

April 11, 2023

The Honorable Tom Vilsack
Secretary of Agriculture
U.S. Department of Agriculture
1400 Independence Avenue, SW
Washington, DC 20250
Via <https://www.federalregister.gov>

Docket ID FNS-2022-0044

Dear Secretary Vilsack:

This letter presents comments on the Notice of Proposed Rulemaking “Child Nutrition Programs: Community Eligibility Provision-Increasing Options for Schools” published by your department in the *Federal Register* on March 23, 2023. Federal officials are already improperly implementing the Community Eligibility Provision (CEP), and this provision from the Healthy and Hunger Free Kids Act of 2010 is converting federal K–12 school meal programs meant for children in need into an entitlement for all students, extending it to children from non-poor families. Federal school meals were created to help disadvantaged children, but now these programs have been transformed by policymakers into a system that also serves middle- and upper-income students who can afford their own school meals.¹ Furthermore, the National School Lunch Program and School Breakfast Program are two of the most error-prone federal programs and waste hundreds of millions of federal tax dollars each year.

Federal lawmakers should sunset the CEP and restore federal school meal programs to their original purpose: helping children in need.

Private charities and state-based food assistance programs were the first to provide meals to disadvantaged schoolchildren in the U.S. in efforts that date back at least as far as the 19th century.² During the Depression, state lawmakers requested federal help for school meals. The U.S. Department of Agriculture (USDA) began providing limited assistance to specific areas of the U.S. based on the financial needs of local residents. In 1946, federal lawmakers adopted the National School Lunch Act, creating the National School Lunch Program (NSLP).³ The new federal services, however, were specifically for children from low-income families. The law

¹Healthy, Hunger-Free Kids Act of 2010, Public Law No. 111–296, <https://www.govinfo.gov/content/pkg/PLAW-111publ296/pdf/PLAW-111publ296.pdf> (accessed April 11, 2023).

²Gordon W. Gunderson, “The National School Lunch Program: Background and Development,” U.S. Department of Agriculture, 1971, p. 7, <https://fns-prod.azureedge.net/sites/default/files/NSLP-Program%20History.pdf> (accessed April 11, 2023).

³Public Law 396, 79th Congress, June 4, 1946, 60 Stat. 231, <http://legisworks.org/congress/79/publaw-396.pdf> (accessed April 11, 2023).

stated, “Such meals shall be served without cost or at a reduced cost to children who are determined by local school authorities to be unable to pay the full cost of the lunch.”⁴

Years and many congressional expansions later, school meal programs are a behemoth of federal policymaking. In 2005, the Brookings Institution’s Ron Haskins wrote in *Education Next*, “Behind the overcooked vegetables and steam-table pizza that some 29 million American children confront each school day is an industry that rivals defense contractors and media giants in its ability to bring home the federal bacon.”⁵ PaymentAccuracy.gov, a project of the Office of Management and Budget and Office of the Inspector General, finds that the NSLP has been a “high priority” program in terms of the loss of federal funds since at least 2016.⁶ This oversight project finds that the NSLP wastes nearly \$500 million annually, with losses as high as nearly \$2 billion in fiscal year (FY) 2017 (when the USDA reduced the rigor of program accounting⁷). The School Breakfast Program (SBP) loses nearly \$200 million per year, with losses as high as nearly \$1 billion in FY 2017.

Under the CEP, if at least 40 percent of students in a school, group of schools, or school district are identified as eligible for free meals because they receive benefits from another means-tested welfare program such as food stamps, then all of the students in those academic settings can receive free meals. Heritage Foundation research has found that the CEP results in more children from middle- or upper-income homes receiving free meals.⁸ Using data from the Annual Social and Economic Supplement of the U.S. Census Bureau’s Current Population Survey (CPS), our research found that among the states that began using the CEP when the program was first implemented in the 2011–2012 school year, the share of middle- and upper-income students accessing free meals increased substantially. In Maryland, between 2004 and 2016, the percent of these higher-income students receiving free meals more than tripled (from 4 percent to 14 percent); in Illinois, the figure doubled (7.7 percent to 15.5 percent); in Michigan, the share more than doubled (8.1 percent to 18.8 percent); and in Kentucky, the share nearly tripled (11.9 percent to 32.3 percent). Again, these figures do not demonstrate increased usage by children from low-income families—these students were already eligible for free or reduced-priced lunch. These figures represent an increase in students from middle- and upper-income families now able to receive taxpayer-funded school meals at no cost to the students.

Federal officials are already improperly implementing the CEP. The Healthy, Hunger-Free Kids Act says that only local education agencies (LEAs, or school districts) and schools can use the 40 percent threshold for the CEP. Yet in 2016, the USDA adopted a rule stating that officials at a group of schools, in addition to students in an LEA or individual school, could tally the

⁴Public Law 396, 79th Congress, June 4, 1946, 60 Stat. 231, p. 233.

⁵Ron Haskins, “The School Lunch Lobby,” *Education Next*, Vol. 5, No. 3 (Summer 2005), <https://www.educationnext.org/the-school-lunchlobby/> (accessed April 11, 2023).

⁶PaymentAccuracy.gov, “Payment Integrity Scorecard: National School Lunch Program,” 2022, Q4, [https://www.cfo.gov/wp-content/uploads/2022/Q4/Food%20and%20Nutrition%20Service%20\(FNS\)%20National%20School%20Lunch%20Program%20\(NSLP\)%20Payments%20Integrity%20Scorecard%20FY%202022%20Q4.pdf](https://www.cfo.gov/wp-content/uploads/2022/Q4/Food%20and%20Nutrition%20Service%20(FNS)%20National%20School%20Lunch%20Program%20(NSLP)%20Payments%20Integrity%20Scorecard%20FY%202022%20Q4.pdf) (accessed April 11, 2023).

⁷Government Accounting Office, “School Meal Programs: USDA Has Reported Taking Some Steps to Reduce Improper Payments but Should Comprehensively Assess Fraud Risks,” GAO-19-389, June 4, 2019, <https://www.gao.gov/products/gao-19-389> (accessed April 11, 2023).

⁸Jonathan Butcher and Vijay Menon, “Returning to the Intent of Government School Meals: Helping Students in Need,” Heritage Foundation *Backgrounder* No. 3399, March 22, 2019, <https://www.heritage.org/sites/default/files/2019-03/BG3399.pdf>.

percentage of children eligible for free meals, combining the figures to reach 40 percent and then provide free meals to children in a group of schools.

As a result, a group of schools participating in the CEP could be composed of a school with zero students eligible for free school meals grouped together with a school that meets the 40 percent threshold and then all students in both schools could receive free meals.⁹ This regulation significantly expands federal law and is not consistent with the original purpose of federal meal programs. This method of implementing the CEP can only result in still more students from middle- and upper-income homes receiving free meals. This interpretation does not make more children from low-income homes eligible—these students are already able to receive free- or reduced-priced lunches based on his or her individual family characteristics.

Some claim that expanding the CEP and making more students eligible for free school meals are necessary today because school lunch debts are increasing, and students feel ashamed for either accessing free meals or because he or she has accumulated lunch debts.¹⁰ Headlines that declare a student’s lunch was thrown away at the register because they did not have money to pay for the meal and had significant debts from previous unpaid meals are heartbreaking—and avoidable. Lawmakers and school leaders should resolve these issues with parents before unpaid lunches become a problem at the lunch counter. State and local officials have developed policies that can reduce the problem from unpaid meals without making taxpayers responsible for a local school’s misguided policies that allowed the debts to accrue in the first place.

State and local policymakers must not allow embarrassing incidents at the lunch counter to occur. Ultimately, unpaid school lunches are not the child’s fault, and parents, not students, should be held responsible. Lawmakers in Hawaii and Texas allow for grace periods during which parents are notified of the debts and given the chance to resolve outstanding bills.¹¹ Lawmakers should not allow the debts to grow, though, and lawmakers in Illinois adopted modest guidelines for school officials to contact families regarding lunch debts.¹² In New Jersey, officials are considering a proposal that would allow schools to accept donations from private entities to pay for school meal debt, which could help to revert the nature of school meals back to a system that involved both public and private providers instead of making federal taxpayers pay for meals.¹³

⁹Daren Bakst and Jonathan Butcher, “A Critical Fix to the Federal Overreach on School Meals,” Heritage Foundation *Issue Brief* No. 4976, July 11, 2019, <https://www.heritage.org/sites/default/files/2019-07/IB4976.pdf>.

¹⁰Kate Grumke, “Meal Debt Is Soaring After Universal Free Lunch Ended. How Are Midwest States Responding?” Nebraska Public Media, April 3, 2023, <https://nebraskapublicmedia.org/en/news/news-articles/meal-debt-is-soaring-after-universal-free-lunch-ended-how-are-midwest-states-responding/> (accessed April 11, 2023).

¹¹Deborah Temkin and Alexandra Cox, “State Policies to Address School Lunch Shaming,” ChildTrends, February 14, 2018, <https://www.childtrends.org/state-policies-address-school-lunch-shaming> (accessed April 11, 2023); 85th Texas Legislative Session, S.B. 1566, <https://capitol.texas.gov/billlookup/Text.aspx?LegSess=85R&Bill=SB1566#> (accessed April 11, 2023); and New Mexico Legislature, 2017 Regular Session, S.B. 374, <https://www.nmlegis.gov/Legislation/Legislation?Chamber=S&LegType=B&LegNo=374&year=17> (accessed April 11, 2023).

¹²100th Illinois General Assembly, S.B. 2428, <http://www.ilga.gov/legislation/BillStatus.asp?DocNum=2428&GAID=14&DocTypeID=SB&SessionID=91&GA=100> (accessed April 11, 2023).

¹³New Jersey Legislature, 2022-23 Regular Session, SB 1661, <https://www.njleg.state.nj.us/bill-search/2022/S1661> (accessed April 11, 2023).

Finally, lawmakers must reckon with the sizeable amount of food waste (often called “plate waste”) in taxpayer-funded meal programs. According to a new study from Penn State University, plate waste in the U.S. could be as high as 27 percent to 53 percent of all food served in school cafeterias.¹⁴ Much of this problem can be attributed to USDA standards for school meals. One of the study’s authors said, “There are certain foods cafeteria managers are buying, presumably to meet U.S. Department of Agriculture guidelines, that the kids never are going to eat.” This research is consistent with other studies. In a study from the World Wildlife Fund, researchers estimate that plate waste is equivalent to \$9.7 million per day and \$1.7 billion per school year.¹⁵ Even if the food was healthy, plate waste makes nutritious offerings irrelevant. Research published in the *Journal of the Academy of Nutrition and Dietetics* finds that “plate waste is a major concern for the NSLP and indicates that children may not fully benefit from having nutritious food in school meals.”¹⁶ Lawmakers should address problems of this magnitude, like the improper payments documented by PaymentAccuracy.gov, before any consideration of expanding the CEP.

Instead of expanding wasteful programs, federal lawmakers should:

- **Eliminate the CEP.** The CEP is inconsistent with the original purpose of federal school meals and does not make more students from low-income families eligible. The provision merely relieves federal actors of their responsibility to make sure only eligible students receive free taxpayer-funded school meals. Furthermore, the provision has resulted in more middle- and upper-income students receiving taxpayer-funded meals.
- **While the CEP is in place, properly implement the CEP by applying the provision to a school or LEA.** The USDA should not apply the CEP to “groups of schools.” LEAs and a school that meets the 40 percent threshold should be the educational institutions participating in the CEP, the plain interpretation of the law.
- **Reduce waste and misspending.** Federal officials should return to the auditing standards the USDA used prior to 2019 and measure the full extent of the waste and misspending in the NSLP and SBP. The GAO reports that the USDA “doesn’t regularly assess the programs’ fraud risks,” and as a result, “it’s hard to tell whether USDA’s oversight activities are effectively monitoring, preventing and addressing the greatest sources of potential fraud.”¹⁷

¹⁴Jeff Mulhollem, “U.S. School Cafeterias Waste More Food than Those in Other Developed Countries,” PSU Research, January 18, 2021, <https://www.psu.edu/news/research/story/us-school-cafeterias-waste-more-food-those-other-developed-countries/> (accessed April 11, 2023).

¹⁵World Wildlife Fund, “Plate Waste in US Cafeterias Could Total 530,000 Tons Per Year,” December 5, 2019, <https://www.worldwildlife.org/press-releases/plate-waste-in-us-cafeterias-could-total-530-000-tons-per-year> (accessed April 11, 2023).

¹⁶Shahrbanou F. Niaki et al., “Younger Elementary School Students Waste More School Lunch Foods than Older Elementary School Students,” *Journal of the Academy of Nutrition and Dietetics*, Vol. 117, No. 1 (January 2017), pp. 95–101, [https://jandonline.org/article/S2212-2672\(16\)30951-0/fulltext](https://jandonline.org/article/S2212-2672(16)30951-0/fulltext) (accessed April 11, 2023).

¹⁷Government Accounting Office, “School Meal Programs: USDA Has Reported Taking Some Steps to Reduce Improper Payments but Should Comprehensively Assess Fraud Risks.”

Federal officials should also review the USDA's food choices and determine what foods are regularly wasted. If the federal government chooses to provide school meals, these officials have a duty to make sure the food is nutritious and not being routinely thrown away by students who are not interested in what the agency is offering.

Federal school meal programs are among the most inefficient federal programs. Lawmakers have already expanded the reach of these federal offerings beyond the meals' original purpose—which was to help children from low-income families. Now, the program is serving meals to middle- and upper-income students and wasting valuable taxpayer resources meant for students in need. Before any discussion of expanding the CEP, lawmakers must correct the program's many errors and return school meals to the programs' original intent: To provide food for children in K–12 schools who cannot afford meals during the school day.

Sincerely,

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