

CHILD NUTRITION ACT OF 1966

[As Amended Through P.L. 111–296, Effective Dec. 13, 2010]

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AN ACT

To strengthen and expand food service programs for children.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, [42 U.S.C. 1771 note] That this Act may be cited as the “Child Nutrition Act of 1966”.¹⁻¹

DECLARATION OF PURPOSE

SEC. 2. [42 U.S.C. 1771] In recognition of the demonstrated relationship between food and good nutrition and the capacity of children to develop and learn, based on the years of cumulative successful experience under the national school lunch program with its significant contributions in the field of applied nutrition research, it is hereby declared to be the policy of Congress that these efforts shall be extended, expanded, and strengthened under the authority of the Secretary of Agriculture as a measure to safeguard the health and well-being of the Nation’s children, and to encourage the domestic consumption of agricultural and other foods, by assisting States, through grants-in-aid and other means, to meet more effectively the nutritional needs of our children.

SPECIAL MILK PROGRAM AUTHORIZATION

SEC. 3. [42 U.S.C. 1772] (a)(1) There is hereby authorized to be appropriated for the fiscal year ending June 30, 1970, and for each succeeding fiscal year such sums as may be necessary to enable the Secretary of Agriculture, under such rules and regulations as the Secretary may deem in the public interest, to encourage consumption of fluid milk by children in the United States in (A) nonprofit schools of high school grade and under, except as provided in paragraph (2), which do not participate in a meal service program authorized under this Act or the Richard B. Russell National School Lunch Act [(42 U.S.C. 1751 et seq.)], and (B) nonprofit nursery schools, child-care centers, settlement houses, summer camps, and similar nonprofit institutions devoted to the care and training of children, which do not participate in a meal service program authorized under this Act or the Richard B. Russell National School Lunch Act.

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

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

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

¹⁻¹ P.L. 89-642, 80 Stat. 885, Oct. 11, 1966.

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

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

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

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

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

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

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

SCHOOL BREAKFAST PROGRAM AUTHORIZATION

SEC. 4. [42 U.S.C. 1773] (a) There is hereby authorized to be appropriated such sums as are necessary to enable the Secretary to carry out a program to assist the States and the Department of Defense through grants-in-aid and other means to initiate, maintain, or expand nonprofit breakfast programs in all schools which make application for assistance and agree to carry out a nonprofit breakfast program in accordance with this Act. Appropriations and expenditures for this Act shall be considered Health and Human Services functions for budget purposes rather than functions of Agriculture.

APPORTIONMENT TO STATES

(b)(1)(A)(i) The Secretary shall make breakfast 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 an amount equal to the product obtained by multiplying—

(I) the number of breakfasts served during such fiscal year to children in schools in such States which participate in the school breakfast program under agreements with such State educational agency; by

(II) the national average breakfast payment for free breakfasts, for reduced price breakfasts, or for breakfasts served to children not eligible for free or reduced price meals, as appropriate, as prescribed in clause (B) of this paragraph.

(ii) The agreements described in clause (i)(I) shall be permanent agreements that may be amended as necessary. Nothing in the preceding sentence shall be construed to limit the ability of the State educational agency to suspend or terminate any such agreement in accordance with regulations prescribed by the Secretary.

(B) The national average payment for each free breakfast shall be 57 cents (as adjusted pursuant to section 11(a) of the Richard B. Russell National School Lunch Act [(42 U.S.C. 1759a(a))]). The national average payment for each reduced price breakfast shall be one-half of the national average payment for each free breakfast, except that in no case shall the difference between the amount of the national average payment for a free breakfast and the national average payment for a reduced price breakfast exceed 30 cents. The national average payment for each breakfast served to a child not eligible for free or reduced price meals shall be 8.25 cents (as adjusted pursuant to section 11(a) of the Richard B. Russell National School Lunch Act).

(C) No school which receives breakfast assistance payments under this section may charge a price of more than 30 cents for a reduced price breakfast.

(D) No breakfast assistance payment may be made under this subsection for any breakfast served by a school unless such breakfast consists of a combination of foods which meet the minimum nutritional requirements prescribed by the Secretary under subsection (e) of this section.

(E) FREE AND REDUCED PRICE POLICY STATEMENT.—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. 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.

(2)(A) The Secretary shall make additional payments for breakfasts served to children qualifying for a free or reduced price meal at schools that are in severe need.

(B) The maximum payment for each such free breakfast shall be the higher of—

(i) the national average payment established by the Secretary for free breakfasts plus 10 cents, or

(ii) 45 cents (as adjusted pursuant to section 11(a)(3)(B) of the Richard B. Russell National School Lunch Act (42 U.S.C. 1759a(a)(3)(B))).

(C) The maximum payment for each such reduced price breakfast shall be thirty cents less than the maximum payment for each free breakfast as determined under clause (B) of this paragraph.

(3) The Secretary shall increase by 6 cents the annually adjusted payment for each breakfast served under this Act and section 17 of the Richard B. Russell National School Lunch Act. These funds shall be used to assist States, to the extent feasible, in improving the nutritional quality of the breakfasts.

(4) Notwithstanding any other provision of law, whenever stocks of agricultural commodities are acquired by the Secretary or the Commodity Credit Corporation and are not likely to be sold by the Secretary or the Commodity Credit Corporation or otherwise used in programs of commodity sale or distribution, the Secretary shall make such commodities available to school food authorities and eligible institutions serving breakfasts under this Act in a quantity equal in value to not less than 3 cents for each breakfast served under this Act and section 17 of the Richard B. Russell National School Lunch Act.

(5) Expenditures of funds from State and local sources for the maintenance of the breakfast program shall not be diminished as a result of funds or commodities received under paragraph (3) or (4).

STATE DISBURSEMENT TO SCHOOLS

(c) Funds apportioned and paid to any State for the purpose of this section shall be disbursed by the State educational agency to schools selected by the State educational agency to assist such schools in operating a breakfast program and for the purpose of subsection (d). Disbursement to schools shall be made at such rates per meal or on such other basis as the Secretary shall prescribe. In selecting schools for participation, the State educational agency shall, to the extent practicable, give first consideration to those schools drawing attendance from areas in which poor economic conditions exist, to those schools in which a substantial proportion of the children enrolled must travel long distances daily, and to those schools in which there is a special need for improving the nutrition and dietary practices of children of working mothers and children from low-income families. Breakfast assistance disbursements to schools under this section may be made in advance or by way of reimbursement in accordance with procedures prescribed by the Secretary.

(d) SEVERE NEED ASSISTANCE.—

(1) IN GENERAL.—Each State educational agency shall provide additional assistance to schools in severe need, which shall include only those schools (having a breakfast program or desiring to initiate a breakfast program) in which—

(A) during the most recent second preceding school year for which lunches were served, 40 percent or more of the lunches served to students at the school were served free or at a reduced price; or

(B) in the case of a school in which lunches were not served during the most recent second preceding school year, the Secretary otherwise determines that the requirements of subparagraph (A) would have been met.

(2) ADDITIONAL ASSISTANCE.—A school, on the submission of appropriate documentation about the need circumstances in

that school and the eligibility of the school for additional assistance, shall be entitled to receive the meal reimbursement rate specified in subsection (b)(2).

NUTRITIONAL AND OTHER PROGRAM REQUIREMENTS

(e)(1)(A) Breakfasts served by schools participating in the school breakfast program under this section shall consist of a combination of foods and shall meet minimum nutritional requirements prescribed by the Secretary on the basis of tested nutritional research, except that the minimum nutritional requirements shall be measured by not less than the weekly average of the nutrient content of school breakfasts. Such breakfasts shall be served free or at a reduced price to children in school under the same terms and conditions as are set forth with respect to the service of lunches free or at a reduced price in section 9 of the Richard B. Russell National School Lunch Act [(42 U.S.C. 1758)].

(B) The Secretary shall provide through State educational agencies technical assistance and training, including technical assistance and training in the preparation of foods high in complex carbohydrates and lower-fat versions of foods commonly used in the school breakfast program established under this section, to schools participating in the school breakfast 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.

(2) At the option of a local school food authority, a student in a school under the authority that participates in the school breakfast program under this Act may be allowed to refuse not more than one item of a breakfast that the student does not intend to consume. A refusal of an offered food item shall not affect the full charge to the student for a breakfast meeting the requirements of this section or the amount of payments made under this Act to a school for the breakfast.

DISBURSEMENT TO SCHOOLS BY THE SECRETARY

SEC. 5. [42 U.S.C. 1774] (a) The Secretary shall withhold funds payable to a State under this Act and disburse the funds directly to schools or 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.

PAYMENTS TO STATES

SEC. 6. [42 U.S.C. 1775] The Secretary shall certify to the Secretary of the Treasury from time to time the amounts to be paid to any State under sections 3 through 7 of this Act and the time or times such amounts are to be paid; and the Secretary of the Treasury shall pay to the State at the time or times fixed by the Secretary the amounts so certified.

SEC. 7. [42 U.S.C. 1776] 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 [(42 U.S.C. 1753, 1759a, and 1766)] and sections 3 and 4 of this Act during the second preceding fiscal year.

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

(2) EXPENSE GRANTS.—

(A) IN GENERAL.—Subject to subparagraph (B), the Secretary shall allocate to each State for administrative costs incurred in any fiscal year in connection with the programs authorized under the Richard B. Russell National School Lunch Act [(42 U.S.C. 1751 et seq.)] or under this Act, except for the programs authorized under section 13 or 17 of the Richard B. Russell National School Lunch Act [(42 U.S.C. 1761 or 1766)] or under section 17 of this Act, an amount equal to not less than 1 percent and not more than 1½ percent of the funds expended by each State under sections 4 and 11 of the Richard B. Russell National School Lunch Act [(42 U.S.C. 1753 and 1759a)] and sections 3 and 4 of this Act during the second preceding fiscal year.

(B) MINIMUM AMOUNT.—

(i) IN GENERAL.—In no case shall the grant available to any State under this paragraph be less than the amount such State was allocated in the fiscal year ending September 30, 1981, or \$200,000 (as adjusted under clause (ii),⁷⁻¹ whichever is larger.

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

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

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

⁷⁻¹ Effective October 1, 2004, section 202(a)(2)(B)(ii)(III) of P.L. 108-265, 118 Stat. 769, June 30, 2004, amended this subparagraph by striking “\$100,000” and inserting “\$200,000 (as adjusted under clause (ii))”. So in original. Probably should be an additional closed parenthesis.

(3) The Secretary shall allocate to each State for its administrative costs incurred under the program authorized by section 17 of the Richard B. Russell National School Lunch Act [(42 U.S.C. 1766)] in any fiscal year an amount, based upon funds expended under that program in the second preceding fiscal year, equal to (A) 20 percent of the first \$50,000, (B) 10 percent of the next \$100,000, (C) 5 percent of the next \$250,000, and (D) 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 [(42 U.S.C. 1751 et seq.)] and this Act, except for section 17 of this Act, including, but not limited to, improved program integrity and the quality of meals served to children.

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

(B) REALLOCATION OF FUNDS.—

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

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

(6) USE OF ADMINISTRATIVE FUNDS.—Funds available to a State under this subsection and under section 13(k)(1) of the Richard B. Russell National School Lunch Act (42 U.S.C. 1761(k)(1)) may be used by the State for the costs of administration of the programs authorized under this Act (except for the programs authorized under sections 17 and 21) and the Richard B. Russell National School Lunch Act (42 U.S.C. 1751 et seq.) without regard to the basis on which the funds were earned and allocated.

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

(8) In the fiscal year 1991 and each succeeding fiscal year, in accordance with regulations issued by the Secretary, each State

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

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

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

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

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

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

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

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

(2) UPDATES AND INFORMATION MANAGEMENT SYSTEMS.—

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

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

(i) monitoring the nutrient content of meals served;

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

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

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

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

(g) PROFESSIONAL STANDARDS FOR SCHOOL FOOD SERVICE.—

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

(A) SCHOOL FOOD SERVICE DIRECTORS.—

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

(ii) REQUIREMENTS.—The program shall include—

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

(II) minimum program training and certification criteria for school food service directors; and

(III) minimum periodic training criteria to maintain school food service director certification.

(B) SCHOOL NUTRITION STATE AGENCY DIRECTORS.—The Secretary shall establish criteria and standards for States to use in the selection of State agency directors with responsibility for the school lunch program established under the Richard B. Russell National School Lunch Act (42

U.S.C. 1751 et seq.) and the school breakfast program established by section 4 of this Act.

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

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

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

(D) REQUIRED DATE OF COMPLIANCE.—

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

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

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

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

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

(ii) FEDERAL ROLE.—The Secretary shall—

(I) provide training and technical assistance described in clause (i) to the State; or

(II) at the option of the Secretary, directly provide training and technical assistance described in clause (i).

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

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

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

(I) the accuracy of approvals for free and reduced price meals; and

(II) the identification of reimbursable meals at the point of service.

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

(I) to ensure program compliance and integrity; and

(II) to demonstrate competence in the training provided under clause (i).

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

(I) nutrition;

(II) health and food safety standards and methodologies; and

(III) any other appropriate topics, as determined by the Secretary.

(3) FUNDING.—

(A) IN GENERAL.—Out of any funds in the Treasury not otherwise appropriated, the Secretary of the Treasury shall transfer to the Secretary to carry out this subsection, to remain available until expended—

(i) on October 1, 2010, \$5,000,000; and

(ii) on each October 1 thereafter, \$1,000,000.

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

(h) FUNDING FOR TRAINING AND ADMINISTRATIVE REVIEWS.—

(1) FUNDING.—

(A) IN GENERAL.—On October 1, 2004, and on each October 1 thereafter, out of any funds in the Treasury not otherwise appropriated, the Secretary of the Treasury shall transfer to the Secretary of Agriculture to carry out this subsection \$4,000,000, to remain available until expended.

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

(2) USE OF FUNDS.—

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

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

(3) ALLOCATION.—The Secretary shall allocate funds provided under this subsection to States based on the number of local educational agencies that have demonstrated a high level

of, or a high risk for, administrative error, as determined by the Secretary, taking into account the requirements established by the Child Nutrition and WIC Reauthorization Act of 2004 and the amendments made by that Act.

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

(i) TECHNOLOGY INFRASTRUCTURE IMPROVEMENT.—

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

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

(A) monitoring the nutrient content of meals served;

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

(i) menu planning;

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

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

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

(3) TECHNOLOGY INFRASTRUCTURE GRANTS.—

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

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

(i) processing and verification of applications for free and reduced price meals;

(ii) integration of menu planning, production, and serving data to monitor compliance with section 9(f)(1) of the Richard B. Russell National School Lunch Act (42 U.S.C. 1758(f)(1)); and

(iii) compatibility with statewide reporting 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, to remain available until expended.

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

UTILIZATION OF FOODS

SEC. 8. [42 U.S.C. 1777] Each school participating under section 4 of this Act shall, insofar as practicable, utilize in its program foods designated from time to time by the Secretary as being in abundance, either nationally or in the school area, or foods donated by the Secretary. Foods available under section 416 of the Agricultural Act of 1949 (63 Stat. 1058[; 7 U.S.C. 1431]), as amended, or purchased under section 32 of the Act of August 24, 1935 (49 Stat. 774[; 7 U.S.C. 612c]), as amended, or section 709 of the Food and Agriculture Act of 1965 (79 Stat. 1212[; 7 U.S.C. 1446a-1]), may be donated by the Secretary to schools, in accordance with the needs as determined by local school authorities, for utilization in their feeding programs under this Act.

NONPROFIT PROGRAMS

SEC. 9. [42 U.S.C. 1778] The food and milk service programs in schools and nonprofit institutions receiving assistance under this Act shall be conducted on a nonprofit basis.

SEC. 10. [42 U.S.C. 1779] REGULATIONS.

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

(b) NATIONAL SCHOOL NUTRITION STANDARDS.—

(1) PROPOSED REGULATIONS.—

(A) IN GENERAL.—The Secretary shall—

(i) establish science-based nutrition standards for foods sold in schools other than foods provided under this Act and the Richard B. Russell National School Lunch Act (42 U.S.C. 1751 et seq.); and

(ii) not later than 1 year after the date of enactment of this paragraph, promulgate proposed regulations to carry out clause (i).

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

(i) outside the school meal programs;

(ii) on the school campus; and

(iii) at any time during the school day.

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

(i) establish standards that are consistent with the most recent Dietary Guidelines for Americans published under section 301 of the National Nutrition Monitoring and Related Research Act of 1990 (7 U.S.C.

5341), including the food groups to encourage and nutrients of concern identified in the Dietary Guidelines; and

(ii) consider—

(I) authoritative scientific recommendations for nutrition standards;

(II) existing school nutrition standards, including voluntary standards for beverages and snack foods and State and local standards;

(III) the practical application of the nutrition standards; and

(IV) special exemptions for school-sponsored fundraisers (other than fundraising through vending machines, school stores, snack bars, a la carte sales, and any other exclusions determined by the Secretary), if the fundraisers are approved by the school and are infrequent within the school.

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

(2) IMPLEMENTATION.—

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

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

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

PROHIBITIONS

SEC. 11. [42 U.S.C. 1780] (a) In carrying out the provisions of sections 3 and 4 of this Act, the Secretary shall not impose any requirements with respect to teaching personnel, curriculum, instruction, methods of instruction, and materials of instruction.

(b) The value of assistance to children under this Act shall not be considered to be income or resources for any purpose under any Federal or State laws including, but not limited to, laws relating to taxation, welfare, and public assistance programs. Expenditures of funds from State and local sources for the maintenance of food pro-

grams for children shall not be diminished as a result of funds received under this Act.

(c) FEDERAL LAW NOT APPLICABLE.—Section 920 of the Electronic Fund Transfer Act shall not apply to electronic benefit transfer systems established under this Act or the Richard B. Russell National School Lunch Act (42 U.S.C. 1751 et seq.).

PRESCHOOL PROGRAMS

SEC. 12. [42 U.S.C. 1781] The Secretary may extend the benefits of all school feeding programs conducted and supervised by the Department of Agriculture to include preschool programs operated as part of the school system.

CENTRALIZATION OF ADMINISTRATION

SEC. 13. [42 U.S.C. 1782] Authority for the conduct and supervision of Federal programs to assist schools in providing food service programs for children is assigned to the Department of Agriculture. To the extent practicable, other Federal agencies administering programs under which funds are to be provided to schools for such assistance shall transfer such funds to the Department of Agriculture for distribution through the administrative channels and in accordance with the standards established under this Act and the Richard B. Russell National School Lunch Act [(42 U.S.C. 1751 et seq.)].

APPROPRIATIONS FOR ADMINISTRATIVE EXPENSE

SEC. 14. [42 U.S.C. 1783] There are hereby authorized to be appropriated for any fiscal year such sums as may be necessary to the Secretary for the Secretary's administrative expense under this Act.

MISCELLANEOUS PROVISIONS AND DEFINITIONS

SEC. 15. [42 U.S.C. 1784] For the purposes of this Act—

(1) "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.

(2) "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.

(3) "School" means (A) any public or nonprofit private school of high school grade or under, including kindergarten and preschool programs operated by such school, 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 clauses (A) and (B) 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.

(4) "Secretary" means the Secretary of Agriculture.

(5) "School year" means the annual period from July 1 through June 30.

(6) Except as used in section 17 of this Act, the terms “child” and “children” as used in this Act, shall be deemed to include persons regardless of age who are determined by the State educational agency, in accordance with regulations prescribed by the Secretary, to have 1 or more disabilities and who are attending 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.

(7) **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.).

ACCOUNTS AND RECORDS

SEC. 16. [42 U.S.C. 1785] (a) States, State educational agencies, schools, and nonprofit institutions participating in programs under this Act shall keep such accounts and records as may be necessary to enable the Secretary to determine whether there has been compliance with this Act and the regulations hereunder. Such accounts and records shall be available at any reasonable time for inspection and audit by representatives of the Secretary and shall be preserved for such period of time, not in excess of three years, as the Secretary determines is necessary.

(b) With regard to any claim arising under this Act or under the Richard B. Russell National School Lunch Act [(42 U.S.C. 1751 et seq.)], the Secretary shall have the authority to determine the amount of, to settle and to adjust any such claim, and to compromise or deny such claim or any part thereof. The Secretary shall also have the authority to waive such claims if the Secretary determines that to do so would serve the purposes of either such Act. Nothing contained in this subsection shall be construed to diminish the authority of the Attorney General of the United States under section 516 of title 28, United States Code, to conduct litigation on behalf of the United States.

SPECIAL SUPPLEMENTAL NUTRITION PROGRAM FOR WOMEN, INFANTS, AND CHILDREN

SEC. 17. [42 U.S.C. 1786] (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, 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.

(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, 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.

(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" means—

(A) the provision of information concerning the dangers of drug abuse; and

(B) the referral of participants who are suspected drug abusers to drug abuse clinics, treatment programs, counselors, or other drug abuse professionals.

(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.

(c)(1) The Secretary may carry out a special supplemental nutrition program¹⁷⁻¹ 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

¹⁷⁻¹Section 204(w)(3) of P.L. 103-448, 108 Stat. 4746, Nov. 2, 1994, provides that any reference to the special supplemental food program established under this section in any provision of law, regulation, document, record, or other paper of the United States shall be considered to be a reference to the special supplemental nutrition program established under this section.

the Agriculture and Consumer Protection Act of 1973 [(7 U.S.C. 612c note)] 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) 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.

(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), a person shall be certified 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.

(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 unreasonable 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.

(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.

(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.

(e)(1) The State agency shall ensure that nutrition education and drug abuse 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 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 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)¹⁷⁻² 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.

(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 determine 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 counseling and treatment.

¹⁷⁻² Sec. 351 of P.L. 111-296, 124 Stat. 3254, Dec. 13, 2010, amended sec. 17(e)(3) of the “Child Nutrition Act” to add subpara. (B). Amendment was made to this Act to effectuate the probable intent of Congress.

(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.

(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 foster parents, protective services, or child welfare authorities, including infants exposed to drugs 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. The State agency shall describe any plans for issuance of vouchers by mail in its plan submitted under paragraph (1). The Secretary may disapprove a State plan with respect to the issuance of vouchers by mail 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 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.

(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.—A State agency may use amounts made available under clause (i) for the purchase of breast pumps.

(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 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; and¹⁷⁻³

(vii) annually compile and publish breastfeeding performance measurements based on program participant data on the number of partially and fully breastfed 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 partici-

¹⁷⁻³ So in original. Probably should strike “and”.

pating 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; and¹⁷⁻⁴

(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

¹⁷⁻⁴So in original. Probably should strike “; and” and insert a period.

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 non-contiguous 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 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).

(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.

(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, the Secretary shall use for the purposes specified in subparagraph (B) \$139,000,000 (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).

(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; 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 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 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) 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.

(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).

(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 multi-function 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.

(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 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.

(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)) 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 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 of the amount allocated to the State agency 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, an amount equal to not more than $\frac{1}{2}$ of 1 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, 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 under-

served 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 [(7 U.S.C. 612c note)]; 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.

(1) Foods available under section 416 of the Agriculture Act of 1949 [(7 U.S.C. 1431)], including, but not limited to, dry milk, or purchased under section 32 of the Act of August 24, 1935 [(7 U.S.C. 612c)] 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, 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 nonprofit 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) Subject to paragraph (6), 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), 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) 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).

(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.

(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) 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.

(F)(i) Except as provided in clauses (ii) and (iii), 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 of total program funds for market development or technical assistance to farmers' markets if the Secretary determines that 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)(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) 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) for grants under this subsection are not sufficient to pay to each State for which a State plan is approved under paragraph (6) 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)¹⁷⁻⁵ to increase the value of the Federal share of the benefits received by a recipient, the funding provided under subparagraph (G)(i)¹⁷⁻⁵ 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); 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 nutri-

¹⁷⁻⁵ So in original. Probably should refer to "subparagraph (F)(i)" in both places.

tious 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).

(7)(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) 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) the change in consumption of fresh fruits and vegetables by recipients, if the information is available;

(E) the effects of the program on farmers' markets, if the information is available; and

(F) any other information determined to be necessary by the Secretary.

(9) 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.

(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 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) For purposes of this subsection:

(A) The term “coupon” means a coupon, voucher, or other negotiable financial instrument 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 determined 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.

[CASH GRANTS FOR NUTRITION EDUCATION]

[SEC. 18. ⁸ 18-1 [42 U.S.C. 1787]]

SEC. 19. [42 U.S.C. 1788] 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

¹⁸⁻¹ Section 730 of P.L. 104-193, 110 Stat. 2305, Aug. 22, 1996, repealed section 18.

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 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 over-

weight, 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 parents and students about the relationship of a poor diet and inactivity to obesity and other health problems;

(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, 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.

(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) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated such sums as are necessary to carry out this section.

DEPARTMENT OF DEFENSE OVERSEAS DEPENDENTS' SCHOOLS

SEC. 20. [42 U.S.C. 1789] (a) For the purpose of obtaining Federal payments and commodities in conjunction with the provision of breakfasts to students attending Department of Defense dependents' schools which are located outside the United States, its territories or possessions, the Secretary of Agriculture shall make available to the Department of Defense, from funds appropriated for such purpose, the same payments and commodities as are provided to States for schools participating in the school breakfast program in the United States.

(b) The Secretary of Defense shall administer breakfast programs authorized by this section and shall determine eligibility for free and reduced-price breakfasts under the criteria published by the Secretary of Agriculture, except that the Secretary of Defense shall prescribe regulations governing computation of income eligibility standards for families of students participating in the school breakfast program under this section.

(c) The Secretary of Defense shall be required to offer meals meeting nutritional standards prescribed by the Secretary of Agriculture; however, the Secretary of Defense may authorize deviations from Department of Agriculture prescribed meal patterns and fluid

milk requirements when local conditions preclude strict compliance or when such compliance is highly impracticable.

(d) Funds are hereby authorized to be appropriated for any fiscal year in such amounts as may be necessary for the administrative expenses of the Department of Defense under this section.

(e) The Secretary of Agriculture shall provide the Secretary of Defense with technical assistance in the administration of the school breakfast programs authorized by this section.

SEC. 21. [42 U.S.C. 1790] BREASTFEEDING PROMOTION PROGRAM.

(a) IN GENERAL.—The Secretary, from amounts received under subsection (d), shall establish a breastfeeding promotion program to promote breastfeeding as the best method of infant nutrition, foster wider public acceptance of breastfeeding in the United States, and assist in the distribution of breastfeeding equipment to breastfeeding women.

(b) CONDUCT OF PROGRAM.—In carrying out the program described in subsection (a), the Secretary may—

(1) develop or assist others to develop appropriate educational materials, including public service announcements, promotional publications, and press kits for the purpose of promoting breastfeeding;

(2) distribute or assist others to distribute such materials to appropriate public and private individuals and entities; and

(3) provide funds to public and private individuals and entities, including physicians, health professional organizations, hospitals, community based health organizations, and employers, for the purpose of assisting such entities in the distribution of breastpumps and similar equipment to breastfeeding women.

(c) COOPERATIVE AGREEMENTS.—The Secretary is authorized to enter into cooperative agreements with Federal agencies, State and local governments, and other entities to carry out the program described in subsection (a).

(d) GIFTS, BEQUESTS, AND DEVISES.—

(1) IN GENERAL.—The Secretary is authorized to solicit, accept, use, and dispose of gifts, bequests, or devises of services or property, both real and personal, for the purpose of establishing and carrying out the program described in subsection (a). Gifts, bequests, or devises of money and proceeds from the sales of other property received as gifts, bequests, or devises shall be deposited in the Treasury and shall be available for disbursement upon order of the Secretary.

(2) CRITERIA FOR ACCEPTANCE.—The Secretary shall establish criteria for determining whether to solicit and accept gifts, bequests, or devises under paragraph (1), including criteria that ensure that the acceptance of any gifts, bequests, or devises would not—

(A) reflect unfavorably on the ability of the Secretary to carry out the Secretary's responsibilities in a fair and objective manner; or

(B) compromise, or appear to compromise, the integrity of any governmental program or any officer or employee involved in the program.

SEC. 22. [42 U.S.C. 1791] 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 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, or other conditions.

(2) APPARENTLY WHOLESOME FOOD.—The term “apparently wholesome food” means food that meets all quality and 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, 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.

(4) 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 consumption.

(5) GLEANER.—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.

(6) GROCERY PRODUCT.—The term “grocery product” means a nonfood grocery product, including a disposable paper or plastic product, household cleaning product, laundry detergent, cleaning product, or miscellaneous household item.

(7) 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) 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) 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) 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, 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.

(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 for ultimate distribution 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 to needy individuals.

(3) EXCEPTION.—Paragraphs (1) and (2) 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, or nonprofit organization, as applicable, constituting gross negligence or intentional misconduct.

(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 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 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 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 supercede State or local health regulations.

SEC. 23. [42 U.S.C. 1793] GRANTS FOR EXPANSION OF SCHOOL BREAKFAST PROGRAMS.

(a) DEFINITION OF QUALIFYING SCHOOL.—In this section, the term “qualifying school” means a school in severe need, as described in section 4(d)(1).

(b) ESTABLISHMENT.—Subject to the availability of appropriations provided in advance in an appropriations Act specifically for the purpose of carrying out this section, the Secretary shall estab-

lish a program under which the Secretary shall provide grants, on a competitive basis, to State educational agencies for the purpose of providing subgrants to local educational agencies for qualifying schools to establish, maintain, or expand the school breakfast program in accordance with this section.

(c) GRANTS TO STATE EDUCATIONAL AGENCIES.—

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

(2) ADMINISTRATION.—In carrying out this section, the Secretary shall—

(A) develop an appropriate competitive application process; and

(B) make information available to State educational agencies concerning the availability of funds under this section.

(3) ALLOCATION.—The amount of grants provided by the Secretary to State educational agencies for a fiscal year under this section shall not exceed the lesser of—

(A) the product obtained by multiplying—

(i) the number of qualifying schools receiving subgrants or other benefits under subsection (d) for the fiscal year; and

(ii) the maximum amount of a subgrant provided to a qualifying school under subsection (d)(4)(B); or
(B) \$2,000,000.

(d) SUBGRANTS TO QUALIFYING SCHOOLS.—

(1) IN GENERAL.—A State educational agency receiving a grant under this section shall use funds made available under the grant to award subgrants to local educational agencies for a qualifying school or groups of qualifying schools to carry out activities in accordance with this section.

(2) PRIORITY.—In awarding subgrants under this subsection, a State educational agency shall give priority to local educational agencies with qualifying schools in which at least 75 percent of the students are eligible for free or reduced price school lunches under the school lunch program established under the Richard B. Russell National School Lunch Act (42 U.S.C. 1751 et seq.).

(3) STATE AND DISTRICT TRAINING AND TECHNICAL SUPPORT.—A local educational agency or State educational agency may allocate a portion of each subgrant to provide training and technical assistance to the staff of qualifying schools to carry out the purposes of this section.

(4) AMOUNT; TERM.—

(A) IN GENERAL.—Except as otherwise provided in this paragraph, a subgrant provided by a State educational agency to a local educational agency or qualifying school under this section shall be in such amount, and shall be provided for such term, as the State educational agency determines appropriate.

(B) MAXIMUM AMOUNT.—The amount of a subgrant provided by a State educational agency to a local educational agency for a qualifying school or a group of quali-

fying schools under this subsection shall not exceed \$10,000 for each school year.

(C) MAXIMUM GRANT TERM.—A local educational agency or State educational agency shall not provide subgrants to a qualifying school under this subsection for more than 2 fiscal years.

(e) BEST PRACTICES.—

(1) IN GENERAL.—Prior to awarding grants under this section, the Secretary shall make available to State educational agencies information regarding the most effective mechanisms by which to increase school breakfast participation among eligible children at qualifying schools.

(2) PREFERENCE.—In awarding subgrants under this section, a State educational agency shall give preference to local educational agencies for qualifying schools or groups of qualifying schools that have adopted, or provide assurances that the subgrant funds will be used to adopt, the most effective mechanisms identified by the Secretary under paragraph (1).

(f) USE OF FUNDS.—

(1) IN GENERAL.—A qualifying school may use a grant provided under this section—

(A) to establish, promote, or expand a school breakfast program of the qualifying school under this section, which shall include a nutritional education component;

(B) to extend the period during which school breakfast is available at the qualifying school;

(C) to provide school breakfast to students of the qualifying school during the school day; or

(D) for other appropriate purposes, as determined by the Secretary.

(2) REQUIREMENT.—Each activity of a qualifying school under this subsection shall be carried out in accordance with applicable nutritional guidelines and regulations issued by the Secretary.

(g) MAINTENANCE OF EFFORT.—Grants made available under this section shall not diminish or otherwise affect the expenditure of funds from State and local sources for the maintenance of the school breakfast program.

(h) REPORTS.—Not later than 18 months following the end of a school year during which subgrants are awarded under this section, the Secretary shall submit to Congress a report describing the activities of the qualifying schools awarded subgrants.

(i) EVALUATION.—Not later than 180 days before the end of a grant term under this section, a local educational agency that receives a subgrant under this section shall—

(1) evaluate whether electing to provide universal free breakfasts under the school breakfast program in accordance with Provision 2 as established under subsections (b) through (k) of section 245.9 of title 7, Code of Federal Regulations (or successor regulations), would be cost-effective for the qualified schools based on estimated administrative savings and economies of scale; and

(2) submit the results of the evaluation to the State educational agency.

(j) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out this section such sums as are necessary for each of fiscal years 2010 through 2015.