



**SCHOOL  
NUTRITION  
ASSOCIATION**

*Making the right food choices, together.*

September 13, 2011

Ms. Julie Brewer, Chief  
Policy and Program Development Branch  
Child Nutrition Division  
Food and Nutrition Service  
U.S. Department of Agriculture  
3101 Park Center Drive, Room 640  
Alexandria, VA 22302-1594

Dear Ms. Brewer:

On behalf of the School Nutrition Association's (SNA) more than 50,000 members providing millions of school lunches and breakfasts each school day, we appreciate this opportunity to provide comments regarding the interim rule, published in the Federal Register on June 17, 2011, to implement Sections 205 and 206 of the Healthy Hunger-Free Kids Act of 2010 (HHFKA). These Sections establish requirements for prices paid for reimbursable lunches, and that the proportion of total school food service revenue provided by the sale of nonprogram foods to the total revenue of the school food service account be equal to or greater than the proportion of total food costs associated with obtaining nonprogram foods to the total costs associated with obtaining program and nonprogram foods from the account.

SNA sincerely appreciates all of the careful and demanding work that has been done by the Food and Nutrition Service (FNS) to implement HHFKA. The changes to school meal programs made by HHFKA are significant, and have been broadly supported by SNA and its membership. We believe that our most important task is to operate school meal programs in a fashion that attracts and retains student interest while maintaining the financial integrity of the programs, and want to continue to work with FNS for a successful and practicable implementation of HHFKA.

Many concerns that SNA has with respect to Sections 205 and 206 will require further legislative action detailed below. While SNA understands that FNS has limited discretion regarding the implementation of HHFKA, we encourage FNS to consider these concerns and want to partner with FNS in seeking appropriate legislative remedies.

## Requirements of Section 205

SNA understands that Section 205 requires school food authorities (SFAs) to raise prices by 2% plus inflation (a total of 3.14% this year) if those SFAs have an average paid lunch price that is less than the free meal reimbursement rate in effect for the previous school year. The price increase may be rounded down to the nearest 5 cents, which for many SFAs this year means that the federally required price increase will be zero. The average price is across the district, while the price charged at individual schools may vary. The paid meal price can be increased annually by a maximum of 10 cents due to the requirements of Section 205, but SFAs may voluntarily increase prices more than 10 cents should they desire to do so. While “other funds”, including reimbursements paid by other units of government including school districts, funds provided by community organizations, and State revenue matching funds that exceed the minimum requirement may be used, “other funds” cannot include in kind contributions and revenues from competitive foods.

## Concerns Regarding Section 205/Section 206

SNA members have expressed several concerns regarding these requirements. SNA strongly believes that local economic circumstances must be considered before requiring meal price increases. SNA believes that this provision has the potential to fundamentally change the structure of the program and reduce participation. In fact, your notice specifically says “*No regulatory requirements currently exist regarding the prices of paid lunches or nonprogram foods, and limited data are available to estimate the cost and participation impacts of the interim rule’s provisions.*”<sup>1</sup> SNA has asked the Congress to test this change with a pilot program in a limited number of schools with a report back to Congress before it becomes national policy. This is simply too significant a policy change to implement in the absence of hard data regarding its likely impact. SNA urges FNS to join us in converting Section 205 into a pilot program.

SNA strongly believes that school food operations need to be looked at as a unit, not segmented into separate components. While some proponents of Section 205 suggest that school meal reimbursements are subsidizing paid meals, we disagree with that conclusion. SNA members want to increase and retain participation in school meal programs. SNA recalls the reduction of assistance under Section 4 of the Richard B. Russell National School Lunch Act (the Russell Act) in the early 1980s. The justification for that reduction was that paid meal students were receiving benefits, rather than recognizing that the assistance was provided to support the school lunch system. The consequence was the loss of more than 3,000 schools and millions of meals to school children. It took more than a decade to recover from that erroneous policy decision. SNA does not want to have that experience repeated.

*Definition of Paid Lunch* - SNA is concerned about the characterization of cash assistance and donated foods being a “subsidy” for lunch. Rather, we view this federal assistance as vital “support” for school lunch programs. There is a long history of the Richard B. Russell Act providing support for improving the availability of school meals for all students. Let us note that Section 2 of the National School Lunch Act defines its purposes: “It is hereby declared to be the

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<sup>1</sup> Federal Register 76:117 (June 17, 2011) p. 35310.

policy of Congress, as a measure of national security, to safeguard the health and well-being of the Nation's children and to encourage the domestic consumption of nutritious agricultural commodities and other food, by assisting the States, through grants-in aid and other means, in providing an adequate supply of food and other facilities for the establishment, maintenance, operation and expansion of nonprofit school lunch programs.” Therefore, SNA respectfully recommends that the Department modify the proposed definition of “paid lunch” at 7 CFR 210.2 to read “*The Department supports each paid lunch with both general cash assistance and donated foods.*”

*Need for Monitoring* - Our members have had mixed experiences following price increases. While some jurisdictions are able to absorb price increases without any adverse impact, some SFAs have found that higher prices lead to lower participation. Reduced participation hurts the viability of school meal programs. SNA urges FNS to conduct ongoing analysis of the impact of meal price changes on school meal participation.

*Pricing Considerations Vary by Location and Risk Unintended Consequences* – Several SNA members tell us that they have worked hard to operate financially viable programs, and have succeeded. Those members say they have no basis for raising meal prices since they are already covering all of their costs because of frugal local policies.

- Should they be forced to raise prices, they believe the consequence of that action will be for school districts to increase assessments for unrelated expenses. This action would be in contradiction of the provisions of Section 307 which seek to limit indirect expenses to those that are reasonable and necessary. In the current fiscal environment, every school account with a positive balance is being reviewed to determine if those balances can be used to cover other school expenses.
- Lower income participants currently ineligible for free and reduced meals are often not able to afford increased meal prices. We endorse your statement that “*We expect that students that do not choose to participate in school meals or purchase higher-priced à la carte foods will either bring food from home, choose not to eat during school hours, or acquire food from other sources.*”<sup>2</sup> Even modest increases can discourage continued participation in the school lunch program, hurting both the nutritional quality of foods being consumed by paid meal children, as well as the financial viability of the lunch program as a consequence of lower participation.

*Inability to Count Competitive Food Receipts Could Force Schools to Raise Meal Prices Unnecessarily* – We understand that proponents of Section 205 argued that reimbursable meal programs should not subsidize paid meals or competitive foods. But the legislative language effectively bars the use of profits from competitive food sales to help offset the need for paid meal price increases. SNA members are concerned that even if they currently operate programs that are financially sufficient in their totality, they may be forced to raise meal prices because the revenue solely from reimbursable meals is insufficient to cover their expenses. This is particularly bothersome since Section 12(q)(2)(B) of the Russell Act, as amended, requires that “All revenue from the sale of nonprogram foods shall accrue to the nonprofit school food service account of a participating school food authority.” In our view, raising prices may discourage

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<sup>2</sup> Federal Register 76:117 (June 17, 2011) p. 35308.

children and their families from selecting balanced reimbursable meals. Further, raising prices solely because of a federal accounting requirement risks having some schools question their continued participation in the program. SNA believes that Section 12(p)(3)(B) of the Russell Act, as amended, should be repealed so that the revenue from the sale of foods sold in competition with school lunch and school breakfast may be included as a non-Federal source of funding that may be used by an SFA to reduce the average price of a paid lunch.

*Ability to Count Competitive Food Receipts to Offset Meal Prices in the Current School Year -* SNA seeks a clarification regarding the ability to use revenue from competitive foods for purposes of reducing the average price charged for paid lunches. 7 CFR 210.14(e)(6)(iii) requires that “*For the school year beginning July 1, 2011 only, the limitations for non-Federal contributions in paragraph (e)(5)(iii) of this section do not apply.*” As proposed, (e)(5)(iii) says “*Any contribution that is for the direct support of paid lunches that is not prohibited under paragraph (e)(5)(ii) of this section may be used as revenue for this purpose.*” The referenced (e)(5)(ii) lists the prohibitions of what can be counted. One of the prohibitions is revenue from competitive foods. Given the apparent waiver provided in 7 CFR 210.14(e)(6)(iii), SNA asks that the final rule make clear whether or not revenue from competitive food sales may be used as a source of revenue for the current school year, even if that revenue may not be used as a revenue source in future school years.

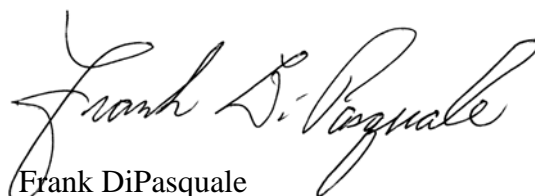
*Need for Timely Notice of Consumer Price Index Adjustment and Regular Availability of this Adjustment –* 7 CFR 210.14 (e)(iii)(2) requires that “*The percentage change in the Consumer Price Index for All Urban Consumers used to increase the Federal reimbursement rate under section 11 of the Act for the most recent school year for which data are available. The percentage to be used is found in the annual notice published in the **Federal Register** announcing the national average payment rates, from the prior year.*” SNA members have to seek approval for meal price increases at different times in advance of the school year. SNA urges FNS to make the percentage change in the Consumer Price Index for All Urban Consumers readily available as soon as possible, and, in addition to its publication in the Federal Register, to maintain this information in a readily accessible place on the FNS webpage.

SNA and FNS both support providing nutritious school meals to every possible student, regardless of their payment status. We appreciate the partnership that we have with you, and look forward to our continued cooperation.

Sincerely,



Helen Phillips  
President



Frank DiPasquale  
Chief Executive Officer