effects of the program on farmers' markets, if the information is available; and

[(F)] (F) any other information determined to be necessary by the Secretary.

[(9)] (8) FUNDING.—

(A) 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] *2023 through 2028*.

(B)(i)(I) Each State shall return to the Secretary any funds made available to the State that are unobligated at the end of the fiscal year for which the funds were originally allocated. The unexpended funds shall be returned to the Secretary by February 1st of the following fiscal year.

(II) Notwithstanding any other provision of this subsection, a total of not more than [5 percent] *10 percent* of funds made available to a State for any fiscal year may be expended by the State to reimburse expenses incurred for a program assisted under this subsection during the preceding fiscal year.

(ii) The Secretary shall establish procedures to reallocate funds that are returned under clause (i).

[(10)] (9) For purposes of this subsection:

(A) The term “coupon” means a coupon, voucher, [or other negotiable financial instrument] *token, electronic benefit transfer card, mobile benefit delivery system, or other forms or technologies as determined by the Secretary* by which benefits under this section are transferred.

(B) The term “program” means—

(i) the State farmers' market coupon nutrition program authorized by this subsection (as it existed on September 30, 1991); or

(ii) the farmers' market nutrition program authorized by this subsection.

(C) The term “recipient” means a person or household, as determined by the State, who is chosen by a State to receive benefits under this subsection, or who is on a waiting list to receive such benefits.

(D) The term “State agency” has the meaning provided in subsection (b)(13), except that the term also includes the agriculture department of each State and any other agency approved by the chief executive officer of the State.

(n) DISQUALIFICATION OF VENDORS WHO ARE DISQUALIFIED UNDER THE SUPPLEMENTAL NUTRITION ASSISTANCE PROGRAM.—

(1) IN GENERAL.—The Secretary shall issue regulations providing criteria for the disqualification under this section of an approved vendor that is disqualified from accepting benefits

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

(2) TERMS.—A disqualification under paragraph (1)—

(A) shall be for the same period as the disqualification from the program referred to in paragraph (1);

(B) may begin at a later date than the disqualification from the program referred to in paragraph (1); and

(C) shall not be subject to judicial or administrative review.

(o) DISQUALIFICATION OF VENDORS CONVICTED OF TRAFFICKING OR ILLEGAL SALES.—

(1) IN GENERAL.—Except as provided in paragraph (4), a State agency shall permanently disqualify from participation in the program authorized under this section a vendor convicted of—

(A) trafficking in food instruments (including any voucher, draft, check, or access device (including an electronic benefit transfer card or personal identification number) issued in lieu of a food instrument under this section); or

(B) selling firearms, ammunition, explosives, or controlled substances (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802)) in exchange for food instruments (including any item described in subparagraph (A) issued in lieu of a food instrument under this section).

(2) NOTICE OF DISQUALIFICATION.—The State agency shall—

(A) provide the vendor with notification of the disqualification; and

(B) make the disqualification effective on the date of receipt of the notice of disqualification.

(3) PROHIBITION OF RECEIPT OF LOST REVENUES.—A vendor shall not be entitled to receive any compensation for revenues lost as a result of disqualification under this subsection.

(4) EXCEPTIONS IN LIEU OF DISQUALIFICATION.—

(A) IN GENERAL.—A State agency may permit a vendor that, but for this paragraph, would be disqualified under paragraph (1), to continue to participate in the program if the State agency determines, in its sole discretion according to criteria established by the Secretary, that—

(i) disqualification of the vendor would cause hardship to participants in the program authorized under this section; or

(ii)(I) the vendor had, at the time of the violation under paragraph (1), an effective policy and program in effect to prevent violations described in paragraph (1); and

(II) the ownership of the vendor was not aware of, did not approve of, and was not involved in the conduct of the violation.

(B) CIVIL PENALTY.—If a State agency under subparagraph (A) permits a vendor to continue to participate in the program in lieu of disqualification, the State agency shall assess the vendor a civil penalty in an amount deter-

mined by the State agency, in accordance with criteria established by the Secretary, except that—

- (i) the amount of the civil penalty shall not exceed \$10,000 for each violation; and
- (ii) the amount of civil penalties imposed for violations investigated as part of a single investigation may not exceed \$40,000.

(p) CRIMINAL FORFEITURE.—

(1) IN GENERAL.—Notwithstanding any provision of State law and in addition to any other penalty authorized by law, a court may order a person that is convicted of a violation of a provision of law described in paragraph (2), with respect to food instruments (including any item described in subsection (o)(1)(A) issued in lieu of a food instrument under this section), funds, assets, or property that have a value of \$100 or more and that are the subject of a grant or other form of assistance under this section, to forfeit to the United States all property described in paragraph (3).

(2) APPLICABLE LAWS.—A provision of law described in this paragraph is—

(A) section 12(g) of the Richard B. Russell National School Lunch Act (42 U.S.C. 1760(g)); and

(B) any other Federal law imposing a penalty for embezzlement, willful misapplication, stealing, obtaining by fraud, or trafficking in food instruments (including any item described in subsection (o)(1)(A) issued in lieu of a food instrument under this section), funds, assets, or property.

(3) PROPERTY SUBJECT TO FORFEITURE.—The following property shall be subject to forfeiture under paragraph (1):

(A) All property, real and personal, used in a transaction or attempted transaction, to commit, or to facilitate the commission of, a violation described in paragraph (1).

(B) All property, real and personal, constituting, derived from, or traceable to any proceeds a person obtained directly or indirectly as a result of a violation described in paragraph (1).

(4) PROCEDURES; INTEREST OF OWNER.—Except as provided in paragraph (5), all property subject to forfeiture under this subsection, any seizure or disposition of the property, and any proceeding relating to the forfeiture, seizure, or disposition shall be subject to section 413 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. 853), other than subsection (d) of that section.

(5) PROCEEDS.—The proceeds from any sale of forfeited property and any amounts forfeited under this subsection shall be used—

(A) first, to reimburse the Department of Justice, the Department of the Treasury, and the United States Postal Service for the costs incurred by the Departments or Service to initiate and complete the forfeiture proceeding;

(B) second, to reimburse the Office of Inspector General of the Department of Agriculture for any costs incurred by the Office in the law enforcement effort resulting in the forfeiture;

(C) third, to reimburse any Federal, State, or local law enforcement agency for any costs incurred in the law enforcement effort resulting in the forfeiture; and

(D) fourth, by the State agency to carry out approval, reauthorization, and compliance investigations of vendors.

(q) The Secretary of Agriculture shall provide technical assistance to the Secretary of Defense, if so requested by the Secretary of Defense, for the purpose of carrying out the overseas special supplemental food program established under section 1060a(a) of title 10, United States Code.

(r) EMERGENCIES AND DISASTERS.—

(1) IN GENERAL.—Notwithstanding any other provision of law, during an emergency period, the Secretary may modify or waive any qualified administrative requirement for one or more State agencies if—

(A) the qualified administrative requirement cannot be met by State agencies during any portion of the emergency period under the conditions which prompted the emergency period; and

(B) the modification or waiver of such a requirement—

(i) is necessary to provide assistance under this section; and

(ii) does not substantially weaken the nutritional quality of supplemental foods provided under this section.

(2) DURATION.—A waiver established under this subsection may be available for a period of not greater than the emergency period and the 60 days after the end of such emergency period.

(3) DEFINITIONS.—In this subsection:

(A) EMERGENCY PERIOD.—The term “emergency period” means a period during which there exists—

(i) a public health emergency declared by the Secretary of Health and Human Services under section 319 of the Public Health Service Act (42 U.S.C. 247d);

(ii) any renewal of such a public health emergency pursuant to such section 319;

(iii) a presidentially declared major disaster as defined under section 102 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 et seq.); or

(iv) a presidentially declared emergency as defined under section 102 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 et seq.).

(B) QUALIFIED ADMINISTRATIVE REQUIREMENT.—The term “qualified administrative requirement” means a requirement under this section or a regulatory requirement issued pursuant to this section.

(s) SUPPLY CHAIN DISRUPTIONS.—

(1) IN GENERAL.—Notwithstanding any other provision of law, during a supply chain disruption, including a supplemental food product recall, the Secretary may modify or waive any qualified administrative requirement for one or more State agencies if—

- (A) the qualified administrative requirement cannot be met by State agencies during any portion of the supply chain disruption, including a supplemental food product recall, under the conditions which prompted such disruption or recall; and
  - (B) the modification or waiver of such a requirement—
    - (i) is necessary to provide assistance under this section; and
    - (ii) does not substantially weaken the nutritional quality of supplemental foods provided under this section.
- (2) **WAIVER AUTHORITY.**—The Secretary may, under a waiver or modification under paragraph (1)—
- (A) permit authorized vendors to exchange or substitute authorized supplemental foods obtained with food instruments beyond exchanges for an identical (exact brand and size) food item;
  - (B) waive any requirement with respect to medical documentation for the issuance of noncontract brand infant formula, except for the requirements for participants receiving Food Package III (as defined in section 246.10(e)(3) of title 7, Code of Federal Regulations (as in effect on the date of the enactment of this subsection));
  - (C) waive the maximum monthly allowance for infant formula; and
  - (D) waive any additional qualified administrative requirement to address a supply chain disruption, including a supplemental food product recall.
- (3) **DURATION.**—A waiver or modification established under this subsection—
- (A) may be—
    - (i) available for a period of not more than 45 days, to begin on a date determined by the Secretary; and
    - (ii) renewed so long as the Secretary provides notice at least 15 days before such renewal; and
  - (B) shall not be available after the date that is 60 days after the supply chain disruption for which such waiver is established ceases to exist.
- (4) **TRANSPARENCY.**—
- (A) **IN GENERAL.**—If the Secretary determines that a supply chain disruption exists and issues a waiver or modification under this subsection, the Secretary shall notify each State agency affected by such disruption and include with such notification an explanation of such determination.
  - (B) **PUBLICATION.**—The Secretary shall make each determination described in subparagraph (A) publicly available on the website of the Department.
  - (C) **STATE AGENCY REQUIREMENTS.**—In the case of a waiver or modification under this subsection related to infant formula, a State agency notified under subparagraph (A) shall notify each infant formula manufacturer that has a contract with such State agency with respect to such notification.

(5) **QUALIFIED ADMINISTRATIVE REQUIREMENT DEFINED.**—For purposes of this subsection, the term “qualified administrative requirement” has the meaning given the term in subsection (r).  
*(t) ACTIVITIES TO SUPPORT WIC-ELIGIBLE INDIVIDUALS IMPACTED BY SUBSTANCE USE DISORDER.*—

(1) *IN GENERAL.*—*The Secretary shall—*

*(A) develop and disseminate nutrition education materials for individuals eligible for the program; and*

*(B) conduct outreach to individuals who are potentially eligible for the program and who are impacted by a substance use disorder.*

(2) *PURPOSE.*—*The purpose of this subsection is to ensure that individuals participating in the program who are impacted by a substance use disorder receive accurate nutrition education from trained staff in an effective and unbiased manner.*

(3) *NUTRITION EDUCATION MATERIALS.*—*The Secretary shall collaborate with the Secretary of Health and Human Services to develop appropriate evidence-based nutrition education materials for individuals impacted by a substance use disorder, including—*

*(A) nutrition education materials for individuals with substance use disorder during pregnancy and in the postpartum period; and*

*(B) nutrition education materials for infants impacted by prenatal substance exposure and neonatal abstinence syndrome.*

(4) *NUTRITION EDUCATION CLEARINGHOUSE.*—*The Secretary shall make available to all State agencies through an online clearinghouse any nutrition education and training materials related to nutrition for individuals impacted by a substance use disorder or neonatal abstinence syndrome that have been produced by the Secretary or the Secretary of Health and Human Services (or produced by a State agency and approved by the Secretary), including educational materials developed under paragraph (15) of section 515(b) of the Public Health Service Act (42 U.S.C. 290bb–21(b)) and guidance issued under section 1005 of the SUPPORT for Patients and Communities Act (42 U.S.C. 1396a note).*

(5) *AUTHORIZATION OF APPROPRIATIONS.*—*There are authorized to be appropriated to carry out this subsection \$1,000,000 for fiscal year 2024, to remain available until expended.*

**SEC. 19. TEAM NUTRITION NETWORK.**

(a) *PURPOSES.*—*The purposes of the team nutrition network are—*

*(1) to establish State systems to promote the nutritional health of school children of the United States through nutrition education and the use of team nutrition messages and material developed by the Secretary, and to encourage regular physical activity and other activities that support healthy lifestyles for children, including those based on 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);*

*(2) to provide assistance to States for the development of comprehensive and integrated nutrition education and active*

living programs in schools and facilities that participate in child nutrition programs;

(3) to provide training, *including training on scratch cooking*, and technical assistance and disseminate team nutrition messages to States, school and community nutrition programs, and child nutrition food service professionals;

(4) to coordinate and collaborate with other nutrition education and active living programs that share similar goals and purposes; and

(5) to identify and share innovative programs with demonstrated effectiveness in [helping children to maintain a healthy weight by] enhancing student understanding of healthful eating patterns and the importance of regular physical activity.

(b) DEFINITION OF TEAM NUTRITION NETWORK.—In this section, the term “team nutrition network” means a statewide multidisciplinary program for children to promote healthy eating and physical activity based on scientifically valid information and sound educational, social, and marketing principles.

(c) GRANTS.—

(1) IN GENERAL.—Subject to the availability of funds for use in carrying out this section, in addition to any other funds made available to the Secretary for team nutrition purposes, the Secretary, in consultation with the Secretary of Education, may make grants to State agencies for each fiscal year, in accordance with this section, to establish team nutrition networks to promote nutrition education through—

(A) the use of team nutrition network messages and other scientifically based information; and

(B) the promotion of active lifestyles.

(2) FORM.—A portion of the grants provided under this subsection may be in the form of competitive grants.

(3) FUNDS FROM NONGOVERNMENTAL SOURCES.—In carrying out this subsection, the Secretary may accept cash contributions from nongovernmental organizations made expressly to further the purposes of this section, to be managed by the Food and Nutrition Service, for use by the Secretary and the States in carrying out this section.

(d) ALLOCATION.—Subject to the availability of funds for use in carrying out this section, the total amount of funds made available for a fiscal year for grants under this section shall equal not more than the sum of—

(1) the product obtained by multiplying  $\frac{1}{2}$  cent by the number of lunches reimbursed through food service programs under the Richard B. Russell National School Lunch Act (42 U.S.C. 1751 et seq.) during the second preceding fiscal year in schools, institutions, and service institutions that participate in the food service programs; and

(2) the total value of funds received by the Secretary in support of this section from nongovernmental sources.

(e) REQUIREMENTS FOR STATE PARTICIPATION.—To be eligible to receive a grant under this section, a State agency shall submit to the Secretary a plan that—

(1) is subject to approval by the Secretary; and

(2) is submitted at such time and in such manner, and that contains such information, as the Secretary may require, including—

(A) a description of the goals and proposed State plan for addressing the health and other consequences of children who are at risk of becoming overweight or obese;

(B) an analysis of the means by which the State agency will use and disseminate the team nutrition messages and material developed by the Secretary;

(C) an explanation of the ways in which the State agency will use the funds from the grant to work toward the goals required under subparagraph (A), and to promote healthy eating and physical activity and fitness in schools throughout the State;

(D) a description of the ways in which the State team nutrition network messages and activities will be coordinated at the State level with other health promotion and education activities;

(E) a description of the consultative process that the State agency employed in the development of the model nutrition and physical activity programs, including consultations with individuals and organizations with expertise in promoting public health, nutrition, or physical activity;

(F) a description of how the State agency will evaluate the effectiveness of each program developed by the State agency;

(G) an annual summary of the team nutrition network activities;

(H) a description of the ways in which the total school environment will support healthy eating and physical activity; and

(I) a description of how all communications to parents and legal guardians of students who are members of a household receiving or applying for assistance under the program shall be in an understandable and uniform format and, to the maximum extent practicable, in a language that parents and legal guardians can understand.

(f) STATE COORDINATOR.—Each State that receives a grant under this section shall appoint a team nutrition network coordinator who shall—

(1) administer and coordinate the team nutrition network within and across schools, school food authorities, and other child nutrition program providers in the State; and

(2) coordinate activities of the Secretary, acting through the Food and Nutrition Service, and State agencies responsible for other children's health, education, and wellness programs to implement a comprehensive, coordinated team nutrition network program.

(g) AUTHORIZED ACTIVITIES.—A State agency that receives a grant under this section may use funds from the grant—

(1)(A) to collect, analyze, and disseminate data regarding the extent to which children and youths in the State are overweight, physically inactive, or otherwise suffering from nutrition-related deficiencies or disease conditions; and



(B) to identify the programs and services available to meet those needs;

(2) to implement model elementary and secondary education curricula using team nutrition network messages and material developed by the Secretary to create a comprehensive, coordinated nutrition and physical fitness awareness and obesity prevention program;

(3) to implement pilot projects in schools to promote physical activity and to enhance the nutritional status of students;

(4) to improve access to local foods through farm-to-cafeteria activities that may include the acquisition of food and the provision of training and education;

(5) to implement State guidelines in health (including nutrition education and physical education guidelines) and to emphasize regular physical activity during school hours;

(6) to establish healthy eating and lifestyle policies in schools;

(7) to provide training and technical assistance to teachers and school food service professionals consistent with the purposes of this section;

(8) to collaborate with public and private organizations, including community-based organizations, State medical associations, and public health groups, to develop and implement nutrition and physical education programs targeting lower income children, ethnic minorities, and youth at a greater risk for obesity.

(h) LOCAL NUTRITION AND PHYSICAL ACTIVITY GRANTS.—

(1) IN GENERAL.—Subject to the availability of funds to carry out this subsection, the Secretary, in consultation with the Secretary of Education, shall provide assistance to selected local educational agencies to create healthy school nutrition environments, promote healthy eating habits, and increase physical activity, consistent with 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), among elementary and secondary education students.

(2) SELECTION OF SCHOOLS.—In selecting local educational agencies for grants under this subsection, the Secretary shall—

(A) provide for the equitable distribution of grants among—

(i) urban, suburban, and rural schools; and

(ii) schools with varying family income levels;

(B) consider factors that affect need, including local educational agencies with significant minority or low-income student populations; and

(C) establish a process that allows the Secretary to conduct an evaluation of how funds were used.

(3) REQUIREMENT FOR PARTICIPATION.—To be eligible to receive assistance under this subsection, a local educational agency shall, in consultation with individuals who possess education or experience appropriate for representing the general field of public health, including nutrition and fitness professionals, submit to the Secretary an application that shall include—

(A) a description of the need of the local educational agency for a nutrition and physical activity program, including an assessment of the nutritional environment of the school;

(B) a description of how the proposed project will improve health and nutrition through education and increased access to physical activity;

(C) a description of how the proposed project will be aligned with the local wellness policy required under section 204 of the Child Nutrition and WIC Reauthorization Act of 2004;

(D) a description of how funds under this subsection will be coordinated with other programs under this Act, the Richard B. Russell National School Lunch Act (42 U.S.C. 1751 et seq.), or other Acts, as appropriate, to improve student health and nutrition;

(E) a statement of the measurable goals of the local educational agency for nutrition and physical education programs and promotion;

(F) a description of the procedures the agency will use to assess and publicly report progress toward meeting those goals; and

(G) a description of how communications to parents and guardians of participating students regarding the activities under this subsection shall be in an understandable and uniform format, and, to the extent maximum practicable, in a language that parents can understand.

(4) DURATION.—Subject to the availability of funds made available to carry out this subsection, a local educational agency receiving assistance under this subsection shall conduct the project during a period of 3 successive school years beginning with the initial fiscal year for which the local educational agency receives funds.

(5) AUTHORIZED ACTIVITIES.—An eligible applicant that receives assistance under this subsection—

(A) shall use funds provided to—

(i) promote healthy eating through the development and implementation of nutrition education programs and curricula based on 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); and

(ii) increase opportunities for physical activity through after school programs, athletics, intramural activities, and recess; and

(B) may use funds provided to—

(i) **educate** *conduct evidence-based nutrition education* for parents and students about the relationship **[of a poor diet and inactivity to obesity and other health problems]** *between diet, activity, and health*;

(ii) develop and implement physical education programs that promote fitness and lifelong activity;

(iii) provide training and technical assistance to food service professionals to develop more appealing, nutritious menus and recipes;

(iv) incorporate nutrition education into physical education, health education, *other classroom education*, and after school programs, including athletics;

(v) involve parents, nutrition professionals, food service staff, educators, community leaders, and other interested parties in assessing the food options in the school environment and developing and implementing an action plan to promote a balanced and healthy diet;

(vi) provide nutrient content or nutrition information on meals served through 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 and items sold a la carte during meal times;

(vii) encourage the increased consumption of a variety of healthy foods, including fruits, vegetables, whole grains, and low-fat dairy products, through new initiatives to creatively market healthful foods, such as salad bars and fruit bars;

(viii) offer healthy food choices outside program meals, including by making low-fat and nutrient dense options available in vending machines, school stores, and other venues; **[and]**

(ix) provide nutrition education, including sports nutrition education, for teachers, coaches, food service staff, athletic trainers, and school nurses**[.]**; *and*

(x) *conduct projects that—*

*(I) hire qualified food and nutrition educators to carry out programs in schools; and*

*(II) have the goal of improving student health and nutrition through such programs.*

**[(6) REPORT.**—Not later than 18 months after completion of the projects and evaluations under this subsection, the Secretary shall—

**[(A)** submit to the Committee on Education and the Workforce of the House of Representatives and the Committee on Health, Education, Labor, and Pensions and the Committee on Agriculture, Nutrition and Forestry of the Senate a report describing the results of the evaluation under this subsection; and

**[(B)** make the report available to the public, including through the Internet.**]**

(i) **NUTRITION EDUCATION SUPPORT.**—In carrying out the purpose of this section to support nutrition education, the Secretary may provide for technical assistance and grants to improve the quality of school meals and access to local foods in schools and institutions.

(j) **LIMITATION.**—Material prepared under this section regarding agricultural commodities, food, or beverages, must be factual and without bias.

**[(k) TEAM NUTRITION NETWORK INDEPENDENT EVALUATION.**—

**[(1) IN GENERAL.**—Subject to the availability of funds to carry out this subsection, the Secretary shall offer to enter into an agreement with an independent, nonpartisan, science-based research organization—

[(A) to conduct a comprehensive independent evaluation of the effectiveness of the team nutrition initiative and the team nutrition network under this section; and

[(B) to identify best practices by schools in—

[(i) improving student understanding of healthful eating patterns;

[(ii) engaging students in regular physical activity and improving physical fitness;

[(iii) reducing diabetes and obesity rates in school children;

[(iv) improving student nutrition behaviors on the school campus, including by increasing healthier meal choices by students, as evidenced by greater inclusion of fruits, vegetables, whole grains, and lean dairy and protein in meal and snack selections;

[(v) providing training and technical assistance for food service professionals resulting in the availability of healthy meals that appeal to ethnic and cultural taste preferences;

[(vi) linking meals programs to nutrition education activities;

[(vii) successfully involving parents, school administrators, the private sector, public health agencies, non-profit organizations, and other community partners;

[(viii) ensuring the adequacy of time to eat during school meal periods; and

[(ix) successfully generating revenue through the sale of food items, while providing healthy options to students through vending, student stores, and other venues.

[(2) REPORT.—Not later than 3 years after funds are made available to carry out this subsection, the Secretary shall submit to the Committee on Education and the Workforce of the House of Representatives, the Committee on Health, Education, Labor, and Pensions and the Committee on Agriculture, Nutrition, and Forestry of the Senate a report describing the findings of the independent evaluation.]

[(1)] (k) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated such sums as are necessary to carry out this section.

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## SEC. 22. BILL EMERSON GOOD SAMARITAN FOOD DONATION ACT.

(a) SHORT TITLE.—This section may be cited as the “Bill Emerson Good Samaritan Food Donation Act”.

(b) DEFINITIONS.—As used in this section:

(1) APPARENTLY FIT GROCERY PRODUCT.—The term “apparently fit grocery product” means a grocery product that meets all [quality and labeling] *safety and safety-related labeling* standards imposed by Federal, State, and local laws and regulations even though the product may not be readily marketable due to appearance, age, freshness, grade, size, surplus, *being past date label*, or other conditions.

(2) APPARENTLY WHOLESOME FOOD.—The term “apparently wholesome food” means food that meets all [quality and label-

ing] *safety and safety-related labeling* standards imposed by Federal, State, and local laws and regulations even though the food may not be readily marketable due to appearance, age, freshness, grade, size, surplus, *being past date label*, or other conditions.

(3) **DONATE.**—The term “donate” means to give without requiring anything of monetary value from the recipient, except that the term shall include giving by a nonprofit organization to another nonprofit organization, notwithstanding that the donor organization has charged a nominal fee to the donee organization, if the ultimate recipient or user is not required to give anything of monetary value *or is charged a good Samaritan Reduced Price*.

(4) **EMOTIONAL SUPPORT ANIMAL.**—The term “emotional support animal” means an animal that is covered by the exclusion specified in section 5.303 of title 24, Code of Federal Regulations (or a successor regulation) and that is not a service animal.

[(4)] (5) **FOOD.**—The term “food” means any raw, cooked, processed, or prepared edible substance, ice, beverage, or ingredient used or intended for use in whole or in part [for human] for—

(A) *human consumption; or*

(B) *pet, emotional support animal, or service animal consumption.* consumption.

[(5)] (6) **GLENER.**—The term “gleaner” means a person who harvests for free distribution to the needy, or for donation to a nonprofit organization for ultimate distribution to the needy, an agricultural crop that has been donated by the owner.

(7) **GOOD SAMARITAN REDUCED PRICE.**—The term “good Samaritan reduced price” means, with respect to an apparently wholesome food or an apparently fit grocery product, a price that is an amount not greater than the cost of handling, administering, and distributing such food or grocery product.

[(6)] (8) **GROCERY PRODUCT.**—The term “grocery product” means a nonfood grocery product, including a disposable paper or plastic product, household cleaning product, *pet supply*, laundry detergent, cleaning product, or miscellaneous household item.

[(7)] (9) **GROSS NEGLIGENCE.**—The term “gross negligence” means voluntary and conscious conduct (including a failure to act) by a person who, at the time of the conduct, knew that the conduct was likely to be harmful to the health or well-being of another person.

[(8)] (10) **INTENTIONAL MISCONDUCT.**—The term “intentional misconduct” means conduct by a person with knowledge (at the time of the conduct) that the conduct is harmful to the health or well-being of another person.

[(9)] (11) **NONPROFIT ORGANIZATION.**—The term “nonprofit organization” means an incorporated or unincorporated entity that—

(A) is operating for religious, charitable, or educational purposes; and

(B) does not provide net earnings to, or operate in any other manner that inures to the benefit of, any officer, employee, or shareholder of the entity.

[(10)] (12) PERSON.—The term “person” means an individual, corporation, partnership, organization, association, or governmental entity, including a retail grocer, wholesaler, hotel, motel, manufacturer, restaurant, caterer, farmer, *pet food supplier, school, school food authority*, and nonprofit food distributor or hospital. In the case of a corporation, partnership, organization, association, or governmental entity, the term includes an officer, director, partner, deacon, trustee, council member, or other elected or appointed individual responsible for the governance of the entity.

(13) PET.—*The term “pet” means a domesticated animal that is kept for pleasure rather than for commercial purposes.*

(14) PET SUPPLIES.—*The term “pet supplies” means tangible personal property used for the caring of pets.*

(15) QUALIFIED DIRECT DONOR.—*The term “qualified direct donor” means a retail grocer, wholesaler, agricultural producer, restaurant, caterer, school food authority, or institution of higher education (as defined in section 101 or 102(a)(1)(B) of the Higher Education Act of 1965 (20 U.S.C. 1001; 1002(a)(1)(B))).*

(16) SERVICE ANIMAL.—*The term “service animal” has the meaning given the term in section 36.104 of title 28, Code of Federal Regulations (or a successor regulation).*

(c) LIABILITY FOR DAMAGES FROM DONATED FOOD AND GROCERY PRODUCTS.—

(1) LIABILITY OF PERSON OR GLEANER.—A person or gleaner shall not be subject to civil or criminal liability arising from the nature, age, packaging, or condition of apparently wholesome food or an apparently fit grocery product that the person or gleaner donates in good faith to a nonprofit organization or State or unit of local government for ultimate distribution or sale at a good Samaritan reduced price to needy individuals.

(2) LIABILITY OF NONPROFIT ORGANIZATION.—A nonprofit organization shall not be subject to civil or criminal liability arising from the nature, age, packaging, or condition of apparently wholesome food or an apparently fit grocery product that the nonprofit organization received as a donation in good faith from a person or gleaner for ultimate distribution or sale at a good Samaritan reduced price to needy individuals.

[(3)] (6) EXCEPTION.—[Paragraphs (1) and (2)] Paragraphs (1), (2), (3), (4), and (5) shall not apply to an injury to or death of an ultimate user or recipient of the food or grocery product that results from an act or omission of the person, gleaner, *qualified direct donor, State or local government*, or nonprofit organization, as applicable, constituting gross negligence or intentional misconduct.

(3) LIABILITY OF STATE OR UNIT OF LOCAL GOVERNMENT.—A State or unit of local government shall not be subject to liability arising from the nature, age, packaging, or condition of apparently wholesome food or an apparently fit grocery product that the State or unit of local government received as a donation in good faith from a person, gleaner, or nonprofit organization for ultimate distribution to needy individuals.

(4) *DIRECT DONATIONS TO NEEDY INDIVIDUALS.*—A qualified direct donor shall not be subject to civil or criminal liability arising from the nature, age, packaging, or condition of apparently wholesome food or an apparently fit grocery product that the qualified direct donor donates in good faith to needy individuals.

(5) *LIABILITY WITH RESPECT TO PETS.*—

(A) *DONATIONS MADE.*—A person or gleaner shall not be subject to civil or criminal liability arising from the nature, age, packaging, or condition of food described in subsection (b)(4)(B) or pet supplies that the person or gleaner donates in good faith to a nonprofit organization or State or unit of local government for direct distribution to pets.

(B) *DONATIONS RECEIVED.*—A nonprofit organization or State or unit of local government shall not be subject to civil or criminal liability arising from the nature, age, packaging, or condition of food described in subsection (b)(4)(B) or pet supplies that the nonprofit organization or State or unit of local government received as a donation in good faith from a person or gleaner for direct distribution to pets.

(d) *COLLECTION OR GLEANING OF DONATIONS.*—A person who allows the collection or gleaning of donations on property owned or occupied by the person by gleaners, or paid or unpaid representatives of a nonprofit organization, for ultimate distribution to needy individuals shall not be subject to civil or criminal liability that arises due to the injury or death of the gleaner or representative, except that this paragraph shall not apply to an injury or death that results from an act or omission of the person constituting gross negligence or intentional misconduct.

(e) *PARTIAL COMPLIANCE.*—If some or all of the donated food and grocery products do not meet all **quality and labeling** *safety and safety-related labeling* standards imposed by Federal, State, and local laws and regulations, the person or gleaner who donates the food and grocery products shall not be subject to civil or criminal liability in accordance with this section if the nonprofit organization or State or unit of local government that receives the donated food or grocery products—

(1) is informed by the donor of the distressed or defective condition of the donated food or grocery products;

(2) agrees to recondition the donated food or grocery products to comply with all the **quality and labeling** *safety and safety-related labeling* standards prior to distribution; and

(3) is knowledgeable of the standards to properly recondition the donated food or grocery product.

(f) *CONSTRUCTION.*—This section shall not be construed to create any liability. Nothing in this section shall be construed to supersede State or local health regulations.

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# **SOCIAL SECURITY ACT**

## **TITLE XIX—GRANTS TO STATES FOR MEDICAL ASSISTANCE PROGRAMS**

\* \* \* \* \*

### **STATE PLANS FOR MEDICAL ASSISTANCE**

SEC. 1902. (a) A State plan for medical assistance must—

(1) provide that it shall be in effect in all political subdivisions of the State, and, if administered by them, be mandatory upon them;

(2) provide for financial participation by the State equal to not less than 40 per centum of the non-Federal share of the expenditures under the plan with respect to which payments under section 1903 are authorized by this title; and, effective July 1, 1969, provide for financial participation by the State equal to all of such non-Federal share or provide for distribution of funds from Federal or State sources, for carrying out the State plan, on an equalization or other basis which will assure that the lack of adequate funds from local sources will not result in lowering the amount, duration, scope, or quality of care and services available under the plan;

(3) provide for granting an opportunity for a fair hearing before the State agency to any individual whose claim for medical assistance under the plan is denied or is not acted upon with reasonable promptness;

(4) provide (A) such methods of administration (including methods relating to the establishment and maintenance of personnel standards on a merit basis, except that the Secretary shall exercise no authority with respect to the selection, tenure of office, and compensation of any individual employed in accordance with such methods, including provision for utilization of professional medical personnel in the administration and, where administered locally, supervision of administration of the plan, and, subject to section 1903(i), including a specification that the single State agency described in paragraph (5) will ensure necessary transportation for beneficiaries under the State plan to and from providers and a description of the methods that such agency will use to ensure such transportation) as are found by the Secretary to be necessary for the proper and efficient operation of the plan, (B) for the training and effective use of paid subprofessional staff, with particular emphasis on the full-time or part-time employment of recipients and other persons of low income, as community service aides, in the administration of the plan and for the use of nonpaid or partially paid volunteers in a social service volunteer program in providing services to applicants and recipients and in assisting any advisory committees established by the State agency, (C) that each State or local officer, employee, or independent contractor who is responsible for the expenditure of substantial amounts of funds under the State plan, each individual who formerly was such an officer, employee, or contractor, and each partner of such an officer, employee, or contractor shall be prohibited from committing any act, in relation to any activity



under the plan, the commission of which, in connection with any activity concerning the United States Government, by an officer or employee of the United States Government, an individual who was such an officer or employee, or a partner of such an officer or employee is prohibited by section 207 or 208 of title 18, United States Code, and (D) that each State or local officer, employee, or independent contractor who is responsible for selecting, awarding, or otherwise obtaining items and services under the State plan shall be subject to safeguards against conflicts of interest that are at least as stringent as the safeguards that apply under section 27 of the Office of Federal Procurement Policy Act (41 U.S.C. 423) to persons described in subsection (a)(2) of such section of that Act;

(5) either provide for the establishment or designation of a single State agency to administer or to supervise the administration of the plan; or provide for the establishment or designation of a single State agency to administer or to supervise the administration of the plan, except that the determination of eligibility for medical assistance under the plan shall be made by the State or local agency administering the State plan approved under title I or XVI (insofar as it relates to the aged) if the State is eligible to participate in the State plan program established under title XVI, or by the agency or agencies administering the supplemental security income program established under title XVI or the State plan approved under part A of title IV if the State is not eligible to participate in the State plan program established under title XVI;

(6) provide that the State agency will make such reports, in such form and containing such information, as the Secretary may from time to time require, and comply with such provisions as the Secretary may from time to time find necessary to assure the correctness and verification of such reports;

(7) provide—

(A) safeguards which restrict the use or disclosure of information concerning applicants and recipients to purposes directly connected with—

- (i) the administration of the plan; and
- (ii) the exchange of information necessary to certify or verify the certification of eligibility of children for free or reduced price breakfasts under the Child Nutrition Act of 1966 and free or reduced price lunches under the Richard B. Russell National School Lunch Act, in accordance with section 9(b) of that Act, using data standards and formats established by the State agency; and

(B) that, notwithstanding the Express Lane option under subsection (e)(13), the State may enter into an agreement with the State agency administering the school lunch program established under the Richard B. Russell National School Lunch Act under which the State shall establish procedures to ensure that—

- (i) a child receiving medical assistance under the State plan under this title whose family income does not exceed 133 percent of the poverty line (as defined in section 673(2) of the Community Services Block

Grant Act, including any revision required by such section), as determined without regard to any expense, block, or other income disregard, applicable to a family of the size involved, may be certified as eligible for free lunches under the Richard B. Russell National School Lunch Act and free breakfasts under the Child Nutrition Act of 1966 without further application; and

(ii) the State agencies responsible for administering the State plan under this title, and for carrying out the school lunch program established under the Richard B. Russell National School Lunch Act (42 U.S.C. 1751 et seq.) or the school breakfast program established by section 4 of the Child Nutrition Act of 1966 (42 U.S.C. 1773), cooperate in carrying out paragraphs (3)(F) and (15) of section 9(b) of that Act;

(8) provide that all individuals wishing to make application for medical assistance under the plan shall have opportunity to do so, and that such assistance shall be furnished with reasonable promptness to all eligible individuals;

(9) provide—

(A) that the State health agency, or other appropriate State medical agency (whichever is utilized by the Secretary for the purpose specified in the first sentence of section 1864(a)), shall be responsible for establishing and maintaining health standards for private or public institutions in which recipients of medical assistance under the plan may receive care or services,

(B) for the establishment or designation of a State authority or authorities which shall be responsible for establishing and maintaining standards, other than those relating to health, for such institutions,

(C) that any laboratory services paid for under such plan must be provided by a laboratory which meets the applicable requirements of section 1861(e)(9) or paragraphs (16) and (17) of section 1861(s), or, in the case of a laboratory which is in a rural health clinic, of section 1861(aa)(2)(G), and

(D) that the State maintain a consumer-oriented website providing useful information to consumers regarding all skilled nursing facilities and all nursing facilities in the State, including for each facility, Form 2567 State inspection reports (or a successor form), complaint investigation reports, the facility's plan of correction, and such other information that the State or the Secretary considers useful in assisting the public to assess the quality of long term care options and the quality of care provided by individual facilities;

(10) provide—

(A) for making medical assistance available, including at least the care and services listed in paragraphs (1) through (5), (17), (21), (28), (29), and (30) of section 1905(a), to—

(i) all individuals—

(I) who are receiving aid or assistance under any plan of the State approved under title I, X, XIV, or XVI, or part A or part E of title IV (includ-

ing individuals eligible under this title by reason of section 402(a)(37), 406(h), or 473(b), or considered by the State to be receiving such aid as authorized under section 482(e)(6)),

(II)(aa) with respect to whom supplemental security income benefits are being paid under title XVI (or were being paid as of the date of the enactment of section 211(a) of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (P.L. 104–193) and would continue to be paid but for the enactment of that section), (bb) who are qualified severely impaired individuals (as defined in section 1905(q)), or (cc) who are under 21 years of age and with respect to whom supplemental security income benefits would be paid under title XVI if subparagraphs (A) and (B) of section 1611(c)(7) were applied without regard to the phrase “the first day of the month following”,

(III) who are qualified pregnant women or children as defined in section 1905(n),

(IV) who are described in subparagraph (A) or (B) of subsection (l)(1) and whose family income does not exceed the minimum income level the State is required to establish under subsection (l)(2)(A) for such a family;

(V) who are qualified family members as defined in section 1905(m)(1),

(VI) who are described in subparagraph (C) of subsection (l)(1) and whose family income does not exceed the income level the State is required to establish under subsection (l)(2)(B) for such a family,

(VII) who are described in subparagraph (D) of subsection (l)(1) and whose family income does not exceed the income level the State is required to establish under subsection (l)(2)(C) for such a family;

(VIII) beginning January 1, 2014, who are under 65 years of age, not pregnant, not entitled to, or enrolled for, benefits under part A of title XVIII, or enrolled for benefits under part B of title XVIII, and are not described in a previous subclause of this clause, and whose income (as determined under subsection (e)(14)) does not exceed 133 percent of the poverty line (as defined in section 2110(c)(5)) applicable to a family of the size involved, subject to subsection (k); or

(IX) who—

(aa) are under 26 years of age;

(bb) are not described in or enrolled under any of subclauses (I) through (VII) of this clause or are described in any of such subclauses but have income that exceeds the level of income applicable under the State

plan for eligibility to enroll for medical assistance under such subclause;

(cc) were in foster care under the responsibility of the State on the date of attaining 18 years of age or such higher age as the State has elected under section 475(8)(B)(iii); and

(dd) were enrolled in the State plan under this title or under a waiver of the plan while in such foster care;

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[Note: Section 1002(a)(1) of Public Law 115–271 provides for amendments to section 1902(a)(10)(A)(i)(IX). Paragraph (2) of such section provides: “The amendments made by this subsection shall take effect with respect to foster youth who attain 18 years of age on or after January 1, 2023.”. Upon such date, section 1902(a)(10)(A)(i)(IX) (as so amended) reads as follows:]

*(IX) who—*

*(aa) are under 26 years of age;*

*(bb) are not described in and are not enrolled under any of subclauses (I) through (VII) of this clause or are described in any of such subclauses but have income that exceeds the level of income applicable under the State plan for eligibility to enroll for medical assistance under such subclause;*

*(cc) were in foster care under the responsibility of a State on the date of attaining 18 years of age or such higher age as the State has elected under section 475(8)(B)(iii); and*

*(dd) were enrolled in a State plan under this title or under a waiver of such a plan while in such foster care;*

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(ii) at the option of the State, to any group or groups of individuals described in section 1905(a) (or, in the case of individuals described in section 1905(a)(i), to any reasonable categories of such individuals) who are not individuals described in clause (i) of this subparagraph but—

(I) who meet the income and resources requirements of the appropriate State plan described in clause (i) or the supplemental security income program (as the case may be),

(II) who would meet the income and resources requirements of the appropriate State plan described in clause (i) if their work-related child care costs were paid from their earnings rather than by a State agency as a service expenditure,

(III) who would be eligible to receive aid under the appropriate State plan described in clause (i) if coverage under such plan was as broad as allowed under Federal law,

(IV) with respect to whom there is being paid, or who are eligible, or would be eligible if they

were not in a medical institution, to have paid with respect to them, aid or assistance under the appropriate State plan described in clause (i), supplemental security income benefits under title XVI, or a State supplementary payment;

(V) who are in a medical institution for a period of not less than 30 consecutive days (with eligibility by reason of this subclause beginning on the first day of such period), who meet the resource requirements of the appropriate State plan described in clause (i) or the supplemental security income program, and whose income does not exceed a separate income standard established by the State which is consistent with the limit established under section 1903(f)(4)(C),

(VI) who would be eligible under the State plan under this title if they were in a medical institution, with respect to whom there has been a determination that but for the provision of home or community-based services described in subsection (c), (d), or (e) of section 1915 they would require the level of care provided in a hospital, nursing facility or intermediate care facility for the mentally retarded the cost of which could be reimbursed under the State plan, and who will receive home or community-based services pursuant to a waiver granted by the Secretary under subsection (c), (d), or (e) of section 1915,

(VII) who would be eligible under the State plan under this title if they were in a medical institution, who are terminally ill, and who will receive hospice care pursuant to a voluntary election described in section 1905(o);

(VIII) who is a child described in section 1905(a)(i)—

(aa) for whom there is in effect an adoption assistance agreement (other than an agreement under part E of title IV) between the State and an adoptive parent or parents,

(bb) who the State agency responsible for adoption assistance has determined cannot be placed with adoptive parents without medical assistance because such child has special needs for medical or rehabilitative care, and

(cc) who was eligible for medical assistance under the State plan prior to the adoption assistance agreement being entered into, or who would have been eligible for medical assistance at such time if the eligibility standards and methodologies of the State's foster care program under part E of title IV were applied rather than the eligibility standards and methodologies of the State's aid to families with dependent children program under part A of title IV;

(IX) who are described in subsection (l)(1) and are not described in clause (i)(IV), clause (i)(VI), or clause (i)(VII);

(X) who are described in subsection (m)(1);

(XI) who receive only an optional State supplementary payment based on need and paid on a regular basis, equal to the difference between the individual's countable income and the income standard used to determine eligibility for such supplementary payment (with countable income being the income remaining after deductions as established by the State pursuant to standards that may be more restrictive than the standards for supplementary security income benefits under title XVI), which are available to all individuals in the State (but which may be based on different income standards by political subdivision according to cost of living differences), and which are paid by a State that does not have an agreement with the Commissioner of Social Security under section 1616 or 1634;

(XII) who are described in subsection (z)(1) (relating to certain TB-infected individuals);

(XIII) who are in families whose income is less than 250 percent of the income official poverty line (as defined by the Office of Management and Budget, and revised annually in accordance with section 673(2) of the Omnibus Budget Reconciliation Act of 1981) applicable to a family of the size involved, and who but for earnings in excess of the limit established under section 1905(q)(2)(B), would be considered to be receiving supplemental security income (subject, notwithstanding section 1916, to payment of premiums or other cost-sharing charges (set on a sliding scale based on income) that the State may determine);

(XIV) who are optional targeted low-income children described in section 1905(u)(2)(B);

(XV) who, but for earnings in excess of the limit established under section 1905(q)(2)(B), would be considered to be receiving supplemental security income, who is at least 16, but less than 65, years of age, and whose assets, resources, and earned or unearned income (or both) do not exceed such limitations (if any) as the State may establish;

(XVI) who are employed individuals with a medically improved disability described in section 1905(v)(1) and whose assets, resources, and earned or unearned income (or both) do not exceed such limitations (if any) as the State may establish, but only if the State provides medical assistance to individuals described in subclause (XV);

(XVII) who are independent foster care adolescents (as defined in section 1905(w)(1)), or who are

within any reasonable categories of such adolescents specified by the State;

(XVIII) who are described in subsection (aa) (relating to certain breast or cervical cancer patients);

(XIX) who are disabled children described in subsection (cc)(1);

(XX) beginning January 1, 2014, who are under 65 years of age and are not described in or enrolled under a previous subclause of this clause, and whose income (as determined under subsection (e)(14)) exceeds 133 percent of the poverty line (as defined in section 2110(c)(5)) applicable to a family of the size involved but does not exceed the highest income eligibility level established under the State plan or under a waiver of the plan, subject to subsection (hh);

(XXI) who are described in subsection (ii) (relating to individuals who meet certain income standards);

(XXII) who are eligible for home and community-based services under needs-based criteria established under paragraph (1)(A) of section 1915(i), or who are eligible for home and community-based services under paragraph (6) of such section, and who will receive home and community-based services pursuant to a State plan amendment under such subsection; or

(XXIII) during any portion of the emergency period defined in paragraph (1)(B) of section 1135(g) beginning on or after the date of the enactment of this subclause, who are uninsured individuals (as defined in subsection (ss));

(B) that the medical assistance made available to any individual described in subparagraph (A)—

(i) shall not be less in amount, duration, or scope than the medical assistance made available to any other such individual, and

(ii) shall not be less in amount, duration, or scope than the medical assistance made available to individuals not described in subparagraph (A);

(C) that if medical assistance is included for any group of individuals described in section 1905(a) who are not described in subparagraph (A) or (E), then—

(i) the plan must include a description of (I) the criteria for determining eligibility of individuals in the group for such medical assistance, (II) the amount, duration, and scope of medical assistance made available to individuals in the group, and (III) the single standard to be employed in determining income and resource eligibility for all such groups, and the methodology to be employed in determining such eligibility, which shall be no more restrictive than the methodology which would be employed under the supplemental security income program in the case of groups

consisting of aged, blind, or disabled individuals in a State in which such program is in effect, and which shall be no more restrictive than the methodology which would be employed under the appropriate State plan (described in subparagraph (A)(i)) to which such group is most closely categorically related in the case of other groups;

(ii) the plan must make available medical assistance—

(I) to individuals under the age of 18 who (but for income and resources) would be eligible for medical assistance as an individual described in subparagraph (A)(i), and

(II) to pregnant women, during the course of their pregnancy, who (but for income and resources) would be eligible for medical assistance as an individual described in subparagraph (A);

(iii) such medical assistance must include (I) with respect to children under 18 and individuals entitled to institutional services, ambulatory services, and (II) with respect to pregnant women, prenatal care and delivery services; and

(iv) if such medical assistance includes services in institutions for mental diseases or in an intermediate care facility for the mentally retarded (or both) for any such group, it also must include for all groups covered at least the care and services listed in paragraphs (1) through (5) and (17) of section 1905(a) or the care and services listed in any 7 of the paragraphs numbered (1) through (24) of such section;

(D) for the inclusion of home health services for any individual who, under the State plan, is entitled to nursing facility services;

(E)(i) for making medical assistance available for medicare cost-sharing (as defined in section 1905(p)(3)) for qualified medicare beneficiaries described in section 1905(p)(1);

(ii) for making medical assistance available for payment of medicare cost-sharing described in section 1905(p)(3)(A)(i) for qualified disabled and working individuals described in section 1905(s);

(iii) for making medical assistance available for medicare cost sharing described in section 1905(p)(3)(A)(ii) subject to section 1905(p)(4), for individuals who would be qualified medicare beneficiaries described in section 1905(p)(1) (including such individuals enrolled under section 1836(b)) but for the fact that their income exceeds the income level established by the State under section 1905(p)(2) but is less than 110 percent in 1993 and 1994, and 120 percent in 1995 and years thereafter of the official poverty line (referred to in such section) for a family of the size involved; and

(iv) subject to sections 1933 and 1905(p)(4), for making medical assistance available for medicare cost-sharing described in section 1905(p)(3)(A)(ii) for individuals who



would be qualified medicare beneficiaries described in section 1905(p)(1) (including such individuals enrolled under section 1836(b)) but for the fact that their income exceeds the income level established by the State under section 1905(p)(2) and is at least 120 percent, but less than 135 percent, of the official poverty line (referred to in such section) for a family of the size involved and who are not otherwise eligible for medical assistance under the State plan;

(F) at the option of a State, for making medical assistance available for COBRA premiums (as defined in subsection (u)(2)) for qualified COBRA continuation beneficiaries described in section 1902(u)(1); and

(G) that, in applying eligibility criteria of the supplemental security income program under title XVI for purposes of determining eligibility for medical assistance under the State plan of an individual who is not receiving supplemental security income, the State will disregard the provisions of subsections (c) and (e) of section 1613;

except that (I) the making available of the services described in paragraph (4), (14), or (16) of section 1905(a) to individuals meeting the age requirements prescribed therein shall not, by reason of this paragraph (10), require the making available of any such services, or the making available of such services of the same amount, duration, and scope, to individuals of any other ages, (II) the making available of supplementary medical insurance benefits under part B of title XVIII to individuals eligible therefor (either pursuant to an agreement entered into under section 1843 or by reason of the payment of premiums under such title by the State agency on behalf of such individuals), or provision for meeting part or all of the cost of deductibles, cost sharing, or similar charges under part B of title XVIII for individuals eligible for benefits under such part, shall not, by reason of this paragraph (10), require the making available of any such benefits, or the making available of services of the same amount, duration, and scope, to any other individuals, (III) the making available of medical assistance equal in amount, duration, and scope to the medical assistance made available to individuals described in clause (A) to any classification of individuals approved by the Secretary with respect to whom there is being paid, or who are eligible, or would be eligible if they were not in a medical institution, to have paid with respect to them, a State supplementary payment shall not, by reason of this paragraph (10), require the making available of any such assistance, or the making available of such assistance of the same amount, duration, and scope, to any other individuals not described in clause (A), (IV) the imposition of a deductible, cost sharing, or similar charge for any item or service furnished to an individual not eligible for the exemption under section 1916(a)(2) or (b)(2) shall not require the imposition of a deductible, cost sharing, or similar charge for the same item or service furnished to an individual who is eligible for such exemption, (V) the making available to pregnant women covered under the plan of services relating to pregnancy (including prenatal, delivery, and postpartum services) or to any other condition which may complicate pregnancy

shall not, by reason of this paragraph (10), require the making available of such services, or the making available of such services of the same amount, duration, and scope, to any other individuals, provided such services are made available (in the same amount, duration, and scope) to all pregnant women covered under the State plan, (VI) with respect to the making available of medical assistance for hospice care to terminally ill individuals who have made a voluntary election described in section 1905(o) to receive hospice care instead of medical assistance for certain other services, such assistance may not be made available in an amount, duration, or scope less than that provided under title XVIII, and the making available of such assistance shall not, by reason of this paragraph (10), require the making available of medical assistance for hospice care to other individuals or the making available of medical assistance for services waived by such terminally ill individuals, (VII) the medical assistance made available to an individual described in subsection (1)(1)(A) who is eligible for medical assistance only because of subparagraph (A)(i)(IV) or (A)(ii)(IX) shall be limited to medical assistance for services related to pregnancy (including prenatal, delivery, postpartum, and family planning services), medical assistance for services related to other conditions which may complicate pregnancy, and medical assistance for vaccines described in section 1905(a)(4)(E) and the administration of such vaccines during the period described in such section, (VIII) the medical assistance made available to a qualified medicare beneficiary described in section 1905(p)(1) who is only entitled to medical assistance because the individual is such a beneficiary shall be limited to medical assistance for medicare cost-sharing (described in section 1905(p)(3)), subject to the provisions of subsection (n) and section 1916(b), (IX) the making available of respiratory care services in accordance with subsection (e)(9) shall not, by reason of this paragraph (10), require the making available of such services, or the making available of such services of the same amount, duration, and scope, to any individuals not included under subsection (e)(9)(A), provided such services are made available (in the same amount, duration, and scope) to all individuals described in such subsection, (X) if the plan provides for any fixed durational limit on medical assistance for inpatient hospital services (whether or not such a limit varies by medical condition or diagnosis), the plan must establish exceptions to such a limit for medically necessary inpatient hospital services furnished with respect to individuals under one year of age in a hospital defined under the State plan, pursuant to section 1923(a)(1)(A), as a disproportionate share hospital and subparagraph (B) (relating to comparability) shall not be construed as requiring such an exception for other individuals, services, or hospitals, (XI) the making available of medical assistance to cover the costs of premiums, deductibles, coinsurance, and other cost-sharing obligations for certain individuals for private health coverage as described in section 1906 shall not, by reason of paragraph (10), require the making available of any such benefits or the making available of services of the same amount, duration, and scope of such private coverage to

any other individuals, (XII) the medical assistance made available to an individual described in subsection (u)(1) who is eligible for medical assistance only because of subparagraph (F) shall be limited to medical assistance for COBRA continuation premiums (as defined in subsection (u)(2)), (XIII) the medical assistance made available to an individual described in subsection (z)(1) who is eligible for medical assistance only because of subparagraph (A)(ii)(XII) shall be limited to medical assistance for TB-related services (described in subsection (z)(2)) and medical assistance for vaccines described in section 1905(a)(4)(E) and the administration of such vaccines during the period described in such section, (XIV) the medical assistance made available to an individual described in subsection (aa) who is eligible for medical assistance only because of subparagraph (A)(10)(ii)(XVIII) shall be limited to medical assistance provided during the period in which such an individual requires treatment for breast or cervical cancer (XV) the medical assistance made available to an individual described in subparagraph (A)(i)(VIII) shall be limited to medical assistance described in subsection (k)(1) and medical assistance for vaccines described in section 1905(a)(4)(E) and the administration of such vaccines during the period described in such section, (XVI) the medical assistance made available to an individual described in subsection (ii) shall be limited to family planning services and supplies described in section 1905(a)(4)(C) including medical diagnosis and treatment services that are provided pursuant to a family planning service in a family planning setting and medical assistance for vaccines described in section 1905(a)(4)(E) and the administration of such vaccines during the period described in such section, (XVII) if an individual is described in subclause (IX) of subparagraph (A)(i) and is also described in subclause (VIII) of that subparagraph, the medical assistance shall be made available to the individual through subclause (IX) instead of through subclause (VIII), and (XVIII) the medical assistance made available to an uninsured individual (as defined in subsection (ss)) who is eligible for medical assistance only because of subparagraph (A)(ii)(XXIII) shall be limited to medical assistance for any in vitro diagnostic product described in section 1905(a)(3)(B) that is administered during any portion of the period at the end of the emergency sentence described in such section beginning on or after the date of the enactment of this subclause (and the administration of such product), any service described in section 1916(a)(2)(G) that is furnished during any such portion, any vaccine described in section 1905(a)(4)(E) (and the administration of such vaccine) that is furnished during any such portion, and testing and treatments for COVID-19, including specialized equipment and therapies (including preventive therapies), and, in the case of an individual who is diagnosed with or presumed to have COVID-19, during the period such individual has (or is presumed to have) COVID-19, the treatment of a condition that may seriously complicate the treatment of COVID-19, if otherwise covered under the State plan (or waiver of such plan), and (XIX) medical assistance shall be made available during the period described in section 1905(a)(4)(E) for vaccines described

in such section and the administration of such vaccines, for any individual who is eligible for and receiving medical assistance under the State plan or under a waiver of such plan (other than an individual who is eligible for medical assistance consisting only of payment of premiums pursuant to subparagraph (E) or (F) or section 1933), notwithstanding any provision of this title or waiver under section 1115 impacting such individual's eligibility for medical assistance under such plan or waiver to coverage for a limited type of benefits and services that would not otherwise include coverage of a COVID-19 vaccine and its administration;

(11)(A) provide for entering into cooperative arrangements with the State agencies responsible for administering or supervising the administration of health services and vocational rehabilitation services in the State looking toward maximum utilization of such services in the provision of medical assistance under the plan, (B) provide, to the extent prescribed by the Secretary, for entering into agreements, with any agency, institution, or organization receiving payments under (or through an allotment under) title V, (i) providing for utilizing such agency, institution, or organization in furnishing care and services which are available under such title or allotment and which are included in the State plan approved under this section (ii) making such provision as may be appropriate for reimbursing such agency, institution, or organization for the cost of any such care and services furnished any individual for which payment would otherwise be made to the State with respect to the individual under section 1903, and (iii) providing for coordination of information and education on pediatric vaccinations and delivery of immunization services, and (C) provide for coordination of the operations under this title, including the provision of information and education on pediatric vaccinations and the delivery of immunization services, with the State's operations under the special supplemental nutrition program for women, infants, and children under section 17 of the Child Nutrition Act of 1966;

(12) provide that, in determining whether an individual is blind, there shall be an examination by a physician skilled in the diseases of the eye or by an optometrist, whichever the individual may select;

(13) provide—

(A) for a public process for determination of rates of payment under the plan for hospital services, nursing facility services, and services of intermediate care facilities for the mentally retarded under which—

(i) proposed rates, the methodologies underlying the establishment of such rates, and justifications for the proposed rates are published,

(ii) providers, beneficiaries and their representatives, and other concerned State residents are given a reasonable opportunity for review and comment on the proposed rates, methodologies, and justifications,

(iii) final rates, the methodologies underlying the establishment of such rates, and justifications for such final rates are published, and

(iv) in the case of hospitals, such rates take into account (in a manner consistent with section 1923) the situation of hospitals which serve a disproportionate number of low-income patients with special needs;

(B) for payment for hospice care in amounts no lower than the amounts, using the same methodology, used under part A of title XVIII and for payment of amounts under section 1905(o)(3); except that in the case of hospice care which is furnished to an individual who is a resident of a nursing facility or intermediate care facility for the mentally retarded, and who would be eligible under the plan for nursing facility services or services in an intermediate care facility for the mentally retarded if he had not elected to receive hospice care, there shall be paid an additional amount, to take into account the room and board furnished by the facility, equal to at least 95 percent of the rate that would have been paid by the State under the plan for facility services in that facility for that individual; and

(C) payment for primary care services (as defined in subsection (jj)) furnished in 2013 and 2014 by a physician with a primary specialty designation of family medicine, general internal medicine, or pediatric medicine at a rate not less than 100 percent of the payment rate that applies to such services and physician under part B of title XVIII (or, if greater, the payment rate that would be applicable under such part if the conversion factor under section 1848(d) for the year involved were the conversion factor under such section for 2009);

(14) provide that enrollment fees, premiums, or similar charges, and deductions, cost sharing, or similar charges, may be imposed only as provided in section 1916;

(15) provide for payment for services described in clause (B) or (C) of section 1905(a)(2) under the plan in accordance with subsection (bb);

(16) provide for inclusion, to the extent required by regulations prescribed by the Secretary, of provisions (conforming to such regulations) with respect to the furnishing of medical assistance under the plan to individuals who are residents of the State but are absent therefrom;

(17) except as provided in subsections (e)(14), (e)(15), (l)(3), (m)(3), and (m)(4), include reasonable standards (which shall be comparable for all groups and may, in accordance with standards prescribed by the Secretary, differ with respect to income levels, but only in the case of applicants or recipients of assistance under the plan who are not receiving aid or assistance under any plan of the State approved under title I, X, XIV, or XVI, or part A of title IV, and with respect to whom supplemental security income benefits are not being paid under title XVI, based on the variations between shelter costs in urban areas and in rural areas) for determining eligibility for and the extent of medical assistance under the plan which (A) are consistent with the objectives of this title, (B) provide for taking into account only such income and resources as are, as determined in accordance with standards prescribed by the

Secretary, available to the applicant or recipient and (in the case of any applicant or recipient who would, except for income and resources, be eligible for aid or assistance in the form of money payments under any plan of the State approved under title I, X, XIV, or XVI, or part A of title IV, or to have paid with respect to him supplemental security income benefits under title XVI) as would not be disregarded (or set aside for future needs) in determining his eligibility for such aid, assistance, or benefits, (C) provide for reasonable evaluation of any such income or resources, and (D) do not take into account the financial responsibility of any individual for any applicant or recipient of assistance under the plan unless such applicant or recipient is such individual's spouse or such individual's child who is under age 21 or (with respect to States eligible to participate in the State program established under title XVI), is blind or permanently and totally disabled, or is blind or disabled as defined in section 1614 (with respect to States which are not eligible to participate in such program); and provide for flexibility in the application of such standards with respect to income by taking into account, except to the extent prescribed by the Secretary, the costs (whether in the form of insurance premiums, payments made to the State under section 1903(f)(2)(B), or otherwise and regardless of whether such costs are reimbursed under another public program of the State or political subdivision thereof) incurred for medical care or for any other type of remedial care recognized under State law;

(18) comply with the provisions of section 1917 with respect to liens, adjustments and recoveries of medical assistance correctly paid, transfers of assets, and treatment of certain trusts;

(19) provide such safeguards as may be necessary to assure that eligibility for care and services under the plan will be determined, and such care and services will be provided, in a manner consistent with simplicity of administration and the best interests of the recipients;

(20) if the State plan includes medical assistance in behalf of individuals 65 years of age or older who are patients in institutions for mental diseases—

(A) provide for having in effect such agreements or other arrangements with State authorities concerned with mental diseases, and, where appropriate, with such institutions, as may be necessary for carrying out the State plan, including arrangements for joint planning and for development of alternate methods of care, arrangements providing assurance of immediate readmittance to institutions where needed for individuals under alternate plans of care, and arrangements providing for access to patients and facilities, for furnishing information, and for making reports;

(B) provide for an individual plan for each such patient to assure that the institutional care provided to him is in his best interests, including, to that end, assurances that there will be initial and periodic review of his medical and other needs, that he will be given appropriate medical treatment within the institution, and that there will be a periodic determination of his need for continued treatment in the institution; and

(C) provide for the development of alternate plans of care, making maximum utilization of available resources, for recipients 65 years of age or older who would otherwise need care in such institutions, including appropriate medical treatment and other aid or assistance; for services referred to in section 3(a)(4)(A)(i) and (ii) or section 1603(a)(4)(A)(i) and (ii) which are appropriate for such recipients and for such patients; and for methods of administration necessary to assure that the responsibilities of the State agency under the State plan with respect to such recipients and such patients will be effectively carried out;

(21) if the State plan includes medical assistance in behalf of individuals 65 years of age or older who are patients in public institutions for mental diseases, show that the State is making satisfactory progress toward developing and implementing a comprehensive mental health program, including provision for utilization of community mental health centers, nursing facilities, and other alternatives to care in public institutions for mental diseases;

(22) include descriptions of (A) the kinds and numbers of professional medical personnel and supporting staff that will be used in the administration of the plan and of the responsibilities they will have, (B) the standards, for private or public institutions in which recipients of medical assistance under the plan may receive care or services, that will be utilized by the State authority or authorities responsible for establishing and maintaining such standards, (C) the cooperative arrangements with State health agencies and State vocational rehabilitation agencies entered into with a view to maximum utilization of and coordination of the provision of medical assistance with the services administered or supervised by such agencies, and (D) other standards and methods that the State will use to assure that medical or remedial care and services provided to recipients of medical assistance are of high quality;

(23) provide that (A) any individual eligible for medical assistance (including drugs) may obtain such assistance from any institution, agency, community pharmacy, or person, qualified to perform the service or services required (including an organization which provides such services, or arranges for their availability, on a prepayment basis), who undertakes to provide him such services, and (B) an enrollment of an individual eligible for medical assistance in a primary care case-management system (described in section 1915(b)(1)), a medicaid managed care organization, or a similar entity shall not restrict the choice of the qualified person from whom the individual may receive services under section 1905(a)(4)(C), except as provided in subsection (g) and in section 1915, except that this paragraph shall not apply in the case of Puerto Rico, the Virgin Islands, and Guam, and except that nothing in this paragraph shall be construed as requiring a State to provide medical assistance for such services furnished by a person or entity convicted of a felony under Federal or State law for an offense which the State agency determines is inconsistent with the best interests of beneficiaries under the State plan or by a pro-

vider or supplier to which a moratorium under subsection (kk)(4) is applied during the period of such moratorium’;

(24) effective July 1, 1969, provide for consultative services by health agencies and other appropriate agencies of the State to hospitals, nursing facilities, home health agencies, clinics, laboratories, and such other institutions as the Secretary may specify in order to assist them (A) to qualify for payments under this Act, (B) to establish and maintain such fiscal records as may be necessary for the proper and efficient administration of this Act, and (C) to provide information needed to determine payments due under this Act on account of care and services furnished to individuals;

(25) provide—

(A) that the State or local agency administering such plan will take all reasonable measures to ascertain the legal liability of third parties (including health insurers, self-insured plans, group health plans (as defined in section 607(1) of the Employee Retirement Income Security Act of 1974), service benefit plans, managed care organizations, pharmacy benefit managers, or other parties that are, by statute, contract, or agreement, legally responsible for payment of a claim for a health care item or service) to pay for care and services available under the plan, including—

(i) the collection of sufficient information (as specified by the Secretary in regulations) to enable the State to pursue claims against such third parties, with such information being collected at the time of any determination or redetermination of eligibility for medical assistance, and

(ii) the submission to the Secretary of a plan (subject to approval by the Secretary) for pursuing claims against such third parties, which plan shall be integrated with, and be monitored as a part of the Secretary’s review of, the State’s mechanized claims processing and information retrieval systems required under section 1903(r);

(B) that in any case where such a legal liability is found to exist after medical assistance has been made available on behalf of the individual and where the amount of reimbursement the State can reasonably expect to recover exceeds the costs of such recovery, the State or local agency will seek reimbursement for such assistance to the extent of such legal liability;

(C) that in the case of an individual who is entitled to medical assistance under the State plan with respect to a service for which a third party is liable for payment, the person furnishing the service may not seek to collect from the individual (or any financially responsible relative or representative of that individual) payment of an amount for that service (i) if the total of the amount of the liabilities of third parties for that service is at least equal to the amount payable for that service under the plan (disregarding section 1916), or (ii) in an amount which exceeds the lesser of (I) the amount which may be collected under



section 1916, or (II) the amount by which the amount payable for that service under the plan (disregarding section 1916) exceeds the total of the amount of the liabilities of third parties for that service;

(D) that a person who furnishes services and is participating under the plan may not refuse to furnish services to an individual (who is entitled to have payment made under the plan for the services the person furnishes) because of a third party's potential liability for payment for the service;

(E) that in the case of preventive pediatric care (including early and periodic screening and diagnosis services under section 1905(a)(4)(B)) covered under the State plan, the State shall—

(i) make payment for such service in accordance with the usual payment schedule under such plan for such services without regard to the liability of a third party for payment for such services; and

(i) make payment for such service in accordance with the usual payment schedule under such plan for such services without regard to the liability of a third party for payment for such services, except that the State may, if the State determines doing so is cost-effective and will not adversely affect access to care, only make such payment if a third party so liable has not made payment within 90 days after the date the provider of such services has initially submitted a claim to such third party for payment for such services; and

(ii) seek reimbursement from such third party in accordance with subparagraph (B);

(F) that in the case of any services covered under such plan which are provided to an individual on whose behalf child support enforcement is being carried out by the State agency under part D of title IV of this Act, the State shall—

(i) make payment for such service in accordance with the usual payment schedule under such plan for such services without regard to any third-party liability for payment for such services, if such third-party liability is derived (through insurance or otherwise) from the parent whose obligation to pay support is being enforced by such agency, if payment has not been made by such third party within 30 days after such services are furnished;

(i) make payment for such service in accordance with the usual payment schedule under such plan for such services without regard to any third-party liability for payment for such services, if such third-party liability is derived (through insurance or otherwise) from the parent whose obligation to pay support is being enforced by such agency, if payment has not been made by such third party within 100 days after the date the provider of such services has initially submitted a claim to such third party for payment for

such services, except that the State may make such payment within 30 days after such date if the State determines doing so is cost-effective and necessary to ensure access to care.;

(ii) seek reimbursement from such third party in accordance with subparagraph (B);

(G) that the State prohibits any health insurer (including a group health plan, as defined in section 607(1) of the Employee Retirement Income Security Act of 1974, a self-insured plan, a service benefit plan, a managed care organization, a pharmacy benefit manager, or other party that is, by statute, contract, or agreement, legally responsible for payment of a claim for a health care item or service), in enrolling an individual or in making any payments for benefits to the individual or on the individual's behalf, from taking into account that the individual is eligible for or is provided medical assistance under a plan under this title for such State, or any other State;

(H) that to the extent that payment has been made under the State plan for medical assistance in any case where a third party has a legal liability to make payment for such assistance, the State has in effect laws under which, to the extent that payment has been made under the State plan for medical assistance for health care items or services furnished to an individual, the State is considered to have acquired the rights of such individual to payment by any other party for such health care items or services; and

(I) that the State shall provide assurances satisfactory to the Secretary that the State has in effect laws requiring health insurers, including self-insured plans, group health plans (as defined in section 607(1) of the Employee Retirement Income Security Act of 1974), service benefit plans, managed care organizations, pharmacy benefit managers, or other parties that are, by statute, contract, or agreement, legally responsible for payment of a claim for a health care item or service, as a condition of doing business in the State, to—

(i) provide, with respect to individuals who are eligible (and, at State option, individuals who apply or whose eligibility for medical assistance is being evaluated in accordance with section 1902(e)(13)(D)) for, or are provided, medical assistance under a State plan (or under a waiver of the plan) under this title and child health assistance under title XXI, upon the request of the State, information to determine during what period the individual or their spouses or their dependents may be (or may have been) covered by a health insurer and the nature of the coverage that is or was provided by the health insurer (including the name, address, and identifying number of the plan) in a manner prescribed by the Secretary;

(ii)(I) accept the State's right of recovery and the assignment to the State of any right of an individual or other entity to payment from the party for an item or

service for which payment has been made under the State plan (or under a waiver of such plan); and

(II) in the case of a responsible third party (other than the original medicare fee-for-service program under parts A and B of title XVIII, a Medicare Advantage plan offered by a Medicare Advantage organization under part C of such title, a reasonable cost reimbursement plan under section 1876, a health care prepayment plan under section 1833, or a prescription drug plan offered by a PDP sponsor under part D of such title) that requires prior authorization for an item or service furnished to an individual eligible to receive medical assistance under this title, accept authorization provided by the State that the item or service is covered under the State plan (or waiver of such plan) for such individual, as if such authorization were the prior authorization made by the third party for such item or service;

(iii) not later than 60 days after receiving any inquiry by the State regarding a claim for payment for any health care item or service that is submitted not later than 3 years after the date of the provision of such health care item or service, respond to such inquiry; and

(iv) agree not to deny a claim submitted by the State solely on the basis of the date of submission of the claim, the type or format of the claim form, a failure to present proper documentation at the point-of-sale that is the basis of the claim, or in the case of a responsible third party (other than the original medicare fee-for-service program under parts A and B of title XVIII, a Medicare Advantage plan offered by a Medicare Advantage organization under part C of such title, a reasonable cost reimbursement plan under section 1876, a health care prepayment plan under section 1833, or a prescription drug plan offered by a PDP sponsor under part D of such title) a failure to obtain a prior authorization for the item or service for which the claim is being submitted, if—

(I) the claim is submitted by the State within the 3-year period beginning on the date on which the item or service was furnished; and

(II) any action by the State to enforce its rights with respect to such claim is commenced within 6 years of the State's submission of such claim;

(26) if the State plan includes medical assistance for inpatient mental hospital services, provide, with respect to each patient receiving such services, for a regular program of medical review (including medical evaluation) of his need for such services, and for a written plan of care;

(27) provide for agreements with every person or institution providing services under the State plan under which such person or institution agrees (A) to keep such records as are necessary fully to disclose the extent of the services provided to individuals receiving assistance under the State plan, and (B)

to furnish the State agency or the Secretary with such information, regarding any payments claimed by such person or institution for providing services under the State plan, as the State agency or the Secretary may from time to time request;

(28) provide—

(A) that any nursing facility receiving payments under such plan must satisfy all the requirements of subsections (b) through (d) of section 1919 as they apply to such facilities;

(B) for including in “nursing facility services” at least the items and services specified (or deemed to be specified) by the Secretary under section 1919(f)(7) and making available upon request a description of the items and services so included;

(C) for procedures to make available to the public the data and methodology used in establishing payment rates for nursing facilities under this title; and

(D) for compliance (by the date specified in the respective sections) with the requirements of—

(i) section 1919(e);

(ii) section 1919(g) (relating to responsibility for survey and certification of nursing facilities); and

(iii) sections 1919(h)(2)(B) and 1919(h)(2)(D) (relating to establishment and application of remedies);

(29) include a State program which meets the requirements set forth in section 1908, for the licensing of administrators of nursing homes;

(30)(A) provide such methods and procedures relating to the utilization of, and the payment for, care and services available under the plan (including but not limited to utilization review plans as provided for in section 1903(i)(4)) as may be necessary to safeguard against unnecessary utilization of such care and services and to assure that payments are consistent with efficiency, economy, and quality of care and are sufficient to enlist enough providers so that care and services are available under the plan at least to the extent that such care and services are available to the general population in the geographic area; and

(B) provide, under the program described in subparagraph (A), that—

(i) each admission to a hospital, intermediate care facility for the mentally retarded, or hospital for mental diseases is reviewed or screened in accordance with criteria established by medical and other professional personnel who are not themselves directly responsible for the care of the patient involved, and who do not have a significant financial interest in any such institution and are not, except in the case of a hospital, employed by the institution providing the care involved, and

(ii) the information developed from such review or screening, along with the data obtained from prior reviews of the necessity for admission and continued stay of patients by such professional personnel, shall be used as the basis for establishing the size and composition of the sample of admissions to be subject to review and evaluation by such personnel, and any such sample may be of any size

up to 100 percent of all admissions and must be of sufficient size to serve the purpose of (I) identifying the patterns of care being provided and the changes occurring over time in such patterns so that the need for modification may be ascertained, and (II) subjecting admissions to early or more extensive review where information indicates that such consideration is warranted to a hospital, intermediate care facility for the mentally retarded, or hospital for mental diseases;

(31) with respect to services in an intermediate care facility for the mentally retarded (where the State plan includes medical assistance for such services) provide, with respect to each patient receiving such services, for a written plan of care, prior to admission to or authorization of benefits in such facility, in accordance with regulations of the Secretary, and for a regular program of independent professional review (including medical evaluation) which shall periodically review his need for such services;

(32) provide that no payment under the plan for any care or service provided to an individual shall be made to anyone other than such individual or the person or institution providing such care or service, under an assignment or power of attorney or otherwise; except that—

(A) in the case of any care or service provided by a physician, dentist, or other individual practitioner, such payment may be made (i) to the employer of such physician, dentist, or other practitioner if such physician, dentist, or practitioner is required as a condition of his employment to turn over his fee for such care or service to his employer, or (ii) (where the care or service was provided in a hospital, clinic, or other facility) to the facility in which the care or service was provided if there is a contractual arrangement between such physician, dentist, or practitioner and such facility under which such facility submits the bill for such care or service;

(B) nothing in this paragraph shall be construed (i) to prevent the making of such a payment in accordance with an assignment from the person or institution providing the care or service involved if such assignment is made to a governmental agency or entity or is established by or pursuant to the order of a court of competent jurisdiction, or (ii) to preclude an agent of such person or institution from receiving any such payment if (but only if) such agent does so pursuant to an agency agreement under which the compensation to be paid to the agent for his services for or in connection with the billing or collection of payments due such person or institution under the plan is unrelated (directly or indirectly) to the amount of such payments or the billings therefor, and is not dependent upon the actual collection of any such payment;

(C) in the case of services furnished (during a period that does not exceed 14 continuous days in the case of an informal reciprocal arrangement or 90 continuous days (or such longer period as the Secretary may provide) in the case of an arrangement involving per diem or other fee-for-

time compensation) by, or incident to the services of, one physician to the patients of another physician who submits the claim for such services, payment shall be made to the physician submitting the claim (as if the services were furnished by, or incident to, the physician's services), but only if the claim identifies (in a manner specified by the Secretary) the physician who furnished the services; and

(D) in the case of payment for a childhood vaccine administered before October 1, 1994, to individuals entitled to medical assistance under the State plan, the State plan may make payment directly to the manufacturer of the vaccine under a voluntary replacement program agreed to by the State pursuant to which the manufacturer (i) supplies doses of the vaccine to providers administering the vaccine, (ii) periodically replaces the supply of the vaccine, and (iii) charges the State the manufacturer's price to the Centers for Disease Control and Prevention for the vaccine so administered (which price includes a reasonable amount to cover shipping and the handling of returns);

(33) provide—

(A) that the State health agency, or other appropriate State medical agency, shall be responsible for establishing a plan, consistent with regulations prescribed by the Secretary, for the review by appropriate professional health personnel of the appropriateness and quality of care and services furnished to recipients of medical assistance under the plan in order to provide guidance with respect thereto in the administration of the plan to the State agency established or designated pursuant to paragraph (5) and, where applicable, to the State agency described in the second sentence of this subsection; and

(B) that, except as provided in section 1919(g), the State or local agency utilized by the Secretary for the purpose specified in the first sentence of section 1864(a), or, if such agency is not the State agency which is responsible for licensing health institutions, the State agency responsible for such licensing, will perform for the State agency administering or supervising the administration of the plan approved under this title the function of determining whether institutions and agencies meet the requirements for participation in the program under such plan, except that, if the Secretary has cause to question the adequacy of such determinations, the Secretary is authorized to validate State determinations and, on that basis, make independent and binding determinations concerning the extent to which individual institutions and agencies meet the requirements for participation;

(34) provide that in the case of any individual who has been determined to be eligible for medical assistance under the plan, such assistance will be made available to him for care and services included under the plan and furnished in or after the third month before the month in which he made application (or application was made on his behalf in the case of a deceased individual) for such assistance if such individual was (or upon

application would have been) eligible for such assistance at the time such care and services were furnished;

(35) provide that any disclosing entity (as defined in section 1124(a)(2)) receiving payments under such plan complies with the requirements of section 1124;

(36) provide that within 90 days following the completion of each survey of any health care facility, laboratory, agency, clinic, or organization, by the appropriate State agency described in paragraph (9), such agency shall (in accordance with regulations of the Secretary) make public in readily available form and place the pertinent findings of each such survey relating to the compliance of each such health care facility, laboratory, clinic, agency, or organization with (A) the statutory conditions of participation imposed under this title, and (B) the major additional conditions which the Secretary finds necessary in the interest of health and safety of individuals who are furnished care or services by any such facility, laboratory, clinic, agency, or organization;

(37) provide for claims payment procedures which (A) ensure that 90 per centum of claims for payment (for which no further written information or substantiation is required in order to make payment) made for services covered under the plan and furnished by health care practitioners through individual or group practices or through shared health facilities are paid within 30 days of the date of receipt of such claims and that 99 per centum of such claims are paid within 90 days of the date of receipt of such claims, and (B) provide for procedures of prepayment and postpayment claims review, including review of appropriate data with respect to the recipient and provider of a service and the nature of the service for which payment is claimed, to ensure the proper and efficient payment of claims and management of the program;

(38) require that an entity (other than an individual practitioner or a group of practitioners) that furnishes, or arranges for the furnishing of, items or services under the plan, shall supply (within such period as may be specified in regulations by the Secretary or by the single State agency which administers or supervises the administration of the plan) upon request specifically addressed to such entity by the Secretary or such State agency, the information described in section 1128(b)(9);

(39) provide that the State agency shall exclude any specified individual or entity from participation in the program under the State plan for the period specified by the Secretary, when required by him to do so pursuant to section 1128 or section 1128A, terminate the participation of any individual or entity in such program if (subject to such exceptions as are permitted with respect to exclusion under sections 1128(c)(3)(B) and 1128(d)(3)(B)) participation of such individual or entity is terminated under title XVIII, any other State plan under this title (or waiver of the plan), or any State child health plan under title XXI (or waiver of the plan) and such termination is included by the Secretary in any database or similar system developed pursuant to section 6401(b)(2) of the Patient Protection and Affordable Care Act, and provide that no payment may be

made under the plan with respect to any item or service furnished by such individual or entity during such period;

(40) require each health services facility or organization which receives payments under the plan and of a type for which a uniform reporting system has been established under section 1121(a) to make reports to the Secretary of information described in such section in accordance with the uniform reporting system (established under such section) for that type of facility or organization;

(41) provide, in accordance with subsection (kk)(8) (as applicable), that whenever a provider of services or any other person is terminated, suspended, or otherwise sanctioned or prohibited from participating under the State plan, the State agency shall promptly notify the Secretary and, in the case of a physician and notwithstanding paragraph (7), the State medical licensing board of such action;

(42) provide that—

(A) the records of any entity participating in the plan and providing services reimbursable on a cost-related basis will be audited as the Secretary determines to be necessary to insure that proper payments are made under the plan; and

(B) not later than December 31, 2010, the State shall—

(i) establish a program under which the State contracts (consistent with State law and in the same manner as the Secretary enters into contracts with recovery audit contractors under section 1893(h), subject to such exceptions or requirements as the Secretary may require for purposes of this title or a particular State) with 1 or more recovery audit contractors for the purpose of identifying underpayments and overpayments and recouping overpayments under the State plan and under any waiver of the State plan with respect to all services for which payment is made to any entity under such plan or waiver; and

(ii) provide assurances satisfactory to the Secretary that—

(I) under such contracts, payment shall be made to such a contractor only from amounts recovered;

(II) from such amounts recovered, payment—

(aa) shall be made on a contingent basis for collecting overpayments; and

(bb) may be made in such amounts as the State may specify for identifying underpayments;

(III) the State has an adequate process for entities to appeal any adverse determination made by such contractors; and

(IV) such program is carried out in accordance with such requirements as the Secretary shall specify, including—

(aa) for purposes of section 1903(a)(7), that amounts expended by the State to carry out the program shall be considered amounts expended as necessary for the proper and effi-



cient administration of the State plan or a waiver of the plan;

(bb) that section 1903(d) shall apply to amounts recovered under the program; and

(cc) that the State and any such contractors under contract with the State shall coordinate such recovery audit efforts with other contractors or entities performing audits of entities receiving payments under the State plan or waiver in the State, including efforts with Federal and State law enforcement with respect to the Department of Justice, including the Federal Bureau of Investigations, the Inspector General of the Department of Health and Human Services, and the State medicaid fraud control unit; and

(43) provide for—

(A) informing all persons in the State who are under the age of 21 and who have been determined to be eligible for medical assistance including services described in section 1905(a)(4)(B), of the availability of early and periodic screening, diagnostic, and treatment services as described in section 1905(r) and the need for age-appropriate immunizations against vaccine-preventable diseases,

(B) providing or arranging for the provision of such screening services in all cases where they are requested,

(C) arranging for (directly or through referral to appropriate agencies, organizations, or individuals) corrective treatment the need for which is disclosed by such child health screening services, and

(D) reporting to the Secretary (in a uniform form and manner established by the Secretary, by age group and by basis of eligibility for medical assistance, and by not later than April 1 after the end of each fiscal year, beginning with fiscal year 1990) the following information relating to early and periodic screening, diagnostic, and treatment services provided under the plan during each fiscal year:

(i) the number of children provided child health screening services,

(ii) the number of children referred for corrective treatment (the need for which is disclosed by such child health screening services),

(iii) the number of children receiving dental services, and other information relating to the provision of dental services to such children described in section 2108(e) and

(iv) the State's results in attaining the participation goals set for the State under section 1905(r);

(44) in each case for which payment for inpatient hospital services, services in an intermediate care facility for the mentally retarded, or inpatient mental hospital services is made under the State plan—

(A) a physician (or, in the case of skilled nursing facility services or intermediate care facility services, a physician, or a nurse practitioner or clinical nurse specialist who is

not an employee of the facility but is working in collaboration with a physician) certifies at the time of admission, or, if later, the time the individual applies for medical assistance under the State plan (and a physician, a physician assistant under the supervision of a physician, or, in the case of skilled nursing facility services or intermediate care facility services, a physician, or a nurse practitioner or clinical nurse specialist who is not an employee of the facility but is working in collaboration with a physician, recertifies, where such services are furnished over a period of time, in such cases, at least as often as required under section 1903(g)(6) (or, in the case of services that are services provided in an intermediate care facility for the mentally retarded, every year), and accompanied by such supporting material, appropriate to the case involved, as may be provided in regulations of the Secretary), that such services are or were required to be given on an inpatient basis because the individual needs or needed such services, and

(B) such services were furnished under a plan established and periodically reviewed and evaluated by a physician, or, in the case of skilled nursing facility services or intermediate care facility services, a physician, or a nurse practitioner or clinical nurse specialist who is not an employee of the facility but is working in collaboration with a physician;

(45) provide for mandatory assignment of rights of payment for medical support and other medical care owed to recipients, in accordance with section 1912;

(46)(A) provide that information is requested and exchanged for purposes of income and eligibility verification in accordance with a State system which meets the requirements of section 1137 of this Act; and

(B) provide, with respect to an individual declaring to be a citizen or national of the United States for purposes of establishing eligibility under this title, that the State shall satisfy the requirements of—

- (i) section 1903(x); or
- (ii) subsection (ee);

(47) provide—

(A) at the option of the State, for making ambulatory prenatal care available to pregnant women during a presumptive eligibility period in accordance with section 1920 and provide for making medical assistance for items and services described in subsection (a) of section 1920A available to children during a presumptive eligibility period in accordance with such section and provide for making medical assistance available to individuals described in subsection (a) of section 1920B during a presumptive eligibility period in accordance with such section and provide for making medical assistance available to individuals described in subsection (a) of section 1920C during a presumptive eligibility period in accordance with such section; and

- (B) that any hospital that is a participating provider under the State plan may elect to be a qualified entity for purposes of determining, on the basis of preliminary information, whether any individual is eligible for medical assistance under the State plan or under a waiver of the plan for purposes of providing the individual with medical assistance during a presumptive eligibility period, in the same manner, and subject to the same requirements, as apply to the State options with respect to populations described in section 1920, 1920A, 1920B, or 1920C (but without regard to whether the State has elected to provide for a presumptive eligibility period under any such sections), subject to such guidance as the Secretary shall establish;
- (48) provide a method of making cards evidencing eligibility for medical assistance available to an eligible individual who does not reside in a permanent dwelling or does not have a fixed home or mailing address;
- (49) provide that the State will provide information and access to certain information respecting sanctions taken against health care practitioners and providers by State licensing authorities in accordance with section 1921;
- (50) provide, in accordance with subsection (q), for a monthly personal needs allowance for certain institutionalized individuals and couples;
- (51) meet the requirements of section 1924 (relating to protection of community spouses);
- (52) meet the requirements of section 1925 (relating to extension of eligibility for medical assistance);
- (53) provide—
- (A) for notifying in a timely manner all individuals in the State who are determined to be eligible for medical assistance and who are pregnant women, breastfeeding or postpartum women (as defined in section 17 of the Child Nutrition Act of 1966), or children [below the age of 5] (*as defined in such section*), of the availability of benefits furnished by the special supplemental nutrition program under such section, and
- (B) for referring any such individual to the State agency responsible for administering such program;
- (54) in the case of a State plan that provides medical assistance for covered outpatient drugs (as defined in section 1927(k)), comply with the applicable requirements of section 1927;
- (55) provide for receipt and initial processing of applications of individuals for medical assistance under subsection (a)(10)(A)(i)(IV), (a)(10)(A)(i)(VI), (a)(10)(A)(i)(VII), (a)(10)(A)(ii)(IX), or (a)(10)(A)(ii)(XXIII)—
- (A) at locations which are other than those used for the receipt and processing of applications for aid under part A of title IV and which include facilities defined as disproportionate share hospitals under section 1923(a)(1)(A) and Federally-qualified health centers described in section 1905(1)(2)(B), and
- (B) using applications which are other than those used for applications for aid under such part;

(56) provide, in accordance with subsection (s), for adjusted payments for certain inpatient hospital services;

(57) provide that each hospital, nursing facility, provider of home health care or personal care services, hospice program, or medicaid managed care organization (as defined in section 1903(m)(1)(A)) receiving funds under the plan shall comply with the requirements of subsection (w);

(58) provide that the State, acting through a State agency, association, or other private nonprofit entity, develop a written description of the law of the State (whether statutory or as recognized by the courts of the State) concerning advance directives that would be distributed by providers or organizations under the requirements of subsection (w);

(59) maintain a list (updated not less often than monthly, and containing each physician's unique identifier provided under the system established under subsection (x)) of all physicians who are certified to participate under the State plan;

(60) provide that the State agency shall provide assurances satisfactory to the Secretary that the State has in effect the laws relating to medical child support required under section 1908A;

(61) provide that the State must demonstrate that it operates a medicaid fraud and abuse control unit described in section 1903(q) that effectively carries out the functions and requirements described in such section, as determined in accordance with standards established by the Secretary, unless the State demonstrates to the satisfaction of the Secretary that the effective operation of such a unit in the State would not be cost-effective because minimal fraud exists in connection with the provision of covered services to eligible individuals under the State plan, and that beneficiaries under the plan will be protected from abuse and neglect in connection with the provision of medical assistance under the plan without the existence of such a unit;

(62) provide for a program for the distribution of pediatric vaccines to program-registered providers for the immunization of vaccine-eligible children in accordance with section 1928;

(63) provide for administration and determinations of eligibility with respect to individuals who are (or seek to be) eligible for medical assistance based on the application of section 1931;

(64) provide, not later than 1 year after the date of the enactment of this paragraph, a mechanism to receive reports from beneficiaries and others and compile data concerning alleged instances of waste, fraud, and abuse relating to the operation of this title;

(65) provide that the State shall issue provider numbers for all suppliers of medical assistance consisting of durable medical equipment, as defined in section 1861(n), and the State shall not issue or renew such a supplier number for any such supplier unless—

(A)(i) full and complete information as to the identity of each person with an ownership or control interest (as defined in section 1124(a)(3)) in the supplier or in any subcontractor (as defined by the Secretary in regulations) in

which the supplier directly or indirectly has a 5 percent or more ownership interest; and

(ii) to the extent determined to be feasible under regulations of the Secretary, the name of any disclosing entity (as defined in section 1124(a)(2)) with respect to which a person with such an ownership or control interest in the supplier is a person with such an ownership or control interest in the disclosing entity; and

(B) a surety bond in a form specified by the Secretary under section 1834(a)(16)(B) and in an amount that is not less than \$50,000 or such comparable surety bond as the Secretary may permit under the second sentence of such section;

(66) provide for making eligibility determinations under section 1935(a);

(67) provide, with respect to services covered under the State plan (but not under title XVIII) that are furnished to a PACE program eligible individual enrolled with a PACE provider by a provider participating under the State plan that does not have a contract or other agreement with the PACE provider that establishes payment amounts for such services, that such participating provider may not require the PACE provider to pay the participating provider an amount greater than the amount that would otherwise be payable for the service to the participating provider under the State plan for the State where the PACE provider is located (in accordance with regulations issued by the Secretary);

(68) provide that any entity that receives or makes annual payments under the State plan of at least \$5,000,000, as a condition of receiving such payments, shall—

(A) establish written policies for all employees of the entity (including management), and of any contractor or agent of the entity, that provide detailed information about the False Claims Act established under sections 3729 through 3733 of title 31, United States Code, administrative remedies for false claims and statements established under chapter 38 of title 31, United States Code, any State laws pertaining to civil or criminal penalties for false claims and statements, and whistleblower protections under such laws, with respect to the role of such laws in preventing and detecting fraud, waste, and abuse in Federal health care programs (as defined in section 1128B(f));

(B) include as part of such written policies, detailed provisions regarding the entity's policies and procedures for detecting and preventing fraud, waste, and abuse; and

(C) include in any employee handbook for the entity, a specific discussion of the laws described in subparagraph (A), the rights of employees to be protected as whistleblowers, and the entity's policies and procedures for detecting and preventing fraud, waste, and abuse;

(69) provide that the State must comply with any requirements determined by the Secretary to be necessary for carrying out the Medicaid Integrity Program established under section 1936;

(70) at the option of the State and notwithstanding paragraphs (1), (10)(B), and (23), provide for the establishment of a non-emergency medical transportation brokerage program in order to more cost-effectively provide transportation for individuals eligible for medical assistance under the State plan who need access to medical care or services and have no other means of transportation which—

(A) may include a wheelchair van, taxi, stretcher car, bus passes and tickets, secured transportation, and such other transportation as the Secretary determines appropriate; and

(B) may be conducted under contract with a broker who—

(i) is selected through a competitive bidding process based on the State's evaluation of the broker's experience, performance, references, resources, qualifications, and costs;

(ii) has oversight procedures to monitor beneficiary access and complaints and ensure that transport personnel are licensed, qualified, competent, and courteous;

(iii) is subject to regular auditing and oversight by the State in order to ensure the quality of the transportation services provided and the adequacy of beneficiary access to medical care and services; and

(iv) complies with such requirements related to prohibitions on referrals and conflict of interest as the Secretary shall establish (based on the prohibitions on physician referrals under section 1877 and such other prohibitions and requirements as the Secretary determines to be appropriate);

(71) provide that the State will implement an asset verification program as required under section 1940;

(72) provide that the State will not prevent a Federally-qualified health center from entering into contractual relationships with private practice dental providers in the provision of Federally-qualified health center services;

(73) in the case of any State in which 1 or more Indian Health Programs or Urban Indian Organizations furnishes health care services, provide for a process under which the State seeks advice on a regular, ongoing basis from designees of such Indian Health Programs and Urban Indian Organizations on matters relating to the application of this title that are likely to have a direct effect on such Indian Health Programs and Urban Indian Organizations and that—

(A) shall include solicitation of advice prior to submission of any plan amendments, waiver requests, and proposals for demonstration projects likely to have a direct effect on Indians, Indian Health Programs, or Urban Indian Organizations; and

(B) may include appointment of an advisory committee and of a designee of such Indian Health Programs and Urban Indian Organizations to the medical care advisory committee advising the State on its State plan under this title;

(74) provide for maintenance of effort under the State plan or under any waiver of the plan in accordance with subsection (gg); and

(75) provide that, beginning January 2015, and annually thereafter, the State shall submit a report to the Secretary that contains—

(A) the total number of enrolled and newly enrolled individuals in the State plan or under a waiver of the plan for the fiscal year ending on September 30 of the preceding calendar year, disaggregated by population, including children, parents, nonpregnant childless adults, disabled individuals, elderly individuals, and such other categories or sub-categories of individuals eligible for medical assistance under the State plan or under a waiver of the plan as the Secretary may require;

(B) a description, which may be specified by population, of the outreach and enrollment processes used by the State during such fiscal year; and

(C) any other data reporting determined necessary by the Secretary to monitor enrollment and retention of individuals eligible for medical assistance under the State plan or under a waiver of the plan;

(76) provide that any data collected under the State plan meets the requirements of section 3101 of the Public Health Service Act;

(77) provide that the State shall comply with provider and supplier screening, oversight, and reporting requirements in accordance with subsection (kk);

(78) provide that, not later than January 1, 2017, in the case of a State that pursuant to its State plan or waiver of the plan for medical assistance pays for medical assistance on a fee-for-service basis, the State shall require each provider furnishing items and services to, or ordering, prescribing, referring, or certifying eligibility for, services for individuals eligible to receive medical assistance under such plan to enroll with the State agency and provide to the State agency the provider's identifying information, including the name, specialty, date of birth, Social Security number, national provider identifier (if applicable), Federal taxpayer identification number, and the State license or certification number of the provider (if applicable);

(79) provide that any agent, clearinghouse, or other alternate payee (as defined by the Secretary) that submits claims on behalf of a health care provider must register with the State and the Secretary in a form and manner specified by the Secretary;

(80) provide that the State shall not provide any payments for items or services provided under the State plan or under a waiver to any financial institution or entity located outside of the United States;

(81) provide for implementation of the payment models specified by the Secretary under section 1115A(c) for implementation on a nationwide basis unless the State demonstrates to the satisfaction of the Secretary that implementation would not be administratively feasible or appropriate to the health care delivery system of the State;

(82) provide that the State agency responsible for administering the State plan under this title provides assurances to the Secretary that the State agency is in compliance with subparagraphs (A), (B), and (C) of section 1128K(b)(2);

(83) provide that, not later than January 1, 2017, in the case of a State plan (or waiver of the plan) that provides medical assistance on a fee-for-service basis or through a primary care case-management system described in section 1915(b)(1) (other than a primary care case management entity (as defined by the Secretary)), the State shall publish (and update on at least an annual basis) on the public website of the State agency administering the State plan, a directory of the physicians described in subsection (mm) and, at State option, other providers described in such subsection that—

(A) includes—

(i) with respect to each such physician or provider—

(I) the name of the physician or provider;

(II) the specialty of the physician or provider;

(III) the address at which the physician or provider provides services; and

(IV) the telephone number of the physician or provider; and

(ii) with respect to any such physician or provider participating in such a primary care case-management system, information regarding—

(I) whether the physician or provider is accepting as new patients individuals who receive medical assistance under this title; and

(II) the physician's or provider's cultural and linguistic capabilities, including the languages spoken by the physician or provider or by the skilled medical interpreter providing interpretation services at the physician's or provider's office; and

(B) may include, at State option, with respect to each such physician or provider—

(i) the Internet website of such physician or provider; or

(ii) whether the physician or provider is accepting as new patients individuals who receive medical assistance under this title;

(84) provide that—

(A) the State shall not terminate eligibility for medical assistance under the State plan for an individual who is an eligible juvenile (as defined in subsection (nn)(2)) because the juvenile is an inmate of a public institution (as defined in subsection (nn)(3)), but may suspend coverage during the period the juvenile is such an inmate;

(B) in the case of an individual who is an eligible juvenile described in paragraph (2)(A) of subsection (nn), the State shall, prior to the individual's release from such a public institution, conduct a redetermination of eligibility for such individual with respect to such medical assistance (without requiring a new application from the individual) and, if the State determines pursuant to such redetermina-



tion that the individual continues to meet the eligibility requirements for such medical assistance, the State shall restore coverage for such medical assistance to such an individual upon the individual's release from such public institution; and

(C) in the case of an individual who is an eligible juvenile described in paragraph (2)(B) of subsection (nn), the State shall process any application for medical assistance submitted by, or on behalf of, such individual such that the State makes a determination of eligibility for such individual with respect to such medical assistance upon release of such individual from such public institution;

(85) provide that the State is in compliance with the drug review and utilization requirements under subsection (oo)(1);

(86) provide, at the option of the State, for making medical assistance available on an inpatient or outpatient basis at a residential pediatric recovery center (as defined in subsection (pp)) to infants with neonatal abstinence syndrome; and

(87) provide for a mechanism, which may include attestation, that ensures that, with respect to any provider (including a transportation network company) or individual driver of non-emergency transportation to medically necessary services receiving payments under such plan (but excluding any public transit authority), at a minimum—

(A) each such provider and individual driver is not excluded from participation in any Federal health care program (as defined in section 1128B(f)) and is not listed on the exclusion list of the Inspector General of the Department of Health and Human Services;

(B) each such individual driver has a valid driver's license;

(C) each such provider has in place a process to address any violation of a State drug law; and

(D) each such provider has in place a process to disclose to the State Medicaid program the driving history, including any traffic violations, of each such individual driver employed by such provider, including any traffic violations.

Notwithstanding paragraph (5), if on January 1, 1965, and on the date on which a State submits its plan for approval under this title, the State agency which administered or supervised the administration of the plan of such State approved under title X (or title XVI, insofar as it relates to the blind) was different from the State agency which administered or supervised the administration of the State plan approved under title I (or title XVI, insofar as it relates to the aged), the State agency which administered or supervised the administration of such plan approved under title X (or title XVI, insofar as it relates to the blind) may be designated to administer or supervise the administration of the portion of the State plan for medical assistance which relates to blind individuals and a different State agency may be established or designated to administer or supervise the administration of the rest of the State plan for medical assistance; and in such case the part of the plan which each such agency administers, or the administration of which each such agency supervises, shall be regarded as a separate plan for purposes of this title (except for purposes of paragraph

(10)). The provisions of paragraphs (9)(A), (31), and (33) and of section 1903(i)(4) shall not apply to a religious nonmedical health care institution (as defined in section 1861(ss)(1)).

For purposes of paragraph (10) any individual who, for the month of August 1972, was eligible for or receiving aid or assistance under a State plan approved under title I, X, XIV, or XVI, or part A of title IV and who for such month was entitled to monthly insurance benefits under title II shall for purposes of this title only be deemed to be eligible for financial aid or assistance for any month thereafter if such individual would have been eligible for financial aid or assistance for such month had the increase in monthly insurance benefits under title II resulting from enactment of Public Law 92-336 not been applicable to such individual.

The requirement of clause (A) of paragraph (37) with respect to a State plan may be waived by the Secretary if he finds that the State has exercised good faith in trying to meet such requirement. For purposes of this title, any child who meets the requirements of paragraph (1) or (2) of section 473(b) shall be deemed to be a dependent child as defined in section 406 and shall be deemed to be a recipient of aid to families with dependent children under part A of title IV in the State where such child resides. Notwithstanding paragraph (10)(B) or any other provision of this subsection, a State plan shall provide medical assistance with respect to an alien who is not lawfully admitted for permanent residence or otherwise permanently residing in the United States under color of law only in accordance with section 1903(v).

(b) The Secretary shall approve any plan which fulfills the conditions specified in subsection (a) of this section, except that he shall not approve any plan which imposes, as a condition of eligibility for medical assistance under the plan—

- (1) an age requirement of more than 65 years; or
- (2) any residence requirement which excludes any individual who resides in the State, regardless of whether or not the residence is maintained permanently or at a fixed address; or
- (3) any citizenship requirement which excludes any citizen of the United States.

(c) Notwithstanding subsection (b), the Secretary shall not approve any State plan for medical assistance if the State requires individuals described in subsection (1)(1) to apply for assistance under the State program funded under part A of title IV as a condition of applying for or receiving medical assistance under this title.

(d) If a State contracts with an entity which meets the requirements of section 1152, as determined by the Secretary, or a utilization and quality control peer review organization having a contract with the Secretary under part B of title XI for the performance of medical or utilization review functions (including quality review functions described in subsection (a)(30)(C)) required under this title of a State plan with respect to specific services or providers (or services or providers in a geographic area of the State), such requirements shall be deemed to be met for those services or providers (or services or providers in that area) by delegation to such an entity or organization under the contract of the State's authority to conduct such review activities if the contract provides for the performance of activities not inconsistent with part B of title XI

and provides for such assurances of satisfactory performance by such an entity or organization as the Secretary may prescribe.

(e)(1) Beginning April 1, 1990, for provisions relating to the extension of eligibility for medical assistance for certain families who have received aid pursuant to a State plan approved under part A of title IV and have earned income, see section 1925.

(2)(A) In the case of an individual who is enrolled with a medicaid managed care organization (as defined in section 1903(m)(1)(A)), with a primary care case manager (as defined in section 1905(t)), or with an eligible organization with a contract under section 1876 and who would (but for this paragraph) lose eligibility for benefits under this title before the end of the minimum enrollment period (defined in subparagraph (B)), the State plan may provide, notwithstanding any other provision of this title, that the individual shall be deemed to continue to be eligible for such benefits until the end of such minimum period, but, except for benefits furnished under section 1905(a)(4)(C), only with respect to such benefits provided to the individual as an enrollee of such organization or entity or by or through the case manager.

(B) For purposes of subparagraph (A), the term “minimum enrollment period” means, with respect to an individual’s enrollment with an organization or entity under a State plan, a period, established by the State, of not more than six months beginning on the date the individual’s enrollment with the organization or entity becomes effective.

(3) At the option of the State, any individual who—

(A) is 18 years of age or younger and qualifies as a disabled individual under section 1614(a);

(B) with respect to whom there has been a determination by the State that—

(i) the individual requires a level of care provided in a hospital, nursing facility, or intermediate care facility for the mentally retarded,

(ii) it is appropriate to provide such care for the individual outside such an institution, and

(iii) the estimated amount which would be expended for medical assistance for the individual for such care outside an institution is not greater than the estimated amount which would otherwise be expended for medical assistance for the individual within an appropriate institution; and

(C) if the individual were in a medical institution, would be eligible for medical assistance under the State plan under this title, shall be deemed, for purposes of this title only, to be an individual with respect to whom a supplemental security income payment, or State supplemental payment, respectively, is being paid under title XVI.

(4) A child born to a woman eligible for and receiving medical assistance under a State plan on the date of the child’s birth shall be deemed to have applied for medical assistance and to have been found eligible for such assistance under such plan on the date of such birth and to remain eligible for such assistance for a period of one year. During the period in which a child is deemed under the preceding sentence to be eligible for medical assistance, the medical assistance eligibility identification number of the mother

shall also serve as the identification number of the child, and all claims shall be submitted and paid under such number (unless the State issues a separate identification number for the child before such period expires). Notwithstanding the preceding sentence, in the case of a child who is born in the United States to an alien mother for whom medical assistance for the delivery of the child is made available pursuant to section 1903(v), the State immediately shall issue a separate identification number for the child upon notification by the facility at which such delivery occurred of the child's birth.

(5) A woman who, while pregnant, is eligible for, has applied for, and has received medical assistance under the State plan, shall continue to be eligible under the plan, as though she were pregnant, for all pregnancy-related and postpartum medical assistance under the plan, through the end of the month in which the 60-day period (beginning on the last day of her pregnancy) ends.

(6) In the case of a pregnant woman described in subsection (a)(10) who, because of a change in income of the family of which she is a member, would not otherwise continue to be described in such subsection, the woman shall be deemed to continue to be an individual described in subsection (a)(10)(A)(i)(IV) and subsection (l)(1)(A) without regard to such change of income through the end of the month in which the 60-day period (beginning on the last day of her pregnancy) ends. The preceding sentence shall not apply in the case of a woman who has been provided ambulatory prenatal care pursuant to section 1920 during a presumptive eligibility period and is then, in accordance with such section, determined to be ineligible for medical assistance under the State plan.

(7) In the case of an infant or child described in subparagraph (B), (C), or (D) of subsection (l)(1) or paragraph (2) of section 1905(n)—

(A) who is receiving inpatient services for which medical assistance is provided on the date the infant or child attains the maximum age with respect to which coverage is provided under the State plan for such individuals, and

(B) who, but for attaining such age, would remain eligible for medical assistance under such subsection, the infant or child shall continue to be treated as an individual described in such respective provision until the end of the stay for which the inpatient services are furnished.

(8) If an individual is determined to be a qualified medicare beneficiary (as defined in section 1905(p)(1)), such determination shall apply to services furnished after the end of the month in which the determination first occurs. For purposes of payment to a State under section 1903(a), such determination shall be considered to be valid for an individual for a period of 12 months, except that a State may provide for such determinations more frequently, but not more frequently than once every 6 months for an individual.

(9)(A) At the option of the State, the plan may include as medical assistance respiratory care services for any individual who—

(i) is medically dependent on a ventilator for life support at least six hours per day;

(ii) has been so dependent for at least 30 consecutive days (or the maximum number of days authorized under the State plan, whichever is less) as an inpatient;

(iii) but for the availability of respiratory care services, would require respiratory care as an inpatient in a hospital, nursing facility, or intermediate care facility for the mentally retarded and would be eligible to have payment made for such inpatient care under the State plan;

(iv) has adequate social support services to be cared for at home; and

(v) wishes to be cared for at home.

(B) The requirements of subparagraph (A)(ii) may be satisfied by a continuous stay in one or more hospitals, nursing facilities, or intermediate care facilities for the mentally retarded.

(C) For purposes of this paragraph, respiratory care services means services provided on a part-time basis in the home of the individual by a respiratory therapist or other health care professional trained in respiratory therapy (as determined by the State), payment for which is not otherwise included within other items and services furnished to such individual as medical assistance under the plan.

(10)(A) The fact that an individual, child, or pregnant woman may be denied aid under part A of title IV pursuant to section 402(a)(43) shall not be construed as denying (or permitting a State to deny) medical assistance under this title to such individual, child, or woman who is eligible for assistance under this title on a basis other than the receipt of aid under such part.

(B) If an individual, child, or pregnant woman is receiving aid under part A of title IV and such aid is terminated pursuant to section 402(a)(43), the State may not discontinue medical assistance under this title for the individual, child, or woman until the State has determined that the individual, child, or woman is not eligible for assistance under this title on a basis other than the receipt of aid under such part.

(11)(A) In the case of an individual who is enrolled with a group health plan under section 1906 and who would (but for this paragraph) lose eligibility for benefits under this title before the end of the minimum enrollment period (defined in subparagraph (B)), the State plan may provide, notwithstanding any other provision of this title, that the individual shall be deemed to continue to be eligible for such benefits until the end of such minimum period, but only with respect to such benefits provided to the individual as an enrollee of such plan.

(B) For purposes of subparagraph (A), the term “minimum enrollment period” means, with respect to an individual’s enrollment with a group health plan, a period established by the State, of not more than 6 months beginning on the date the individual’s enrollment under the plan becomes effective.

(12) At the option of the State, the plan may provide that an individual who is under an age specified by the State (not to exceed 19 years of age) and who is determined to be eligible for benefits under a State plan approved under this title under subsection (a)(10)(A) shall remain eligible for those benefits until the earlier of—

(A) the end of a period (not to exceed 12 months) following the determination; or

(B) the time that the individual exceeds that age.

(13) EXPRESS LANE OPTION.—

## (A) IN GENERAL.—

(i) OPTION TO USE A FINDING FROM AN EXPRESS LANE AGENCY.—At the option of the State, the State plan may provide that in determining eligibility under this title for a child (as defined in subparagraph (G)), the State may rely on a finding made within a reasonable period (as determined by the State) from an Express Lane agency (as defined in subparagraph (F)) when it determines whether a child satisfies one or more components of eligibility for medical assistance under this title. The State may rely on a finding from an Express Lane agency notwithstanding sections 1902(a)(46)(B) and 1137(d) or any differences in budget unit, disregard, deeming or other methodology, if the following requirements are met:

(I) PROHIBITION ON DETERMINING CHILDREN INELIGIBLE FOR COVERAGE.—If a finding from an Express Lane agency would result in a determination that a child does not satisfy an eligibility requirement for medical assistance under this title and for child health assistance under title XXI, the State shall determine eligibility for assistance using its regular procedures.

(II) NOTICE REQUIREMENT.—For any child who is found eligible for medical assistance under the State plan under this title or child health assistance under title XXI and who is subject to premiums based on an Express Lane agency's finding of such child's income level, the State shall provide notice that the child may qualify for lower premium payments if evaluated by the State using its regular policies and of the procedures for requesting such an evaluation.

(III) COMPLIANCE WITH SCREEN AND ENROLL REQUIREMENT.—The State shall satisfy the requirements under subparagraphs (A) and (B) of section 2102(b)(3) (relating to screen and enroll) before enrolling a child in child health assistance under title XXI. At its option, the State may fulfill such requirements in accordance with either option provided under subparagraph (C) of this paragraph.

(IV) VERIFICATION OF CITIZENSHIP OR NATIONALITY STATUS.—The State shall satisfy the requirements of section 1902(a)(46)(B) or 2105(c)(9), as applicable for verifications of citizenship or nationality status.

(V) CODING.—The State meets the requirements of subparagraph (E).

(ii) OPTION TO APPLY TO RENEWALS AND REDETERMINATIONS.—The State may apply the provisions of this paragraph when conducting initial determinations of eligibility, redeterminations of eligibility, or both, as described in the State plan.

(B) RULES OF CONSTRUCTION.—Nothing in this paragraph shall be construed—

(i) to limit or prohibit a State from taking any actions otherwise permitted under this title or title XXI in determining eligibility for or enrolling children into medical as-

sistance under this title or child health assistance under title XXI; or

(ii) to modify the limitations in section 1902(a)(5) concerning the agencies that may make a determination of eligibility for medical assistance under this title.

(C) OPTIONS FOR SATISFYING THE SCREEN AND ENROLL REQUIREMENT.—

(i) IN GENERAL.—With respect to a child whose eligibility for medical assistance under this title or for child health assistance under title XXI has been evaluated by a State agency using an income finding from an Express Lane agency, a State may carry out its duties under subparagraphs (A) and (B) of section 2102(b)(3) (relating to screen and enroll) in accordance with either clause (ii) or clause (iii).

(ii) ESTABLISHING A SCREENING THRESHOLD.—

(I) IN GENERAL.—Under this clause, the State establishes a screening threshold set as a percentage of the Federal poverty level that exceeds the highest income threshold applicable under this title to the child by a minimum of 30 percentage points or, at State option, a higher number of percentage points that reflects the value (as determined by the State and described in the State plan) of any differences between income methodologies used by the program administered by the Express Lane agency and the methodologies used by the State in determining eligibility for medical assistance under this title.

(II) CHILDREN WITH INCOME NOT ABOVE THRESHOLD.—If the income of a child does not exceed the screening threshold, the child is deemed to satisfy the income eligibility criteria for medical assistance under this title regardless of whether such child would otherwise satisfy such criteria.

(III) CHILDREN WITH INCOME ABOVE THRESHOLD.—If the income of a child exceeds the screening threshold, the child shall be considered to have an income above the Medicaid applicable income level described in section 2110(b)(4) and to satisfy the requirement under section 2110(b)(1)(C) (relating to the requirement that CHIP matching funds be used only for children not eligible for Medicaid). If such a child is enrolled in child health assistance under title XXI, the State shall provide the parent, guardian, or custodial relative with the following:

(aa) Notice that the child may be eligible to receive medical assistance under the State plan under this title if evaluated for such assistance under the State's regular procedures and notice of the process through which a parent, guardian, or custodial relative can request that the State evaluate the child's eligibility for medical assistance under this title using such regular procedures.

(bb) A description of differences between the medical assistance provided under this title and child health assistance under title XXI, including differences in cost-sharing requirements and covered benefits.

(iii) TEMPORARY ENROLLMENT IN CHIP PENDING SCREEN AND ENROLL.—

(I) IN GENERAL.—Under this clause, a State enrolls a child in child health assistance under title XXI for a temporary period if the child appears eligible for such assistance based on an income finding by an Express Lane agency.

(II) DETERMINATION OF ELIGIBILITY.—During such temporary enrollment period, the State shall determine the child's eligibility for child health assistance under title XXI or for medical assistance under this title in accordance with this clause.

(III) PROMPT FOLLOW UP.—In making such a determination, the State shall take prompt action to determine whether the child should be enrolled in medical assistance under this title or child health assistance under title XXI pursuant to subparagraphs (A) and (B) of section 2102(b)(3) (relating to screen and enroll).

(IV) REQUIREMENT FOR SIMPLIFIED DETERMINATION.—In making such a determination, the State shall use procedures that, to the maximum feasible extent, reduce the burden imposed on the individual of such determination. Such procedures may not require the child's parent, guardian, or custodial relative to provide or verify information that already has been provided to the State agency by an Express Lane agency or another source of information unless the State agency has reason to believe the information is erroneous.

(V) AVAILABILITY OF CHIP MATCHING FUNDS DURING TEMPORARY ENROLLMENT PERIOD.—Medical assistance for items and services that are provided to a child enrolled in title XXI during a temporary enrollment period under this clause shall be treated as child health assistance under such title.

(D) OPTION FOR AUTOMATIC ENROLLMENT.—

(i) IN GENERAL.—The State may initiate and determine eligibility for medical assistance under the State Medicaid plan or for child health assistance under the State CHIP plan without a program application from, or on behalf of, the child based on data obtained from sources other than the child (or the child's family), but a child can only be automatically enrolled in the State Medicaid plan or the State CHIP plan if the child or the family affirmatively consents to being enrolled through affirmation in writing, by telephone, orally, through electronic signature, or through any other means specified by the Secretary or by signature on an Express Lane agency application, if the requirement of clause (ii) is met.



- (ii) INFORMATION REQUIREMENT.—The requirement of this clause is that the State informs the parent, guardian, or custodial relative of the child of the services that will be covered, appropriate methods for using such services, premium or other cost sharing charges (if any) that apply, medical support obligations (under section 1912(a)) created by enrollment (if applicable), and the actions the parent, guardian, or relative must take to maintain enrollment and renew coverage.
- (E) CODING; APPLICATION TO ENROLLMENT ERROR RATES.—
- (i) IN GENERAL.—For purposes of subparagraph (A)(iv), the requirement of this subparagraph for a State is that the State agrees to—
- (I) assign such codes as the Secretary shall require to the children who are enrolled in the State Medicaid plan or the State CHIP plan through reliance on a finding made by an Express Lane agency for the duration of the State's election under this paragraph;
  - (II) annually provide the Secretary with a statistically valid sample (that is approved by Secretary) of the children enrolled in such plans through reliance on such a finding by conducting a full Medicaid eligibility review of the children identified for such sample for purposes of determining an eligibility error rate (as described in clause (iv)) with respect to the enrollment of such children (and shall not include such children in any data or samples used for purposes of complying with a Medicaid Eligibility Quality Control (MEQC) review or a payment error rate measurement (PERM) requirement);
  - (III) submit the error rate determined under subclause (II) to the Secretary;
  - (IV) if such error rate exceeds 3 percent for either of the first 2 fiscal years in which the State elects to apply this paragraph, demonstrate to the satisfaction of the Secretary the specific corrective actions implemented by the State to improve upon such error rate; and
  - (V) if such error rate exceeds 3 percent for any fiscal year in which the State elects to apply this paragraph, a reduction in the amount otherwise payable to the State under section 1903(a) for quarters for that fiscal year, equal to the total amount of erroneous excess payments determined for the fiscal year only with respect to the children included in the sample for the fiscal year that are in excess of a 3 percent error rate with respect to such children.
- (ii) NO PUNITIVE ACTION BASED ON ERROR RATE.—The Secretary shall not apply the error rate derived from the sample under clause (i) to the entire population of children enrolled in the State Medicaid plan or the State CHIP plan through reliance on a finding made by an Express Lane agency, or to the population of children enrolled in such plans on the basis of the State's regular procedures for determining eligibility, or penalize the State on the

basis of such error rate in any manner other than the reduction of payments provided for under clause (i)(V).

(iii) **RULE OF CONSTRUCTION.**—Nothing in this paragraph shall be construed as relieving a State that elects to apply this paragraph from being subject to a penalty under section 1903(u), for payments made under the State Medicaid plan with respect to ineligible individuals and families that are determined to exceed the error rate permitted under that section (as determined without regard to the error rate determined under clause (i)(II)).

(iv) **ERROR RATE DEFINED.**—In this subparagraph, the term “error rate” means the rate of erroneous excess payments for medical assistance (as defined in section 1903(u)(1)(D)) for the period involved, except that such payments shall be limited to individuals for which eligibility determinations are made under this paragraph and except that in applying this paragraph under title XXI, there shall be substituted for references to provisions of this title corresponding provisions within title XXI.

**(F) EXPRESS LANE AGENCY.**—

(i) **IN GENERAL.**—In this paragraph, the term “Express Lane agency” means a public agency that—

(I) is determined by the State Medicaid agency or the State CHIP agency (as applicable) to be capable of making the determinations of one or more eligibility requirements described in subparagraph (A)(i);

(II) is identified in the State Medicaid plan or the State CHIP plan; and

(III) notifies the child’s family—

(aa) of the information which shall be disclosed in accordance with this paragraph;

(bb) that the information disclosed will be used solely for purposes of determining eligibility for medical assistance under the State Medicaid plan or for child health assistance under the State CHIP plan; and

(cc) that the family may elect to not have the information disclosed for such purposes; and

(IV) enters into, or is subject to, an interagency agreement to limit the disclosure and use of the information disclosed.

(ii) **INCLUSION OF SPECIFIC PUBLIC AGENCIES AND INDIAN TRIBES AND TRIBAL ORGANIZATIONS.**—Such term includes the following:

(I) A public agency that determines eligibility for assistance under any of the following:

(aa) The temporary assistance for needy families program funded under part A of title IV.

(bb) A State program funded under part D of title IV.

(cc) The State Medicaid plan.

(dd) The State CHIP plan.

(ee) The Food and Nutrition Act of 2008 (7 U.S.C. 2011 et seq.).

(ff) The Head Start Act (42 U.S.C. 9801 et seq.).

(gg) The Richard B. Russell National School Lunch Act (42 U.S.C. 1751 et seq.).

(hh) The Child Nutrition Act of 1966 (42 U.S.C. 1771 et seq.).

(ii) The Child Care and Development Block Grant Act of 1990 (42 U.S.C. 9858 et seq.).

(jj) The Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11301 et seq.).

(kk) The United States Housing Act of 1937 (42 U.S.C. 1437 et seq.).

(ll) The Native American Housing Assistance and Self-Determination Act of 1996 (25 U.S.C. 4101 et seq.).

(II) A State-specified governmental agency that has fiscal liability or legal responsibility for the accuracy of the eligibility determination findings relied on by the State.

(III) A public agency that is subject to an inter-agency agreement limiting the disclosure and use of the information disclosed for purposes of determining eligibility under the State Medicaid plan or the State CHIP plan.

(IV) The Indian Health Service, an Indian Tribe, Tribal Organization, or Urban Indian Organization (as defined in section 1139(c)).

(iii) EXCLUSIONS.—Such term does not include an agency that determines eligibility for a program established under the Social Services Block Grant established under title XX or a private, for-profit organization.

(iv) RULES OF CONSTRUCTION.—Nothing in this paragraph shall be construed as—

(I) exempting a State Medicaid agency from complying with the requirements of section 1902(a)(4) relating to merit-based personnel standards for employees of the State Medicaid agency and safeguards against conflicts of interest); or

(II) authorizing a State Medicaid agency that elects to use Express Lane agencies under this subparagraph to use the Express Lane option to avoid complying with such requirements for purposes of making eligibility determinations under the State Medicaid plan.

(v) ADDITIONAL DEFINITIONS.—In this paragraph:

(I) STATE.—The term “State” means 1 of the 50 States or the District of Columbia.

(II) STATE CHIP AGENCY.—The term “State CHIP agency” means the State agency responsible for administering the State CHIP plan.

(III) STATE CHIP PLAN.—The term “State CHIP plan” means the State child health plan established under title XXI and includes any waiver of such plan.

(IV) STATE MEDICAID AGENCY.—The term “State Medicaid agency” means the State agency responsible for administering the State Medicaid plan.

(V) STATE MEDICAID PLAN.—The term “State Medicaid plan” means the State plan established under title XIX and includes any waiver of such plan.

(G) CHILD DEFINED.—For purposes of this paragraph, the term “child” means an individual under 19 years of age, or, at the option of a State, such higher age, not to exceed 21 years of age, as the State may elect.

(H) STATE OPTION TO RELY ON STATE INCOME TAX DATA OR RETURN.—At the option of the State, a finding from an Express Lane agency may include gross income or adjusted gross income shown by State income tax records or returns.

(I) APPLICATION.—This paragraph shall not apply with respect to eligibility determinations made after September 30, 2027.

(14) INCOME DETERMINED USING MODIFIED ADJUSTED GROSS INCOME.—

(A) IN GENERAL.—Notwithstanding subsection (r) or any other provision of this title, except as provided in subparagraph (D), for purposes of determining income eligibility for medical assistance under the State plan or under any waiver of such plan and for any other purpose applicable under the plan or waiver for which a determination of income is required, including with respect to the imposition of premiums and cost-sharing, a State shall use the modified adjusted gross income of an individual and, in the case of an individual in a family greater than 1, the household income of such family. A State shall establish income eligibility thresholds for populations to be eligible for medical assistance under the State plan or a waiver of the plan using modified adjusted gross income and household income that are not less than the effective income eligibility levels that applied under the State plan or waiver on the date of enactment of the Patient Protection and Affordable Care Act. For purposes of complying with the maintenance of effort requirements under subsection (gg) during the transition to modified adjusted gross income and household income, a State shall, working with the Secretary, establish an equivalent income test that ensures individuals eligible for medical assistance under the State plan or under a waiver of the plan on the date of enactment of the Patient Protection and Affordable Care Act, do not lose coverage under the State plan or under a waiver of the plan. The Secretary may waive such provisions of this title and title XXI as are necessary to ensure that States establish income and eligibility determination systems that protect beneficiaries.

(B) NO INCOME OR EXPENSE DISREGARDS.—Subject to subparagraph (I), no type of expense, block, or other income disregard shall be applied by a State to determine income eligibility for medical assistance under the State plan or under any waiver of such plan or for any other purpose applicable under the plan or waiver for which a determination of income is required.

(C) NO ASSETS TEST.—A State shall not apply any assets or resources test for purposes of determining eligibility for

medical assistance under the State plan or under a waiver of the plan.

(D) EXCEPTIONS.—

(i) INDIVIDUALS ELIGIBLE BECAUSE OF OTHER AID OR ASSISTANCE, ELDERLY INDIVIDUALS, MEDICALLY NEEDY INDIVIDUALS, AND INDIVIDUALS ELIGIBLE FOR MEDICARE COST-SHARING.—Subparagraphs (A), (B), and (C) shall not apply to the determination of eligibility under the State plan or under a waiver for medical assistance for the following:

(I) Individuals who are eligible for medical assistance under the State plan or under a waiver of the plan on a basis that does not require a determination of income by the State agency administering the State plan or waiver, including as a result of eligibility for, or receipt of, other Federal or State aid or assistance, individuals who are eligible on the basis of receiving (or being treated as if receiving) supplemental security income benefits under title XVI, and individuals who are eligible as a result of being or being deemed to be a child in foster care under the responsibility of the State.

(II) Individuals who have attained age 65.

(III) Individuals who qualify for medical assistance under the State plan or under any waiver of such plan on the basis of being blind or disabled (or being treated as being blind or disabled) without regard to whether the individual is eligible for supplemental security income benefits under title XVI on the basis of being blind or disabled and including an individual who is eligible for medical assistance on the basis of section 1902(e)(3).

(IV) Individuals described in subsection (a)(10)(C).

(V) Individuals described in any clause of subsection (a)(10)(E).

(ii) EXPRESS LANE AGENCY FINDINGS.—In the case of a State that elects the Express Lane option under paragraph (13), notwithstanding subparagraphs (A), (B), and (C), the State may rely on a finding made by an Express Lane agency in accordance with that paragraph relating to the income of an individual for purposes of determining the individual's eligibility for medical assistance under the State plan or under a waiver of the plan.

(iii) MEDICARE PRESCRIPTION DRUG SUBSIDIES DETERMINATIONS.—Subparagraphs (A), (B), and (C) shall not apply to any determinations of eligibility for premium and cost-sharing subsidies under and in accordance with section 1860D-14 made by the State pursuant to section 1935(a)(2).

(iv) LONG-TERM CARE.—Subparagraphs (A), (B), and (C) shall not apply to any determinations of eligibility of individuals for purposes of medical assistance for nursing facility services, a level of care in any institu-

tion equivalent to that of nursing facility services, home or community-based services furnished under a waiver or State plan amendment under section 1915 or a waiver under section 1115, and services described in section 1917(c)(1)(C)(ii).

(v) GRANDFATHER OF CURRENT ENROLLEES UNTIL DATE OF NEXT REGULAR REDETERMINATION.—An individual who, on January 1, 2014, is enrolled in the State plan or under a waiver of the plan and who would be determined ineligible for medical assistance solely because of the application of the modified adjusted gross income or household income standard described in subparagraph (A), shall remain eligible for medical assistance under the State plan or waiver (and subject to the same premiums and cost-sharing as applied to the individual on that date) through March 31, 2014, or the date on which the individual's next regularly scheduled redetermination of eligibility is to occur, whichever is later.

(E) TRANSITION PLANNING AND OVERSIGHT.—Each State shall submit to the Secretary for the Secretary's approval the income eligibility thresholds proposed to be established using modified adjusted gross income and household income, the methodologies and procedures to be used to determine income eligibility using modified adjusted gross income and household income and, if applicable, a State plan amendment establishing an optional eligibility category under subsection (a)(10)(A)(ii)(XX). To the extent practicable, the State shall use the same methodologies and procedures for purposes of making such determinations as the State used on the date of enactment of the Patient Protection and Affordable Care Act. The Secretary shall ensure that the income eligibility thresholds proposed to be established using modified adjusted gross income and household income, including under the eligibility category established under subsection (a)(10)(A)(ii)(XX), and the methodologies and procedures proposed to be used to determine income eligibility, will not result in children who would have been eligible for medical assistance under the State plan or under a waiver of the plan on the date of enactment of the Patient Protection and Affordable Care Act no longer being eligible for such assistance.

(F) LIMITATION ON SECRETARIAL AUTHORITY.—The Secretary shall not waive compliance with the requirements of this paragraph except to the extent necessary to permit a State to coordinate eligibility requirements for dual eligible individuals (as defined in section 1915(h)(2)(B)) under the State plan or under a waiver of the plan and under title XVIII and individuals who require the level of care provided in a hospital, a nursing facility, or an intermediate care facility for the mentally retarded.

(G) DEFINITIONS OF MODIFIED ADJUSTED GROSS INCOME AND HOUSEHOLD INCOME.—In this paragraph, the terms “modified adjusted gross income” and “household income”

have the meanings given such terms in section 36B(d)(2) of the Internal Revenue Code of 1986.

(H) CONTINUED APPLICATION OF MEDICAID RULES REGARDING POINT-IN-TIME INCOME AND SOURCES OF INCOME.—The requirement under this paragraph for States to use modified adjusted gross income and household income to determine income eligibility for medical assistance under the State plan or under any waiver of such plan and for any other purpose applicable under the plan or waiver for which a determination of income is required shall not be construed as affecting or limiting the application of—

(i) the requirement under this title and under the State plan or a waiver of the plan to determine an individual's income as of the point in time at which an application for medical assistance under the State plan or a waiver of the plan is processed; or

(ii) any rules established under this title or under the State plan or a waiver of the plan regarding sources of countable income.

(I) TREATMENT OF PORTION OF MODIFIED ADJUSTED GROSS INCOME.—For purposes of determining the income eligibility of an individual for medical assistance whose eligibility is determined based on the application of modified adjusted gross income under subparagraph (A), the State shall—

(i) determine the dollar equivalent of the difference between the upper income limit on eligibility for such an individual (expressed as a percentage of the poverty line) and such upper income limit increased by 5 percentage points; and

(ii) notwithstanding the requirement in subparagraph (A) with respect to use of modified adjusted gross income, utilize as the applicable income of such individual, in determining such income eligibility, an amount equal to the modified adjusted gross income applicable to such individual reduced by such dollar equivalent amount.

(J) EXCLUSION OF PARENT MENTOR COMPENSATION FROM INCOME DETERMINATION.—Any nominal amount received by an individual as compensation, including a stipend, for participation as a parent mentor (as defined in paragraph (5) of section 2113(f)) in an activity or program funded through a grant under such section shall be disregarded for purposes of determining the income eligibility of such individual for medical assistance under the State plan or any waiver of such plan.

(K) TREATMENT OF CERTAIN LOTTERY WINNINGS AND INCOME RECEIVED AS A LUMP SUM.—

(i) IN GENERAL.—In the case of an individual who is the recipient of qualified lottery winnings (pursuant to lotteries occurring on or after January 1, 2018) or qualified lump sum income (received on or after such date) and whose eligibility for medical assistance is determined based on the application of modified adjusted gross income under subparagraph (A), a State

shall, in determining such eligibility, include such winnings or income (as applicable) as income received—

(I) in the month in which such winnings or income (as applicable) is received if the amount of such winnings or income is less than \$80,000;

(II) over a period of 2 months if the amount of such winnings or income (as applicable) is greater than or equal to \$80,000 but less than \$90,000;

(III) over a period of 3 months if the amount of such winnings or income (as applicable) is greater than or equal to \$90,000 but less than \$100,000; and

(IV) over a period of 3 months plus 1 additional month for each increment of \$10,000 of such winnings or income (as applicable) received, not to exceed a period of 120 months (for winnings or income of \$1,260,000 or more), if the amount of such winnings or income is greater than or equal to \$100,000.

(ii) COUNTING IN EQUAL INSTALLMENTS.—For purposes of subclauses (II), (III), and (IV) of clause (i), winnings or income to which such subclause applies shall be counted in equal monthly installments over the period of months specified under such subclause.

(iii) HARDSHIP EXEMPTION.—An individual whose income, by application of clause (i), exceeds the applicable eligibility threshold established by the State, shall continue to be eligible for medical assistance to the extent that the State determines, under procedures established by the State (in accordance with standards specified by the Secretary), that the denial of eligibility of the individual would cause an undue medical or financial hardship as determined on the basis of criteria established by the Secretary.

(iv) NOTIFICATIONS AND ASSISTANCE REQUIRED IN CASE OF LOSS OF ELIGIBILITY.—A State shall, with respect to an individual who loses eligibility for medical assistance under the State plan (or a waiver of such plan) by reason of clause (i)—

(I) before the date on which the individual loses such eligibility, inform the individual—

(aa) of the individual's opportunity to enroll in a qualified health plan offered through an Exchange established under title I of the Patient Protection and Affordable Care Act during the special enrollment period specified in section 9801(f)(3) of the Internal Revenue Code of 1986 (relating to loss of Medicaid or CHIP coverage); and

(bb) of the date on which the individual would no longer be considered ineligible by reason of clause (i) to receive medical assistance under the State plan or under any waiv-



er of such plan and be eligible to reapply to receive such medical assistance; and

(II) provide technical assistance to the individual seeking to enroll in such a qualified health plan.

(v) QUALIFIED LOTTERY WINNINGS DEFINED.—In this subparagraph, the term “qualified lottery winnings” means winnings from a sweepstakes, lottery, or pool described in paragraph (3) of section 4402 of the Internal Revenue Code of 1986 or a lottery operated by a multistate or multijurisdictional lottery association, including amounts awarded as a lump sum payment.

(vi) QUALIFIED LUMP SUM INCOME DEFINED.—In this subparagraph, the term “qualified lump sum income” means income that is received as a lump sum from monetary winnings from gambling (as defined by the Secretary and including gambling activities described in section 1955(b)(4) of title 18, United States Code).

(15) EXCLUSION OF COMPENSATION FOR PARTICIPATION IN A CLINICAL TRIAL FOR TESTING OF TREATMENTS FOR A RARE DISEASE OR CONDITION.—The first \$2,000 received by an individual (who has attained 19 years of age) as compensation for participation in a clinical trial meeting the requirements of section 1612(b)(26) shall be disregarded for purposes of determining the income eligibility of such individual for medical assistance under the State plan or any waiver of such plan.

(16) EXTENDING CERTAIN COVERAGE FOR PREGNANT AND POSTPARTUM WOMEN.—

(A) IN GENERAL.—At the option of the State, the State plan (or waiver of such State plan) may provide, that an individual who, while pregnant, is eligible for and has received medical assistance under the State plan approved under this title (or a waiver of such plan) (including during a period of retroactive eligibility under subsection (a)(34)) shall, in addition to remaining eligible under paragraph (5) for all pregnancy-related and postpartum medical assistance available under the State plan (or waiver) through the last day of the month in which the 60-day period (beginning on the last day of her pregnancy) ends, remain eligible under the State plan (or waiver) for medical assistance for the period beginning on the first day occurring after the end of such 60-day period and ending on the last day of the month in which the 12-month period (beginning on the last day of her pregnancy) ends.

(B) FULL BENEFITS DURING PREGNANCY AND THROUGHOUT THE 12-MONTH POSTPARTUM PERIOD.—The medical assistance provided for a pregnant or postpartum individual by a State making an election under this paragraph, without regard to the basis on which the individual is eligible for medical assistance under the State plan (or waiver), shall—

(i) include all items and services covered under the State plan (or waiver) that are not less in amount, duration, or scope, or are determined by the Secretary to be substantially equivalent, to the medical assistance

available for an individual described in subsection (a)(10)(A)(i); and

(ii) be provided for the individual while pregnant and during the 12-month period that begins on the last day of the individual's pregnancy and ends on the last day of the month in which such 12-month period ends.

(C) COVERAGE UNDER CHIP.—A State making an election under this paragraph that covers under title XXI child health assistance for targeted low-income children who are pregnant or targeted low-income pregnant women, as applicable, shall also make the election under section 2107(e)(1)(J) of such title.

(f) Notwithstanding any other provision of this title, except as provided in subsection (e) and section 1619(b)(3) and section 1924, except with respect to qualified disabled and working individuals (described in section 1905(s)), and except with respect to qualified medicare beneficiaries, qualified severely impaired individuals, and individuals described in subsection (m)(1), no State not eligible to participate in the State plan program established under title XVI shall be required to provide medical assistance to any aged, blind, or disabled individual (within the meaning of title XVI) for any month unless such State would be (or would have been) required to provide medical assistance to such individual for such month had its plan for medical assistance approved under this title and in effect on January 1, 1972, been in effect in such month, except that for this purpose any such individual shall be deemed eligible for medical assistance under such State plan if (in addition to meeting such other requirements as are or may be imposed under the State plan) the income of any such individual as determined in accordance with section 1903(f) (after deducting any supplemental security income payment and State supplementary payment made with respect to such individual, and incurred expenses for medical care as recognized under State law regardless of whether such expenses are reimbursed under another public program of the State or political subdivision thereof) is not in excess of the standard for medical assistance established under the State plan as in effect on January 1, 1972. In States which provide medical assistance to individuals pursuant to paragraph (10)(C) of subsection (a) of this section, an individual who is eligible for medical assistance by reason of the requirements of this section concerning the deduction of incurred medical expenses from income shall be considered an individual eligible for medical assistance under paragraph (10)(A) of that subsection if that individual is, or is eligible to be (1) an individual with respect to whom there is payable a State supplementary payment on the basis of which similarly situated individuals are eligible to receive medical assistance equal in amount, duration, and scope to that provided to individuals eligible under paragraph (10)(A), or (2) an eligible individual or eligible spouse, as defined in title XVI, with respect to whom supplemental security income benefits are payable; otherwise that individual shall be considered to be an individual eligible for medical assistance under paragraph (10)(C) of that subsection. In States which do not provide medical assistance to individuals pursuant to paragraph (10)(C) of that subsection, an individual who is eligible for medical

assistance by reason of the requirements of this section concerning the deduction of incurred medical expenses from income shall be considered an individual eligible for medical assistance under paragraph (10)(A) of that subsection.

(g) In addition to any other sanction available to a State, a State may provide for a reduction of any payment amount otherwise due with respect to a person who furnishes services under the plan in an amount equal to up to three times the amount of any payment sought to be collected by that person in violation of subsection (a)(25)(C).

(h)(1) Nothing in this title (including subsections (a)(13) and (a)(30) of this section) shall be construed as authorizing the Secretary to limit the amount of payment that may be made under a plan under this title for home and community care, home and community-based services provided under subsection (c), (d), or (i) of section 1915 or under a waiver or demonstration project under section 1115, self-directed personal assistance services provided pursuant to a written plan of care under section 1915(j), and home and community-based attendant services and supports under section 1915(k).

(2) Nothing in this title, title XVIII, or title XI shall be construed as prohibiting receipt of any care or services specified in paragraph (1) in an acute care hospital that are—

(A) identified in an individual's person-centered service plan (or comparable plan of care);

(B) provided to meet needs of the individual that are not met through the provision of hospital services;

(C) not a substitute for services that the hospital is obligated to provide through its conditions of participation or under Federal or State law, or under another applicable requirement; and

(D) designed to ensure smooth transitions between acute care settings and home and community-based settings, and to preserve the individual's functional abilities.

(i)(1) In addition to any other authority under State law, where a State determines that a intermediate care facility for the mentally retarded which is certified for participation under its plan no longer substantially meets the requirements for such a facility under this title and further determines that the facility's deficiencies—

(A) immediately jeopardize the health and safety of its patients, the State shall provide for the termination of the facility's certification for participation under the plan and may provide, or

(B) do not immediately jeopardize the health and safety of its patients, the State may, in lieu of providing for terminating the facility's certification for participation under the plan, establish alternative remedies if the State demonstrates to the Secretary's satisfaction that the alternative remedies are effective in deterring noncompliance and correcting deficiencies, and may provide

that no payment will be made under the State plan with respect to any individual admitted to such facility after a date specified by the State.

(2) The State shall not make such a decision with respect to a facility until the facility has had a reasonable opportunity, following the initial determination that it no longer substantially meets the requirements for such a facility under this title, to correct its deficiencies, and, following this period, has been given reasonable notice and opportunity for a hearing.

(3) The State's decision to deny payment may be made effective only after such notice to the public and to the facility as may be provided for by the State, and its effectiveness shall terminate (A) when the State finds that the facility is in substantial compliance (or is making good faith efforts to achieve substantial compliance) with the requirements for such a facility under this title, or (B) in the case described in paragraph (1)(B), with the end of the eleventh month following the month such decision is made effective, whichever occurs first. If a facility to which clause (B) of the previous sentence applies still fails to substantially meet the provisions of the respective section on the date specified in such clause, the State shall terminate such facility's certification for participation under the plan effective with the first day of the first month following the month specified in such clause.

(j) Notwithstanding any other requirement of this title, the Secretary may waive or modify any requirement of this title with respect to the medical assistance program in American Samoa and the Northern Mariana Islands, other than a waiver of the Federal medical assistance percentage, the limitation in section 1108(f), the requirement that payment may be made for medical assistance only with respect to amounts expended by American Samoa or the Northern Mariana Islands for care and services described in a numbered paragraph of section 1905(a), or the requirement under subsection (qq)(1) (relating to data reporting).

(k)(1) The medical assistance provided to an individual described in subclause (VIII) of subsection (a)(10)(A)(i) shall consist of benchmark coverage described in section 1937(b)(1) or benchmark equivalent coverage described in section 1937(b)(2). Such medical assistance shall be provided subject to the requirements of section 1937, without regard to whether a State otherwise has elected the option to provide medical assistance through coverage under that section, unless an individual described in subclause (VIII) of subsection (a)(10)(A)(i) is also an individual for whom, under subparagraph (B) of section 1937(a)(2), the State may not require enrollment in benchmark coverage described in subsection (b)(1) of section 1937 or benchmark equivalent coverage described in subsection (b)(2) of that section.

(2) Beginning with the first day of any fiscal year quarter that begins on or after April 1, 2010, and before January 1, 2014, a State may elect through a State plan amendment to provide medical assistance to individuals who would be described in subclause (VIII) of subsection (a)(10)(A)(i) if that subclause were effective before January 1, 2014. A State may elect to phase-in the extension of eligibility for medical assistance to such individuals based on income, so long as the State does not extend such eligibility to individuals described in such subclause with higher income before making individuals described in such subclause with lower income eligible for medical assistance.

(3) If an individual described in subclause (VIII) of subsection (a)(10)(A)(i) is the parent of a child who is under 19 years of age (or such higher age as the State may have elected) who is eligible for medical assistance under the State plan or under a waiver of such plan (under that subclause or under a State plan amendment under paragraph (2), the individual may not be enrolled under the State plan unless the individual's child is enrolled under the State plan or under a waiver of the plan or is enrolled in other health insurance coverage. For purposes of the preceding sentence, the term "parent" includes an individual treated as a caretaker relative for purposes of carrying out section 1931.

(1)(1) Individuals described in this paragraph are—

(A) women during pregnancy (and during the 60-day period beginning on the last day of the pregnancy),

(B) infants under one year of age,

(C) children who have attained one year of age but have not attained 6 years of age, and

(D) children born after September 30, 1983 (or, at the option of a State, after any earlier date), who have attained 6 years of age but have not attained 19 years of age,

who are not described in any of subclauses (I) through (III) of subsection (a)(10)(A)(i) and whose family income does not exceed the income level established by the State under paragraph (2) for a family size equal to the size of the family, including the woman, infant, or child.

(2)(A)(i) For purposes of paragraph (1) with respect to individuals described in subparagraph (A) or (B) of that paragraph, the State shall establish an income level which is a percentage (not less than the percentage provided under clause (ii) and not more than 185 percent) of the income official poverty line (as defined by the Office of Management and Budget, and revised annually in accordance with section 673(2) of the Omnibus Budget Reconciliation Act of 1981) applicable to a family of the size involved.

(ii) The percentage provided under this clause, with respect to eligibility for medical assistance on or after—

(I) July 1, 1989, is 75 percent, or, if greater, the percentage provided under clause (iii), and

(II) April 1, 1990, 133 percent, or, if greater, the percentage provided under clause (iv).

(iii) In the case of a State which, as of the date of the enactment of this clause, has elected to provide, and provides, medical assistance to individuals described in this subsection or has enacted legislation authorizing, or appropriating funds, to provide such assistance to such individuals before July 1, 1989, the percentage provided under clause (ii)(I) shall not be less than—

(I) the percentage specified by the State in an amendment to its State plan (whether approved or not) as of the date of the enactment of this clause, or

(II) if no such percentage is specified as of the date of the enactment of this clause, the percentage established under the State's authorizing legislation or provided for under the State's appropriations;

but in no case shall this clause require the percentage provided under clause (ii)(I) to exceed 100 percent.

(iv) In the case of a State which, as of the date of the enactment of this clause, has established under clause (i), or has enacted legislation authorizing, or appropriating funds, to provide for, a percentage (of the income official poverty line) that is greater than 133 percent, the percentage provided under clause (ii) for medical assistance on or after April 1, 1990, shall not be less than—

(I) the percentage specified by the State in an amendment to its State plan (whether approved or not) as of the date of the enactment of this clause, or

(II) if no such percentage is specified as of the date of the enactment of this clause, the percentage established under the State's authorizing legislation or provided for under the State's appropriations.

(B) For purposes of paragraph (1) with respect to individuals described in subparagraph (C) of such paragraph, the State shall establish an income level which is equal to 133 percent of the income official poverty line described in subparagraph (A) applicable to a family of the size involved.

(C) For purposes of paragraph (1) with respect to individuals described in subparagraph (D) of that paragraph, the State shall establish an income level which is equal to 100 percent (or, beginning January 1, 2014, 133 percent) of the income official poverty line described in subparagraph (A) applicable to a family of the size involved.

(3) Notwithstanding subsection (a)(17), for individuals who are eligible for medical assistance because of subsection (a)(10)(A)(i)(IV), (a)(10)(A)(i)(VI), (a)(10)(A)(i)(VII), or (a)(10)(A)(ii)(IX)—

(A) application of a resource standard shall be at the option of the State;

(B) any resource standard or methodology that is applied with respect to an individual described in subparagraph (A) of paragraph (1) may not be more restrictive than the resource standard or methodology that is applied under title XVI;

(C) any resource standard or methodology that is applied with respect to an individual described in subparagraph (B), (C), or (D) of paragraph (1) may not be more restrictive than the corresponding methodology that is applied under the State plan under part A of title IV;

(D) the income standard to be applied is the appropriate income standard established under paragraph (2); and

(E) family income shall be determined in accordance with the methodology employed under the State plan under part A or E of title IV (except to the extent such methodology is inconsistent with clause (D) of subsection (a)(17)), and costs incurred for medical care or for any other type of remedial care shall not be taken into account.

Any different treatment provided under this paragraph for such individuals shall not, because of subsection (a)(17), require or permit such treatment for other individuals.

(4)(A) In the case of any State which is providing medical assistance to its residents under a waiver granted under section 1115, the Secretary shall require the State to provide medical assistance for pregnant women and infants under age 1 described in subsection (a)(10)(A)(i)(IV) and for children described in subsection

(a)(10)(A)(i)(VI) or subsection (a)(10)(A)(i)(VII) in the same manner as the State would be required to provide such assistance for such individuals if the State had in effect a plan approved under this title.

(B) In the case of a State which is not one of the 50 States or the District of Columbia, the State need not meet the requirement of subsection (a)(10)(A)(i)(IV), (a)(10)(A)(i)(VI), or (a)(10)(A)(i)(VII) and, for purposes of paragraph (2)(A), the State may substitute for the percentage provided under clause (ii) of such paragraph any percentage.

(m)(1) Individuals described in this paragraph are individuals—

(A) who are 65 years of age or older or are disabled individuals (as determined under section 1614(a)(3)),

(B) whose income (as determined under section 1612 for purposes of the supplemental security income program, except as provided in paragraph (2)(C)) does not exceed an income level established by the State consistent with paragraph (2)(A), and

(C) whose resources (as determined under section 1613 for purposes of the supplemental security income program) do not exceed (except as provided in paragraph (2)(B)) the maximum amount of resources that an individual may have and obtain benefits under that program.

(2)(A) The income level established under paragraph (1)(B) may not exceed a percentage (not more than 100 percent) of the official poverty line (as defined by the Office of Management and Budget, and revised annually in accordance with section 673(2) of the Omnibus Budget Reconciliation Act of 1981) applicable to a family of the size involved.

(B) In the case of a State that provides medical assistance to individuals not described in subsection (a)(10)(A) and at the State's option, the State may use under paragraph (1)(C) such resource level (which is higher than the level described in that paragraph) as may be applicable with respect to individuals described in paragraph (1)(A) who are not described in subsection (a)(10)(A).

(C) The provisions of section 1905(p)(2)(D) shall apply to determinations of income under this subsection in the same manner as they apply to determinations of income under section 1905(p).

(3) Notwithstanding subsection (a)(17), for individuals described in paragraph (1) who are covered under the State plan by virtue of subsection (a)(10)(A)(ii)(X)—

(A) the income standard to be applied is the income standard described in paragraph (1)(B), and

(B) except as provided in section 1612(b)(4)(B)(ii), costs incurred for medical care or for any other type of remedial care shall not be taken into account in determining income.

Any different treatment provided under this paragraph for such individuals shall not, because of subsection (a)(17), require or permit such treatment for other individuals.

(4) Notwithstanding subsection (a)(17), for qualified medicare beneficiaries described in section 1905(p)(1)—

(A) the income standard to be applied is the income standard described in section 1905(p)(1)(B), and

(B) except as provided in section 1612(b)(4)(B)(ii), costs incurred for medical care or for any other type of remedial care shall not be taken into account in determining income.

Any different treatment provided under this paragraph for such individuals shall not, because of subsection (a)(17), require or permit such treatment for other individuals.

(n)(1) In the case of medical assistance furnished under this title for medicare cost-sharing respecting the furnishing of a service or item to a qualified medicare beneficiary, the State plan may provide payment in an amount with respect to the service or item that results in the sum of such payment amount and any amount of payment made under title XVIII with respect to the service or item exceeding the amount that is otherwise payable under the State plan for the item or service for eligible individuals who are not qualified medicare beneficiaries.

(2) In carrying out paragraph (1), a State is not required to provide any payment for any expenses incurred relating to payment for deductibles, coinsurance, or copayments for medicare cost-sharing to the extent that payment under title XVIII for the service would exceed the payment amount that otherwise would be made under the State plan under this title for such service if provided to an eligible recipient other than a medicare beneficiary.

(3) In the case in which a State's payment for medicare cost-sharing for a qualified medicare beneficiary with respect to an item or service is reduced or eliminated through the application of paragraph (2)—

(A) for purposes of applying any limitation under title XVIII on the amount that the beneficiary may be billed or charged for the service, the amount of payment made under title XVIII plus the amount of payment (if any) under the State plan shall be considered to be payment in full for the service;

(B) the beneficiary shall not have any legal liability to make payment to a provider or to an organization described in section 1903(m)(1)(A) for the service; and

(C) any lawful sanction that may be imposed upon a provider or such an organization for excess charges under this title or title XVIII shall apply to the imposition of any charge imposed upon the individual in such case.

This paragraph shall not be construed as preventing payment of any medicare cost-sharing by a medicare supplemental policy or an employer retiree health plan on behalf of an individual.

(o) Notwithstanding any provision of subsection (a) to the contrary, a State plan under this title shall provide that any supplemental security income benefits paid by reason of subparagraph (E) or (G) of section 1611(e)(1) to an individual who—

(1) is eligible for medical assistance under the plan, and

(2) is in a hospital, skilled nursing facility, or intermediate care facility at the time such benefits are paid,

will be disregarded for purposes of determining the amount of any post-eligibility contribution by the individual to the cost of the care and services provided by the hospital, skilled nursing facility, or intermediate care facility.

(p)(1) In addition to any other authority, a State may exclude any individual or entity for purposes of participating under the State plan under this title for any reason for which the Secretary could exclude the individual or entity from participation in a program under title XVIII under section 1128, 1128A, or 1866(b)(2).



(2) In order for a State to receive payments for medical assistance under section 1903(a), with respect to payments the State makes to a medicaid managed care organization (as defined in section 1903(m)) or to an entity furnishing services under a waiver approved under section 1915(b)(1), the State must provide that it will exclude from participation, as such an organization or entity, any organization or entity that—

(A) could be excluded under section 1128(b)(8) (relating to owners and managing employees who have been convicted of certain crimes or received other sanctions),

(B) has, directly or indirectly, a substantial contractual relationship (as defined by the Secretary) with an individual or entity that is described in section 1128(b)(8)(B), or

(C) employs or contracts with any individual or entity that is excluded from participation under this title under section 1128 or 1128A for the provision of health care, utilization review, medical social work, or administrative services or employs or contracts with any entity for the provision (directly or indirectly) through such an excluded individual or entity of such services.

(3) As used in this subsection, the term “exclude” includes the refusal to enter into or renew a participation agreement or the termination of such an agreement.

(q)(1)(A) In order to meet the requirement of subsection (a)(50), the State plan must provide that, in the case of an institutionalized individual or couple described in subparagraph (B), in determining the amount of the individual’s or couple’s income to be applied monthly to payment for the cost of care in an institution, there shall be deducted from the monthly income (in addition to other allowances otherwise provided under the State plan) a monthly personal needs allowance—

(i) which is reasonable in amount for clothing and other personal needs of the individual (or couple) while in an institution, and

(ii) which is not less (and may be greater) than the minimum monthly personal needs allowance described in paragraph (2).

(B) In this subsection, the term “institutionalized individual or couple” means an individual or married couple—

(i) who is an inpatient (or who are inpatients) in a medical institution or nursing facility for which payments are made under this title throughout a month, and

(ii) who is or are determined to be eligible for medical assistance under the State plan.

(2) The minimum monthly personal needs allowance described in this paragraph is \$30 for an institutionalized individual and \$60 for an institutionalized couple (if both are aged, blind, or disabled, and their incomes are considered available to each other in determining eligibility).

(r)(1)(A) For purposes of sections 1902(a)(17) and 1924(d)(1)(D) and for purposes of a waiver under section 1915, with respect to the post-eligibility treatment of income of individuals who are institutionalized or receiving home or community-based services under such a waiver, the treatment described in subparagraph (B) shall apply, there shall be disregarded reparation payments made by the Federal Republic of Germany, and there shall be taken into ac-

count amounts for incurred expenses for medical or remedial care that are not subject to payment by a third party, including—

- (i) medicare and other health insurance premiums, deductibles, or coinsurance, and
- (ii) necessary medical or remedial care recognized under State law but not covered under the State plan under this title, subject to reasonable limits the State may establish on the amount of these expenses.

(B)(i) In the case of a veteran who does not have a spouse or a child, if the veteran—

(I) receives, after the veteran has been determined to be eligible for medical assistance under the State plan under this title, a veteran's pension in excess of \$90 per month, and

(II) resides in a State veterans home with respect to which the Secretary of Veterans Affairs makes per diem payments for nursing home care pursuant to section 1741(a) of title 38, United States Code,

any such pension payment, including any payment made due to the need for aid and attendance, or for unreimbursed medical expenses, that is in excess of \$90 per month shall be counted as income only for the purpose of applying such excess payment to the State veterans home's cost of providing nursing home care to the veteran.

(ii) The provisions of clause (i) shall apply with respect to a surviving spouse of a veteran who does not have a child in the same manner as they apply to a veteran described in such clause.

(2)(A) The methodology to be employed in determining income and resource eligibility for individuals under subsection (a)(10)(A)(i)(III), (a)(10)(A)(i)(IV), (a)(10)(A)(i)(VI), (a)(10)(A)(i)(VII), (a)(10)(A)(ii), (a)(10)(C)(i)(III), or (f) or under section 1905(p) may be less restrictive, and shall be no more restrictive, than the methodology—

(i) in the case of groups consisting of aged, blind, or disabled individuals, under the supplemental security income program under title XVI, or

(ii) in the case of other groups, under the State plan most closely categorically related.

(B) For purposes of this subsection and subsection (a)(10), methodology is considered to be "no more restrictive" if, using the methodology, additional individuals may be eligible for medical assistance and no individuals who are otherwise eligible are made ineligible for such assistance.

(s) In order to meet the requirements of subsection (a)(55), the State plan must provide that payments to hospitals under the plan for inpatient hospital services furnished to infants who have not attained the age of 1 year, and to children who have not attained the age of 6 years and who receive such services in a disproportionate share hospital described in section 1923(b)(1), shall—

(1) if made on a prospective basis (whether per diem, per case, or otherwise) provide for an outlier adjustment in payment amounts for medically necessary inpatient hospital services involving exceptionally high costs or exceptionally long lengths of stay,

(2) not be limited by the imposition of day limits with respect to the delivery of such services to such individuals, and

(3) not be limited by the imposition of dollar limits (other than such limits resulting from prospective payments as adjusted pursuant to paragraph (1)) with respect to the delivery of such services to any such individual who has not attained their first birthday (or in the case of such an individual who is an inpatient on his first birthday until such individual is discharged).

(t) Nothing in this title (including sections 1903(a) and 1905(a)) shall be construed as authorizing the Secretary to deny or limit payments to a State for expenditures, for medical assistance for items or services, attributable to taxes of general applicability imposed with respect to the provision of such items or services.

(u)(1) Individuals described in this paragraph are individuals—

(A) who are entitled to elect COBRA continuation coverage (as defined in paragraph (3)),

(B) whose income (as determined under section 1612 for purposes of the supplemental security income program) does not exceed 100 percent of the official poverty line (as defined by the Office of Management and Budget, and revised annually in accordance with section 673(2) of the Omnibus Budget Reconciliation Act of 1981) applicable to a family of the size involved,

(C) whose resources (as determined under section 1613 for purposes of the supplemental security income program) do not exceed twice the maximum amount of resources that an individual may have and obtain benefits under that program, and

(D) with respect to whose enrollment for COBRA continuation coverage the State has determined that the savings in expenditures under this title resulting from such enrollment is likely to exceed the amount of payments for COBRA premiums made.

(2) For purposes of subsection (a)(10)(F) and this subsection, the term “COBRA premiums” means the applicable premium imposed with respect to COBRA continuation coverage.

(3) In this subsection, the term “COBRA continuation coverage” means coverage under a group health plan provided by an employer with 75 or more employees provided pursuant to title XXII of the Public Health Service Act, section 4980B of the Internal Revenue Code of 1986, or title VI of the Employee Retirement Income Security Act of 1974.

(4) Notwithstanding subsection (a)(17), for individuals described in paragraph (1) who are covered under the State plan by virtue of subsection (a)(10)(A)(ii)(XI)—

(A) the income standard to be applied is the income standard described in paragraph (1)(B), and

(B) except as provided in section 1612(b)(4)(B)(ii), costs incurred for medical care or for any other type of remedial care shall not be taken into account in determining income.

Any different treatment provided under this paragraph for such individuals shall not, because of subsection (a)(10)(B) or (a)(17), require or permit such treatment for other individuals.

(v) A State plan may provide for the making of determinations of disability or blindness for the purpose of determining eligibility for medical assistance under the State plan by the single State agency or its designee, and make medical assistance available to

individuals whom it finds to be blind or disabled and who are determined otherwise eligible for such assistance during the period of time prior to which a final determination of disability or blindness is made by the Social Security Administration with respect to such an individual. In making such determinations, the State must apply the definitions of disability and blindness found in section 1614(a) of the Social Security Act.

(w)(1) For purposes of subsection (a)(57) and sections 1903(m)(1)(A) and 1919(c)(2)(E), the requirement of this subsection is that a provider or organization (as the case may be) maintain written policies and procedures with respect to all adult individuals receiving medical care by or through the provider or organization—

(A) to provide written information to each such individual concerning—

(i) an individual's rights under State law (whether statutory or as recognized by the courts of the State) to make decisions concerning such medical care, including the right to accept or refuse medical or surgical treatment and the right to formulate advance directives (as defined in paragraph (3)), and

(ii) the provider's or organization's written policies respecting the implementation of such rights;

(B) to document in the individual's medical record whether or not the individual has executed an advance directive;

(C) not to condition the provision of care or otherwise discriminate against an individual based on whether or not the individual has executed an advance directive;

(D) to ensure compliance with requirements of State law (whether statutory or as recognized by the courts of the State) respecting advance directives; and

(E) to provide (individually or with others) for education for staff and the community on issues concerning advance directives.

Subparagraph (C) shall not be construed as requiring the provision of care which conflicts with an advance directive.

(2) The written information described in paragraph (1)(A) shall be provided to an adult individual—

(A) in the case of a hospital, at the time of the individual's admission as an inpatient,

(B) in the case of a nursing facility, at the time of the individual's admission as a resident,

(C) in the case of a provider of home health care or personal care services, in advance of the individual coming under the care of the provider,

(D) in the case of a hospice program, at the time of initial receipt of hospice care by the individual from the program, and

(E) in the case of a medicaid managed care organization, at the time of enrollment of the individual with the organization.

(3) Nothing in this section shall be construed to prohibit the application of a State law which allows for an objection on the basis of conscience for any health care provider or any agent of such provider which as a matter of conscience cannot implement an advance directive.

(4) In this subsection, the term "advance directive" means a written instruction, such as a living will or durable power of attorney

for health care, recognized under State law (whether statutory or as recognized by the courts of the State) and relating to the provision of such care when the individual is incapacitated.

(5) For construction relating to this subsection, see section 7 of the Assisted Suicide Funding Restriction Act of 1997 (relating to clarification respecting assisted suicide, euthanasia, and mercy killing).

(x) The Secretary shall establish a system, for implementation by not later than July 1, 1991, which provides for a unique identifier for each physician who furnishes services for which payment may be made under a State plan approved under this title.

(y)(1) In addition to any other authority under State law, where a State determines that a psychiatric hospital which is certified for participation under its plan no longer meets the requirements for a psychiatric hospital (referred to in section 1905(h)) and further finds that the hospital's deficiencies—

(A) immediately jeopardize the health and safety of its patients, the State shall terminate the hospital's participation under the State plan; or

(B) do not immediately jeopardize the health and safety of its patients, the State may terminate the hospital's participation under the State plan, or provide that no payment will be made under the State plan with respect to any individual admitted to such hospital after the effective date of the finding, or both.

(2) Except as provided in paragraph (3), if a psychiatric hospital described in paragraph (1)(B) has not complied with the requirements for a psychiatric hospital under this title—

(A) within 3 months after the date the hospital is found to be out of compliance with such requirements, the State shall provide that no payment will be made under the State plan with respect to any individual admitted to such hospital after the end of such 3-month period, or

(B) within 6 months after the date the hospital is found to be out of compliance with such requirements, no Federal financial participation shall be provided under section 1903(a) with respect to further services provided in the hospital until the State finds that the hospital is in compliance with the requirements of this title.

(3) The Secretary may continue payments, over a period of not longer than 6 months from the date the hospital is found to be out of compliance with such requirements, if—

(A) the State finds that it is more appropriate to take alternative action to assure compliance of the hospital with the requirements than to terminate the certification of the hospital,

(B) the State has submitted a plan and timetable for corrective action to the Secretary for approval and the Secretary approves the plan of corrective action, and

(C) the State agrees to repay to the Federal Government payments received under this paragraph if the corrective action is not taken in accordance with the approved plan and timetable.

(z)(1) Individuals described in this paragraph are individuals not described in subsection (a)(10)(A)(i)—

(A) who are infected with tuberculosis;

(B) whose income (as determined under the State plan under this title with respect to disabled individuals) does not exceed the maximum amount of income a disabled individual described in subsection (a)(10)(A)(i) may have and obtain medical assistance under the plan; and

(C) whose resources (as determined under the State plan under this title with respect to disabled individuals) do not exceed the maximum amount of resources a disabled individual described in subsection (a)(10)(A)(i) may have and obtain medical assistance under the plan.

(2) For purposes of subsection (a)(10), the term “TB-related services” means each of the following services relating to treatment of infection with tuberculosis:

(A) Prescribed drugs.

(B) Physicians’ services and services described in section 1905(a)(2).

(C) Laboratory and X-ray services (including services to confirm the presence of infection).

(D) Clinic services and Federally-qualified health center services.

(E) Case management services (as defined in section 1915(g)(2)).

(F) Services (other than room and board) designed to encourage completion of regimens of prescribed drugs by outpatients, including services to observe directly the intake of prescribed drugs.

(aa) Individuals described in this subsection are individuals who—

(1) are not described in subsection (a)(10)(A)(i);

(2) have not attained age 65;

(3) have been screened for breast and cervical cancer under the Centers for Disease Control and Prevention breast and cervical cancer early detection program established under title XV of the Public Health Service Act (42 U.S.C. 300k et seq.) in accordance with the requirements of section 1504 of that Act (42 U.S.C. 300n) and need treatment for breast or cervical cancer; and

(4) are not otherwise covered under creditable coverage, as defined in section 2701(c) of the Public Health Service Act (42 U.S.C. 300gg(c)), but applied without regard to paragraph (1)(F) of such section.

(bb) PAYMENT FOR SERVICES PROVIDED BY FEDERALLY-QUALIFIED HEALTH CENTERS AND RURAL HEALTH CLINICS.—

(1) IN GENERAL.—Beginning with fiscal year 2001 with respect to services furnished on or after January 1, 2001, and each succeeding fiscal year, the State plan shall provide for payment for services described in section 1905(a)(2)(C) furnished by a Federally-qualified health center and services described in section 1905(a)(2)(B) furnished by a rural health clinic in accordance with the provisions of this subsection.

(2) FISCAL YEAR 2001.—Subject to paragraph (4), for services furnished on and after January 1, 2001, during fiscal year 2001, the State plan shall provide for payment for such services in an amount (calculated on a per visit basis) that is equal to 100 percent of the average of the costs of the center or clinic

of furnishing such services during fiscal years 1999 and 2000 which are reasonable and related to the cost of furnishing such services, or based on such other tests of reasonableness as the Secretary prescribes in regulations under section 1833(a)(3), or, in the case of services to which such regulations do not apply, the same methodology used under section 1833(a)(3), adjusted to take into account any increase or decrease in the scope of such services furnished by the center or clinic during fiscal year 2001.

(3) FISCAL YEAR 2002 AND SUCCEEDING FISCAL YEARS.—Subject to paragraph (4), for services furnished during fiscal year 2002 or a succeeding fiscal year, the State plan shall provide for payment for such services in an amount (calculated on a per visit basis) that is equal to the amount calculated for such services under this subsection for the preceding fiscal year—

(A) increased by the percentage increase in the MEI (as defined in section 1842(i)(3)) applicable to primary care services (as defined in section 1842(i)(4)) for that fiscal year; and

(B) adjusted to take into account any increase or decrease in the scope of such services furnished by the center or clinic during that fiscal year.

(4) ESTABLISHMENT OF INITIAL YEAR PAYMENT AMOUNT FOR NEW CENTERS OR CLINICS.—In any case in which an entity first qualifies as a Federally-qualified health center or rural health clinic after fiscal year 2000, the State plan shall provide for payment for services described in section 1905(a)(2)(C) furnished by the center or services described in section 1905(a)(2)(B) furnished by the clinic in the first fiscal year in which the center or clinic so qualifies in an amount (calculated on a per visit basis) that is equal to 100 percent of the costs of furnishing such services during such fiscal year based on the rates established under this subsection for the fiscal year for other such centers or clinics located in the same or adjacent area with a similar case load or, in the absence of such a center or clinic, in accordance with the regulations and methodology referred to in paragraph (2) or based on such other tests of reasonableness as the Secretary may specify. For each fiscal year following the fiscal year in which the entity first qualifies as a Federally-qualified health center or rural health clinic, the State plan shall provide for the payment amount to be calculated in accordance with paragraph (3).

(5) ADMINISTRATION IN THE CASE OF MANAGED CARE.—

(A) IN GENERAL.—In the case of services furnished by a Federally-qualified health center or rural health clinic pursuant to a contract between the center or clinic and a managed care entity (as defined in section 1932(a)(1)(B)), the State plan shall provide for payment to the center or clinic by the State of a supplemental payment equal to the amount (if any) by which the amount determined under paragraphs (2), (3), and (4) of this subsection exceeds the amount of the payments provided under the contract.

(B) PAYMENT SCHEDULE.—The supplemental payment required under subparagraph (A) shall be made pursuant to a payment schedule agreed to by the State and the Feder-

ally-qualified health center or rural health clinic, but in no case less frequently than every 4 months.

(6) ALTERNATIVE PAYMENT METHODOLOGIES.—Notwithstanding any other provision of this section, the State plan may provide for payment in any fiscal year to a Federally-qualified health center for services described in section 1905(a)(2)(C) or to a rural health clinic for services described in section 1905(a)(2)(B) in an amount which is determined under an alternative payment methodology that—

(A) is agreed to by the State and the center or clinic; and

(B) results in payment to the center or clinic of an amount which is at least equal to the amount otherwise required to be paid to the center or clinic under this section.

(cc)(1) Individuals described in this paragraph are individuals—

(A) who are children who have not attained 19 years of age and are born—

(i) on or after January 1, 2001 (or, at the option of a State, on or after an earlier date), in the case of the second, third, and fourth quarters of fiscal year 2007;

(ii) on or after October 1, 1995 (or, at the option of a State, on or after an earlier date), in the case of each quarter of fiscal year 2008; and

(iii) after October 1, 1989, in the case of each quarter of fiscal year 2009 and each quarter of any fiscal year thereafter;

(B) who would be considered disabled under section 1614(a)(3)(C) (as determined under title XVI for children but without regard to any income or asset eligibility requirements that apply under such title with respect to children); and

(C) whose family income does not exceed such income level as the State establishes and does not exceed—

(i) 300 percent of the poverty line (as defined in section 2110(c)(5)) applicable to a family of the size involved; or

(ii) such higher percent of such poverty line as a State may establish, except that—

(I) any medical assistance provided to an individual whose family income exceeds 300 percent of such poverty line may only be provided with State funds; and

(II) no Federal financial participation shall be provided under section 1903(a) for any medical assistance provided to such an individual.

(2)(A) If an employer of a parent of an individual described in paragraph (1) offers family coverage under a group health plan (as defined in section 2791(a) of the Public Health Service Act), the State shall—

(i) notwithstanding section 1906, require such parent to apply for, enroll in, and pay premiums for such coverage as a condition of such parent's child being or remaining eligible for medical assistance under subsection (a)(10)(A)(ii)(XIX) if the parent is determined eligible for such coverage and the employer contributes at least 50 percent of the total cost of annual premiums for such coverage; and

(ii) if such coverage is obtained—



(I) subject to paragraph (2) of section 1916(h), reduce the premium imposed by the State under that section in an amount that reasonably reflects the premium contribution made by the parent for private coverage on behalf of a child with a disability; and

(II) treat such coverage as a third party liability under subsection (a)(25).

(B) In the case of a parent to which subparagraph (A) applies, a State, notwithstanding section 1906 but subject to paragraph (1)(C)(ii), may provide for payment of any portion of the annual premium for such family coverage that the parent is required to pay. Any payments made by the State under this subparagraph shall be considered, for purposes of section 1903(a), to be payments for medical assistance.

(dd) ELECTRONIC TRANSMISSION OF INFORMATION.—If the State agency determining eligibility for medical assistance under this title or child health assistance under title XXI verifies an element of eligibility based on information from an Express Lane Agency (as defined in subsection (e)(13)(F)), or from another public agency, then the applicant's signature under penalty of perjury shall not be required as to such element. Any signature requirement for an application for medical assistance may be satisfied through an electronic signature, as defined in section 1710(1) of the Government Paperwork Elimination Act (44 U.S.C. 3504 note). The requirements of subparagraphs (A) and (B) of section 1137(d)(2) may be met through evidence in digital or electronic form.

(ee)(1) For purposes of subsection (a)(46)(B)(ii), the requirements of this subsection with respect to an individual declaring to be a citizen or national of the United States for purposes of establishing eligibility under this title, are, in lieu of requiring the individual to present satisfactory documentary evidence of citizenship or nationality under section 1903(x) (if the individual is not described in paragraph (2) of that section), as follows:

(A) The State submits the name and social security number of the individual to the Commissioner of Social Security as part of the program established under paragraph (2).

(B) If the State receives notice from the Commissioner of Social Security that the name or social security number, or the declaration of citizenship or nationality, of the individual is inconsistent with information in the records maintained by the Commissioner—

(i) the State makes a reasonable effort to identify and address the causes of such inconsistency, including through typographical or other clerical errors, by contacting the individual to confirm the accuracy of the name or social security number submitted or declaration of citizenship or nationality and by taking such additional actions as the Secretary, through regulation or other guidance, or the State may identify, and continues to provide the individual with medical assistance while making such effort; and

(ii) in the case such inconsistency is not resolved under clause (i), the State—

(I) notifies the individual of such fact;

(II) provides the individual with a period of 90 days from the date on which the notice required under subclause (I) is received by the individual to either present satisfactory documentary evidence of citizenship or nationality (as defined in section 1903(x)(3)) or resolve the inconsistency with the Commissioner of Social Security (and continues to provide the individual with medical assistance during such 90-day period); and

(III) disenrolls the individual from the State plan under this title within 30 days after the end of such 90-day period if no such documentary evidence is presented or if such inconsistency is not resolved.

(2)(A) Each State electing to satisfy the requirements of this subsection for purposes of section 1902(a)(46)(B) shall establish a program under which the State submits at least monthly to the Commissioner of Social Security for comparison of the name and social security number, of each individual newly enrolled in the State plan under this title that month who is not described in section 1903(x)(2) and who declares to be a United States citizen or national, with information in records maintained by the Commissioner.

(B) In establishing the State program under this paragraph, the State may enter into an agreement with the Commissioner of Social Security—

(i) to provide, through an on-line system or otherwise, for the electronic submission of, and response to, the information submitted under subparagraph (A) for an individual enrolled in the State plan under this title who declares to be citizen or national on at least a monthly basis; or

(ii) to provide for a determination of the consistency of the information submitted with the information maintained in the records of the Commissioner through such other method as agreed to by the State and the Commissioner and approved by the Secretary, provided that such method is no more burdensome for individuals to comply with than any burdens that may apply under a method described in clause (i).

(C) The program established under this paragraph shall provide that, in the case of any individual who is required to submit a social security number to the State under subparagraph (A) and who is unable to provide the State with such number, shall be provided with at least the reasonable opportunity to present satisfactory documentary evidence of citizenship or nationality (as defined in section 1903(x)(3)) as is provided under clauses (i) and (ii) of section 1137(d)(4)(A) to an individual for the submittal to the State of evidence indicating a satisfactory immigration status.

(3)(A) The State agency implementing the plan approved under this title shall, at such times and in such form as the Secretary may specify, provide information on the percentage each month that the inconsistent submissions bears to the total submissions made for comparison for such month. For purposes of this subparagraph, a name, social security number, or declaration of citizenship or nationality of an individual shall be treated as inconsistent and included in the determination of such percentage only if—

(i) the information submitted by the individual is not consistent with information in records maintained by the Commissioner of Social Security;

(ii) the inconsistency is not resolved by the State;

(iii) the individual was provided with a reasonable period of time to resolve the inconsistency with the Commissioner of Social Security or provide satisfactory documentation of citizenship status and did not successfully resolve such inconsistency; and

(iv) payment has been made for an item or service furnished to the individual under this title.

(B) If, for any fiscal year, the average monthly percentage determined under subparagraph (A) is greater than 3 percent—

(i) the State shall develop and adopt a corrective plan to review its procedures for verifying the identities of individuals seeking to enroll in the State plan under this title and to identify and implement changes in such procedures to improve their accuracy; and

(ii) pay to the Secretary an amount equal to the amount which bears the same ratio to the total payments under the State plan for the fiscal year for providing medical assistance to individuals who provided inconsistent information as the number of individuals with inconsistent information in excess of 3 percent of such total submitted bears to the total number of individuals with inconsistent information.

(C) The Secretary may waive, in certain limited cases, all or part of the payment under subparagraph (B)(ii) if the State is unable to reach the allowable error rate despite a good faith effort by such State.

(D) Subparagraphs (A) and (B) shall not apply to a State for a fiscal year if there is an agreement described in paragraph (2)(B) in effect as of the close of the fiscal year that provides for the submission on a real-time basis of the information described in such paragraph.

(4) Nothing in this subsection shall affect the rights of any individual under this title to appeal any disenrollment from a State plan.

(ff) Notwithstanding any other requirement of this title or any other provision of Federal or State law, a State shall disregard the following property from resources for purposes of determining the eligibility of an individual who is an Indian for medical assistance under this title:

(1) Property, including real property and improvements, that is held in trust, subject to Federal restrictions, or otherwise under the supervision of the Secretary of the Interior, located on a reservation, including any federally recognized Indian Tribe's reservation, pueblo, or colony, including former reservations in Oklahoma, Alaska Native regions established by the Alaska Native Claims Settlement Act, and Indian allotments on or near a reservation as designated and approved by the Bureau of Indian Affairs of the Department of the Interior.

(2) For any federally recognized Tribe not described in paragraph (1), property located within the most recent boundaries of a prior Federal reservation.

(3) Ownership interests in rents, leases, royalties, or usage rights related to natural resources (including extraction of natural resources or harvesting of timber, other plants and plant products, animals, fish, and shellfish) resulting from the exercise of federally protected rights.

(4) Ownership interests in or usage rights to items not covered by paragraphs (1) through (3) that have unique religious, spiritual, traditional, or cultural significance or rights that support subsistence or a traditional lifestyle according to applicable tribal law or custom.

(gg) MAINTENANCE OF EFFORT.—

(1) GENERAL REQUIREMENT TO MAINTAIN ELIGIBILITY STANDARDS UNTIL STATE EXCHANGE IS FULLY OPERATIONAL.—Subject to the succeeding paragraphs of this subsection, during the period that begins on the date of enactment of the Patient Protection and Affordable Care Act and ends on the date on which the Secretary determines that an Exchange established by the State under section 1311 of the Patient Protection and Affordable Care Act is fully operational, as a condition for receiving any Federal payments under section 1903(a) for calendar quarters occurring during such period, a State shall not have in effect eligibility standards, methodologies, or procedures under the State plan under this title or under any waiver of such plan that is in effect during that period, that are more restrictive than the eligibility standards, methodologies, or procedures, respectively, under the plan or waiver that are in effect on the date of enactment of the Patient Protection and Affordable Care Act.

(2) CONTINUATION OF ELIGIBILITY STANDARDS FOR CHILDREN THROUGH SEPTEMBER 30, 2027.—The requirement under paragraph (1) shall continue to apply to a State through September 30, 2027 (but during the period that begins on October 1, 2019, and ends on September 30, 2027 only with respect to children in families whose income does not exceed 300 percent of the poverty line (as defined in section 2110(c)(5)) applicable to a family of the size involved) with respect to the eligibility standards, methodologies, and procedures under the State plan under this title or under any waiver of such plan that are applicable to determining the eligibility for medical assistance of any child who is under 19 years of age (or such higher age as the State may have elected).

(3) NONAPPLICATION.—During the period that begins on January 1, 2011, and ends on December 31, 2013, the requirement under paragraph (1) shall not apply to a State with respect to nonpregnant, nondisabled adults who are eligible for medical assistance under the State plan or under a waiver of the plan at the option of the State and whose income exceeds 133 percent of the poverty line (as defined in section 2110(c)(5)) applicable to a family of the size involved if, on or after December 31, 2010, the State certifies to the Secretary that, with respect to the State fiscal year during which the certification is made, the State has a budget deficit, or with respect to the succeeding State fiscal year, the State is projected to have a budget deficit. Upon submission of such a certification to the Secretary, the requirement under paragraph (1) shall not apply to

the State with respect to any remaining portion of the period described in the preceding sentence.

(4) DETERMINATION OF COMPLIANCE.—

(A) STATES SHALL APPLY MODIFIED ADJUSTED GROSS INCOME.—A State's determination of income in accordance with subsection (e)(14) shall not be considered to be eligibility standards, methodologies, or procedures that are more restrictive than the standards, methodologies, or procedures in effect under the State plan or under a waiver of the plan on the date of enactment of the Patient Protection and Affordable Care Act for purposes of determining compliance with the requirements of paragraph (1), (2), or (3).

(B) STATES MAY EXPAND ELIGIBILITY OR MOVE WAIVERED POPULATIONS INTO COVERAGE UNDER THE STATE PLAN.—With respect to any period applicable under paragraph (1), (2), or (3), a State that applies eligibility standards, methodologies, or procedures under the State plan under this title or under any waiver of the plan that are less restrictive than the eligibility standards, methodologies, or procedures, applied under the State plan or under a waiver of the plan on the date of enactment of the Patient Protection and Affordable Care Act, or that makes individuals who, on such date of enactment, are eligible for medical assistance under a waiver of the State plan, after such date of enactment eligible for medical assistance through a State plan amendment with an income eligibility level that is not less than the income eligibility level that applied under the waiver, or as a result of the application of subclause (VIII) of section 1902(a)(10)(A)(i), shall not be considered to have in effect eligibility standards, methodologies, or procedures that are more restrictive than the standards, methodologies, or procedures in effect under the State plan or under a waiver of the plan on the date of enactment of the Patient Protection and Affordable Care Act for purposes of determining compliance with the requirements of paragraph (1), (2), or (3).

(hh)(1) A State may elect to phase-in the extension of eligibility for medical assistance to individuals described in subclause (XX) of subsection (a)(10)(A)(ii) based on the categorical group (including nonpregnant childless adults) or income, so long as the State does not extend such eligibility to individuals described in such subclause with higher income before making individuals described in such subclause with lower income eligible for medical assistance.

(2) If an individual described in subclause (XX) of subsection (a)(10)(A)(ii) is the parent of a child who is under 19 years of age (or such higher age as the State may have elected) who is eligible for medical assistance under the State plan or under a waiver of such plan, the individual may not be enrolled under the State plan unless the individual's child is enrolled under the State plan or under a waiver of the plan or is enrolled in other health insurance coverage. For purposes of the preceding sentence, the term "parent" includes an individual treated as a caretaker relative for purposes of carrying out section 1931.

(ii)(1) Individuals described in this subsection are individuals—

(A) whose income does not exceed an income eligibility level established by the State that does not exceed the highest income eligibility level established under the State plan under this title (or under its State child health plan under title XXI) for pregnant women; and

(B) who are not pregnant.

(2) At the option of a State, individuals described in this subsection may include individuals who, had individuals applied on or before January 1, 2007, would have been made eligible pursuant to the standards and processes imposed by that State for benefits described in clause (XVI) of the matter following subparagraph (G) of section subsection (a)(10) pursuant to a waiver granted under section 1115.

(3) At the option of a State, for purposes of subsection (a)(17)(B), in determining eligibility for services under this subsection, the State may consider only the income of the applicant or recipient.

(jj) PRIMARY CARE SERVICES DEFINED.—For purposes of subsection (a)(13)(C), the term “primary care services” means—

(1) evaluation and management services that are procedure codes (for services covered under title XVIII) for services in the category designated Evaluation and Management in the Healthcare Common Procedure Coding System (established by the Secretary under section 1848(c)(5) as of December 31, 2009, and as subsequently modified); and

(2) services related to immunization administration for vaccines and toxoids for which CPT codes 90465, 90466, 90467, 90468, 90471, 90472, 90473, or 90474 (as subsequently modified) apply under such System.

(kk) PROVIDER AND SUPPLIER SCREENING, OVERSIGHT, AND REPORTING REQUIREMENTS.—For purposes of subsection (a)(77), the requirements of this subsection are the following:

(1) SCREENING.—The State complies with the process for screening providers and suppliers under this title, as established by the Secretary under section 1866(j)(2).

(2) PROVISIONAL PERIOD OF ENHANCED OVERSIGHT FOR NEW PROVIDERS AND SUPPLIERS.—The State complies with procedures to provide for a provisional period of enhanced oversight for new providers and suppliers under this title, as established by the Secretary under section 1866(j)(3).

(3) DISCLOSURE REQUIREMENTS.—The State requires providers and suppliers under the State plan or under a waiver of the plan to comply with the disclosure requirements established by the Secretary under section 1866(j)(5).

(4) TEMPORARY MORATORIUM ON ENROLLMENT OF NEW PROVIDERS OR SUPPLIERS.—

(A) TEMPORARY MORATORIUM IMPOSED BY THE SECRETARY.—

(i) IN GENERAL.—Subject to clause (ii), the State complies with any temporary moratorium on the enrollment of new providers or suppliers imposed by the Secretary under section 1866(j)(7).

(ii) EXCEPTIONS.—

(I) COMPLIANCE WITH MORATORIUM.—A State shall not be required to comply with a temporary

moratorium described in clause (i) if the State determines that the imposition of such temporary moratorium would adversely impact beneficiaries' access to medical assistance.

(II) FFP AVAILABLE.—Notwithstanding section 1903(i)(2)(E), payment may be made to a State under this title with respect to amounts expended for items and services described in such section if the Secretary, in consultation with the State agency administering the State plan under this title (or a waiver of the plan), determines that denying payment to the State pursuant to such section would adversely impact beneficiaries' access to medical assistance.

(iii) LIMITATION ON CHARGES TO BENEFICIARIES.—With respect to any amount expended for items or services furnished during calendar quarters beginning on or after October 1, 2017, the State prohibits, during the period of a temporary moratorium described in clause (i), a provider meeting the requirements specified in subparagraph (C)(iii) of section 1866(j)(7) from charging an individual or other person eligible to receive medical assistance under the State plan under this title (or a waiver of the plan) for an item or service described in section 1903(i)(2)(E) furnished to such an individual.

(B) MORATORIUM ON ENROLLMENT OF PROVIDERS AND SUPPLIERS.—At the option of the State, the State imposes, for purposes of entering into participation agreements with providers or suppliers under the State plan or under a waiver of the plan, periods of enrollment moratoria, or numerical caps or other limits, for providers or suppliers identified by the Secretary as being at high-risk for fraud, waste, or abuse as necessary to combat fraud, waste, or abuse, but only if the State determines that the imposition of any such period, cap, or other limits would not adversely impact beneficiaries' access to medical assistance.

(5) COMPLIANCE PROGRAMS.—The State requires providers and suppliers under the State plan or under a waiver of the plan to establish, in accordance with the requirements of section 1866(j)(7), a compliance program that contains the core elements established under subparagraph (B) of that section 1866(j)(7) for providers or suppliers within a particular industry or category.

(6) REPORTING OF ADVERSE PROVIDER ACTIONS.—The State complies with the national system for reporting criminal and civil convictions, sanctions, negative licensure actions, and other adverse provider actions to the Secretary, through the Administrator of the Centers for Medicare & Medicaid Services, in accordance with regulations of the Secretary.

(7) ENROLLMENT AND NPI OF ORDERING OR REFERRING PROVIDERS.—The State requires—

(A) all ordering or referring physicians or other professionals to be enrolled under the State plan or under a waiver of the plan as a participating provider; and

(B) the national provider identifier of any ordering or referring physician or other professional to be specified on any claim for payment that is based on an order or referral of the physician or other professional.

(8) PROVIDER TERMINATIONS.—

(A) IN GENERAL.—Beginning on July 1, 2018, in the case of a notification under subsection (a)(41) with respect to a termination for a reason specified in section 455.101 of title 42, Code of Federal Regulations (as in effect on November 1, 2015) or for any other reason specified by the Secretary, of the participation of a provider of services or any other person under the State plan (or under a waiver of the plan), the State, not later than 30 days after the effective date of such termination, submits to the Secretary with respect to any such provider or person, as appropriate—

- (i) the name of such provider or person;
- (ii) the provider type of such provider or person;
- (iii) the specialty of such provider's or person's practice;
- (iv) the date of birth, Social Security number, national provider identifier (if applicable), Federal taxpayer identification number, and the State license or certification number of such provider or person (if applicable);
- (v) the reason for the termination;
- (vi) a copy of the notice of termination sent to the provider or person;
- (vii) the date on which such termination is effective, as specified in the notice; and
- (viii) any other information required by the Secretary.

(B) EFFECTIVE DATE DEFINED.—For purposes of this paragraph, the term “effective date” means, with respect to a termination described in subparagraph (A), the later of—

- (i) the date on which such termination is effective, as specified in the notice of such termination; or
- (ii) the date on which all appeal rights applicable to such termination have been exhausted or the timeline for any such appeal has expired.

(9) OTHER STATE OVERSIGHT.—Nothing in this subsection shall be interpreted to preclude or limit the ability of a State to engage in provider and supplier screening or enhanced provider and supplier oversight activities beyond those required by the Secretary.

(11) TERMINATION NOTIFICATION DATABASE.—In the case of a provider of services or any other person whose participation under this title or title XXI is terminated (as described in subsection (kk)(8)), the Secretary shall, not later than 30 days after the date on which the Secretary is notified of such termination under subsection (a)(41) (as applicable), review such termination and, if the Secretary determines appropriate, include such termination in any database or similar system developed pursuant to section 6401(b)(2) of the Patient Protection and Affordable Care Act (42 U.S.C. 1395cc note; Public Law 111–148).



(mm) DIRECTORY PHYSICIAN OR PROVIDER DESCRIBED.—A physician or provider described in this subsection is—

(1) in the case of a physician or provider of a provider type for which the State agency, as a condition on receiving payment for items and services furnished by the physician or provider to individuals eligible to receive medical assistance under the State plan, requires the enrollment of the physician or provider with the State agency, a physician or a provider that—

(A) is enrolled with the agency as of the date on which the directory is published or updated (as applicable) under subsection (a)(83); and

(B) received payment under the State plan in the 12-month period preceding such date; and

(2) in the case of a physician or provider of a provider type for which the State agency does not require such enrollment, a physician or provider that received payment under the State plan (or a waiver of the plan) in the 12-month period preceding the date on which the directory is published or updated (as applicable) under subsection (a)(83).

(nn) JUVENILE; ELIGIBLE JUVENILE; PUBLIC INSTITUTION.—For purposes of subsection (a)(84) and this subsection:

(1) JUVENILE.—The term “juvenile” means an individual who is—

(A) under 21 years of age; or

(B) described in subsection (a)(10)(A)(i)(IX).

(2) ELIGIBLE JUVENILE.—The term “eligible juvenile” means a juvenile who is an inmate of a public institution and who—

(A) was determined eligible for medical assistance under the State plan immediately before becoming an inmate of such a public institution; or

(B) is determined eligible for such medical assistance while an inmate of a public institution.

(3) INMATE OF A PUBLIC INSTITUTION.—The term “inmate of a public institution” has the meaning given such term for purposes of applying the subdivision (A) following paragraph (30) of section 1905(a), taking into account the exception in such subdivision for a patient of a medical institution.

(oo) DRUG REVIEW AND UTILIZATION REQUIREMENTS.—

(1) IN GENERAL.—For purposes of subsection (a)(85), the drug review and utilization requirements under this subsection are, subject to paragraph (3) and beginning October 1, 2019, the following:

(A) CLAIMS REVIEW LIMITATIONS.—

(i) IN GENERAL.—The State has in place—

(I) safety edits (as specified by the State) for subsequent fills for opioids and a claims review automated process (as designed and implemented by the State) that indicates when an individual enrolled under the State plan (or under a waiver of the State plan) is prescribed a subsequent fill of opioids in excess of any limitation that may be identified by the State;

(II) safety edits (as specified by the State) on the maximum daily morphine equivalent that can be prescribed to an individual enrolled under the

State plan (or under a waiver of the State plan) for treatment of chronic pain and a claims review automated process (as designed and implemented by the State) that indicates when an individual enrolled under the plan (or waiver) is prescribed the morphine equivalent for such treatment in excess of any limitation that may be identified by the State; and

(III) a claims review automated process (as designed and implemented by the State) that monitors when an individual enrolled under the State plan (or under a waiver of the State plan) is concurrently prescribed opioids and—

(aa) benzodiazepines; or

(bb) antipsychotics.

(ii) **MANAGED CARE ENTITIES.**—The State requires each managed care entity (as defined in section 1932(a)(1)(B)) with respect to which the State has a contract under section 1903(m) or under section 1905(t)(3) to have in place, subject to paragraph (3), with respect to individuals who are eligible for medical assistance under the State plan (or under a waiver of the State plan) and who are enrolled with the entity, the limitations described in subclauses (I) and (II) of clause (i) and a claims review automated process described in subclause (III) of such clause.

(iii) **RULES OF CONSTRUCTION.**—Nothing in this subparagraph may be construed as prohibiting a State or managed care entity from designing and implementing a claims review automated process under this subparagraph that provides for prospective or retrospective reviews of claims. Nothing in this subparagraph shall be understood as prohibiting the exercise of clinical judgment from a provider enrolled as a participating provider in a State plan (or waiver of the State plan) or contracting with a managed care entity regarding the best items and services for an individual enrolled under such State plan (or waiver).

(B) **PROGRAM TO MONITOR ANTIPSYCHOTIC MEDICATIONS BY CHILDREN.**—The State has in place a program (as designed and implemented by the State) to monitor and manage the appropriate use of antipsychotic medications by children enrolled under the State plan (or under a waiver of the State plan) and submits annually to the Secretary such information as the Secretary may require on activities carried out under such program for individuals not more than the age of 18 years generally and children in foster care specifically.

(C) **FRAUD AND ABUSE IDENTIFICATION.**—The State has in place a process (as designed and implemented by the State) that identifies potential fraud or abuse of controlled substances by individuals enrolled under the State plan (or under a waiver of the State plan), health care providers prescribing drugs to individuals so enrolled, and pharmacies dispensing drugs to individuals so enrolled.

(D) REPORTS.—The State shall include in the annual report submitted to the Secretary under section 1927(g)(3)(D) information on the limitations, requirement, program, and processes applied by the State under subparagraphs (A) through (C) in accordance with such manner and time as specified by the Secretary.

(E) CLARIFICATION.—Nothing shall prevent a State from satisfying the requirement—

(i) described in subparagraph (A) by having safety edits or a claims review automated process described in such subparagraph that was in place before October 1, 2019;

(ii) described in subparagraph (B) by having a program described in such subparagraph that was in place before such date; or

(iii) described in subparagraph (C) by having a process described in such subparagraph that was in place before such date.

(2) ANNUAL REPORT BY SECRETARY.—For each fiscal year beginning with fiscal year 2020, the Secretary shall submit to Congress a report on the most recent information submitted by States under paragraph (1)(D).

(3) EXCEPTIONS.—

(A) CERTAIN INDIVIDUALS EXEMPTED.—The drug review and utilization requirements under this subsection shall not apply with respect to an individual who—

(i) is receiving—

(I) hospice or palliative care; or

(II) treatment for cancer;

(ii) is a resident of a long-term care facility, of a facility described in section 1905(d), or of another facility for which frequently abused drugs are dispensed for residents through a contract with a single pharmacy; or

(iii) the State elects to treat as exempted from such requirements.

(B) EXCEPTION RELATING TO ENSURING ACCESS.—In order to ensure reasonable access to health care, the Secretary shall waive the drug review and utilization requirements under this subsection, with respect to a State, in the case of natural disasters and similar situations, and in the case of the provision of emergency services (as defined for purposes of section 1860D-4(c)(5)(D)(ii)(II)).

(pp) RESIDENTIAL PEDIATRIC RECOVERY CENTER DEFINED.—

(1) IN GENERAL.—For purposes of section 1902(a)(86), the term “residential pediatric recovery center” means a center or facility that furnishes items and services for which medical assistance is available under the State plan to infants with the diagnosis of neonatal abstinence syndrome without any other significant medical risk factors.

(2) COUNSELING AND SERVICES.—A residential pediatric recovery center may offer counseling and other services to mothers (and other appropriate family members and caretakers) of infants receiving treatment at such centers if such services are otherwise covered under the State plan under this title or

under a waiver of such plan. Such other services may include the following:

- (A) Counseling or referrals for services.
- (B) Activities to encourage caregiver-infant bonding.
- (C) Training on caring for such infants.

(qq) APPLICATION OF CERTAIN DATA REPORTING AND PROGRAM INTEGRITY REQUIREMENTS TO NORTHERN MARIANA ISLANDS, AMERICAN SAMOA, AND GUAM.—

(1) IN GENERAL.—Not later than October 1, 2021, the Northern Mariana Islands, American Samoa, and Guam shall—

(A) demonstrate progress in implementing methods, satisfactory to the Secretary, for the collection and reporting of reliable data to the Transformed Medicaid Statistical Information System (T-MSIS) (or a successor system); and

(B) demonstrate progress in establishing a State medicaid fraud control unit described in section 1903(q).

(2) DETERMINATION OF PROGRESS.—For purposes of paragraph (1), the Secretary shall deem that a territory described in such paragraph has demonstrated satisfactory progress in implementing methods for the collection and reporting of reliable data or establishing a State medicaid fraud control unit if the territory has made a good faith effort to implement such methods or establish such a unit, given the circumstances of the territory.

(rr) PROGRAM INTEGRITY REQUIREMENTS FOR PUERTO RICO.—

(1) SYSTEM FOR TRACKING FEDERAL MEDICAID FUNDING PROVIDED TO PUERTO RICO.—

(A) IN GENERAL.—Puerto Rico shall establish and maintain a system, which may include the use of a quarterly Form CMS-64, for tracking any amounts paid by the Federal Government to Puerto Rico with respect to the State plan of Puerto Rico (or a waiver of such plan). Under such system, Puerto Rico shall ensure that information is available, with respect to each quarter in a fiscal year (beginning with the first quarter beginning on or after the date that is 1 year after the date of the enactment of this subsection), on the following:

(i) In the case of a quarter other than the first quarter of such fiscal year—

(I) the total amount expended by Puerto Rico during any previous quarter of such fiscal year under the State plan of Puerto Rico (or a waiver of such plan); and

(II) a description of how such amount was so expended.

(ii) The total amount that Puerto Rico expects to expend during the quarter under the State plan of Puerto Rico (or a waiver of such plan), and a description of how Puerto Rico expects to expend such amount.

(B) REPORT TO CMS.—For each quarter with respect to which Puerto Rico is required under subparagraph (A) to ensure that information described in such subparagraph is available, Puerto Rico shall submit to the Administrator of the Centers for Medicare & Medicaid Services a report on

such information for such quarter, which may include the submission of a quarterly Form CMS-37.

(2) SUBMISSION OF DOCUMENTATION ON CONTRACTS UPON REQUEST.—Puerto Rico shall, upon request, submit to the Administrator of the Centers for Medicare & Medicaid Services all documentation requested with respect to contracts awarded under the State plan of Puerto Rico (or a waiver of such plan).

(3) REPORTING ON MEDICAID AND CHIP SCORECARD MEASURES.—Beginning 12 months after the date of enactment of this subsection, Puerto Rico shall begin to report to the Administrator of the Centers for Medicare & Medicaid Services on selected measures included in the Medicaid and CHIP Scorecard developed by the Centers for Medicare & Medicaid Services.

(ss) UNINSURED INDIVIDUAL DEFINED.—For purposes of this section, the term “uninsured individual” means, notwithstanding any other provision of this title, any individual who is—

(1) not described in subsection (a)(10)(A)(i) (excluding subclause (VIII) of such subsection if the individual is a resident of a State which does not furnish medical assistance to individuals described in such subclause); and

(2) not enrolled in a Federal health care program (as defined in section 1128B(f)), a group health plan, group or individual health insurance coverage offered by a health insurance issuer (as such terms are defined in section 2791 of the Public Health Service Act), or a health plan offered under chapter 89 of title 5, United States Code, except that individuals who are eligible for medical assistance under subsection (a)(10)(A)(ii)(XII), subsection (a)(10)(A)(ii)(XVIII), subsection (a)(10)(A)(ii)(XXI), or subsection (a)(10)(C) (but only to the extent such an individual is considered to not have minimum essential coverage under section 5000A(f)(1) of the Internal Revenue Code of 1986), or who are described in subsection (l)(1)(A) and are eligible for medical assistance only because of subsection (a)(10)(A)(i)(IV) or (a)(10)(A)(ii)(IX) and whose eligibility for such assistance is limited by the State under clause (VII) in the matter following subsection (a)(10)(G), shall not be treated as enrolled in a Federal health care program for purposes of this paragraph.

\* \* \* \* \*

## MINORITY VIEWS

### INTRODUCTION

Nutrition programs for children were very important during the pandemic as providers utilized flexibilities to serve students in unique ways. While the pandemic is over, child nutrition programs are just beginning to return to operating in accordance with the law. It is irresponsible to discuss significant reforms to the underlying child nutrition laws while schools and other program operators are still working on getting the programs back to normal operation. Worse, the Democrats' recent spending splurge has left every taxpayer dealing with significant inflation. Increasing spending by tens of billions of dollars on these programs is reckless and demonstrates a lack of economic understanding.

### SUMMARY OF CONCERNS

Republicans did not offer a substitute amendment because this is the wrong time to reauthorize these programs. The waivers allowed during the pandemic are still in place for some issues, such as mealtime changes, monitoring flexibility, and parent pick-up when a child is sick due to COVID. Other waivers have just ended, such as allowing area eligibility for all regions for the summer program and allowing schools to participate in the summer program. Because those waivers remain in place, operators have not had time to learn what changes may be needed to improve these programs for the future. The Democrats' bill largely legislates by looking backwards and grants the policy wishes of their members; it is not a bill that actually improves the situation on the ground for students and schools. Congress already acted to help schools deal with inflation and return to regular operation; this legislation complicates that process for schools and other program operators.

This bill dramatically increases costs and burdens by unnecessarily expanding existing programs. The Committee did not have a cost estimate for the bill prior to the markup, but it is anticipated to add tens of billions of dollars to taxpayers' debt. One program which the bill expands is Community Eligibility. This expansion will increase costs for taxpayers by providing more free meals to those families that can afford to pay their fair share. Additionally, the bill significantly expands the summer food service program by expanding the Summer Electronic Benefits Transfer program. This change is not accompanied by any additional cuts or changes to the current summer program, creating significant integrity concerns by potentially providing duplicate meals for many children. These changes are all made without any offsets within the program.

The bill also expands the authority of the federal government unnecessarily. The bill first does this by wildly overstepping the appropriate limits of the federal government by requiring the Sec-

retary of the U.S. Department of Agriculture (USDA) to issue guidance on the school day schedule, specifically the length of lunch. Scheduling the school day is a hyper-local issue, not the concern of the Secretary of USDA. The bill also creates a new advisory committee on unpaid meal debt. While unpaid debt certainly harms both schools and students, a task force in D.C. is not going to solve the problem.

The Democrats' bill also requires another review of the Buy American requirement. This issue is another example of why moving this bill now is inappropriate. Before beginning a complicated process to address concerns with the Buy American requirements, schools need a chance to understand the market and the challenges that remain in implementing those requirements. The provision adding an additional Buy American review in H.R. 8450 will likely result in the status quo remaining in place—after significant paperwork burden is added to schools and states.

Finally, while it is premature to consider this bill now, the Democrats' bill misses opportunities which could in fact be addressed at this time. First, the bill fails to simplify child nutrition programs, but instead requires additional and overlapping regulations that will increase program costs and complexity. Requiring new regulations on additives and "other potentially harmful substances" increases complexity and costs, and it leaves schools and other program providers unsure about what foods are allowable in the program. Second, the bill fails to address significant administrative issues long known in the programs. This includes limiting unnecessary administrative reviews, preventing the challenges created by the last school meal programs' regulations, and removing onerous requirements like paid meal equity.

#### *Republican Amendments*

While Republicans did not offer a comprehensive substitute, there were several amendments offered that would improve the bill and the program overall if enacted. Those include the following:

Rep. McClain and Rep. Fulcher offered—and withdrew—an amendment to ensure potatoes remain allowable as vegetable under the programs.

Rep. McClain offered an amendment to prohibit all new changes from being enacted unless an independent study is conducted to ensure the program won't increase inflation or the changes can be implemented once inflation drops to 2 percent. This amendment was defeated in a roll call vote.

Rep. Thompson, along with Rep. Stefanik, Rep. Fulcher, and Rep. Keller, offered an amendment to address whole milk and chocolate milk in school meals and allow greater choice of milk in the Women, Infant and Children (WIC) program. This amendment was defeated by a voice vote.

Rep. Stefanik offered an amendment that would address the infant formula contracting requirements in WIC by requiring two manufacturers per state or state consortia. While it received bipartisan support, the amendment failed by roll call vote.

Rep. Good and Rep. Miller offered—and withdrew—an amendment to require nutrition regulations promulgated under the bill to make grain-based desserts eligible for reimbursement.

Rep. Walberg offered an amendment to ensure food substitutions for religious needs are allowed. This amendment was adopted.

Rep. Miller and Rep. Good offered an amendment to eliminate the change the Democrats made to the definition of woman and therefore to re-define pregnant woman, breastfeeding woman, and postpartum woman as a woman. This amendment was defeated on a party line vote.

Rep. Grothman and Rep. Harshbarger offered an amendment to prohibit enforcement of the May 5, 2022, memo on Title IX enforcement as it relates to child nutrition programs. This amendment was defeated on a partisan vote.

Rep. Harshbarger offered an amendment to require a feasibility study before issuing new regulations. This study would determine the cost increase these potential standards would impose, the timeline for availability of food meeting these standards, and the increase to plate waste these standards might cause. This amendment was also defeated on a party line vote.

#### CONCLUSION

Nutrition programs for children are critical for those in need. Proper nutrition supports strong development and helps students learn and thrive in school. Instead of fixing problems in the program and ensuring the programs are back to operating as intended, the Democrats' bill adds layers of bureaucracy through new programs and significantly expands failing programs. When inflation is at a forty year high, Congress should rein in reckless spending and target programs to those who need support the most. This bill misses the mark on integrity, misses the mark on improving existing programs, and misses the mark on protecting taxpayers.

VIRGINIA FOXX,  
*Ranking Member.*  
 JOE WILSON.  
 GLENN "GT" THOMPSON.  
 TIM WALBERG.  
 GLENN GROTHMAN.  
 RICK W. ALLEN.  
 JIM BANKS.  
 JAMES COMER.  
 RUSS FULCHER  
 FRED KELLER  
 MARIANNETTE MILLER MEEKS,  
 M.D.  
 BURGESS OWENS.  
 BOB GOOD.  
 LISA C. McCLAIN.  
 MARY E. MILLER.  
 SCOTT FITZGERALD.  
 CHRIS JACOBS.  
 JOE SEMPOLINSKI.