

April 8, 2013

Julie Brewer, Chief  
Policy and Program Development Branch  
Child Nutrition Division  
Food and Nutrition Service  
3101 Park Center Drive  
Alexandria, VA 22302

Dear Ms. Brewer:

On behalf of the American Association of School Administrators, representing more than 10,000 school superintendents across the country, I am writing to share our comments in response to the proposed rule published by the Food and Nutrition Service in the February 8, 2013 edition of the Federal Register, titled *Nutrition Standards for All Foods Sold in School as Required by the Health, Hunger-Free Kids Act of 2010*.

AASA supports the overall goals to end childhood hunger and address the epidemic of childhood obesity in the Healthy, Hunger-Free Kids Act (PL 111-296). School superintendents understand the importance of fostering a healthy and positive learning environment. AASA's response to this interim rule is in large shaped by the unfunded mandate the requirements and proposed regulations will bring to LEAs. AASA is concerned by the financial impact the interim could have on local education agencies (LEAs) in a time when many continue to struggle with the impacts of the economic recession and the troubling cuts of sequestration. The federal child nutrition law and its implementation must ensure that educational systems are supported, not undermined, by the provisions of the act.

AASA strongly supports the role of good nutrition for all students and recognizes its important role in helping advance student achievement. While AASA could not support the reauthorization of the child nutrition bill as passed, we remain hopeful that the regulation and implementation process will provide an avenue for addressing our concerns with the bill, especially as it pertains to the unfunded costs associated with the bill. Every day, school districts across the nation provide millions of school-based meals, both breakfast and lunch. The scope of the program is wide: in FY10, schools served 2.9 billion free NSLP lunches, 0.5 billion reduced price lunches, 1.8 billion 'full' price (or paid) lunches, 1.5 billion free breakfasts, 0.2 billion reduced price breakfasts, and 0.3 billion paid breakfasts. Federal meal reimbursements and USDA Foods totaled \$13.3 billion in FY10.

AASA urges the Department to ensure that implementation of this law reinforces the important goals of the school nutrition program. We recognize that the intention of this rule was to regulate competitive foods within schools. Unfortunately, we find this interim rule proposes an unprecedented expansion of regulation in an area that had previously been under state and local control. Further, this regulation comes without any federal resources to support the required compliance. AASA is opposed to the unfunded mandate this proposed rule represents to our nation's schools.

As an opening, general comment, AASA is concerned by the Department's willingness to make a conscious decision to shift local school district funds from instruction to the federal school nutrition program without engaging the public. When created, the National School Lunch Program was designed as a federal program that was locally implemented. While states and locals could contribute to the program, the federal program was

federally funded. With this latest reauthorization we see a significant shift, with a clear assumption that this program is now, somehow, a partnership, with direct fiscal implications for state and local dollars that were previously available for state and local priorities. This is a sentiment we have articulated time and again as this bill moved through the legislative and now regulatory processes, and we are concerned that the shift in funding burden is being overlooked. School districts should not have to continue to financially subsidize the federal meals program at the expense of their primary responsibility, our students' educational program.

As written, the current law, proposed regulations and interim rule cause good nutrition policy to fail because the provisions make the program fiscally impossible in these tough economic times. Recent guidance issued by USDA, relating to lifting the cap requirements on whole grains and protein within the new meal pattern, is an excellent example of the problematic nature of the current law and its implementation as shaped by proposed/pending regulations and rules. The law and its regulations should not put LEAs in the position of having to choose between covering the federal funding shortfall and funding an instructional position. Little attention has been focused on the drain of local school district funds to pay for or offset the continuing un-funded costs of the federal free and reduced-priced school meals, and AASA is concerned that this interim rule compounds this problem.

School superintendents simply request that the role of the federal government as it relates to competitive foods in schools be proportional to the amount of resources it provides to support the regulations. As the federal government currently does not provide funds—and this regulation provides no resources—for competitive foods, there is not a role for federal policy to dictate competitive food policy in school districts. Either provide the resources required to cover the costs associated with the new competitive food regulations or refrain from imposing new federal requirements.

AASA recognizes that it is likely these competitive food regulations will become reality, in some shape or form. To that end, while AASA opposes any federal role for regulating competitive foods within the school lunch program—we offer these comments:

- **Defer to State and Local Governance:** AASA fully subscribes to the idea that state and local education agencies are best positioned to develop wellness policies. These wellness policies are usually the area of school policy that shapes competitive food policy. Further, the regulations themselves describe a current reality where many states and schools are already working to ensure healthier options exist within their competitive food offerings. As such, the unfunded nature of these federal regulations is unnecessary, redundant, and burdensome. Local and state education agencies are the ones best positioned to make decisions that reflect the diversity of their student, schools and lunch programs while bolstering/supporting overall participation in the school lunch/breakfast programs.
- **Definitions:** AASA generally agrees with the definitions, as proposed, for competitive foods, school day, school campus and combination foods.
- **General Nutrition Standards (including a la carte/entrée items):** AASA believes that any standards relating to competitive foods (including their nutritional elements and a la carte items) should be consistent with/identical to those already in place for the school lunch/breakfast programs. AASA opposes any effort to restrict or modify or frequently an LEA can serve a la carte items that meet school lunch program standards.
- **Fundraisers:** AASA opposes both of the alternatives proposed in the regulations. AASA believes that the determination of exemptions for competitive food fundraisers (including count and/or frequency standards) is at the total discretion of the SEA. As such, AASA proposes a melding of the two alternatives,

authoring SEAs to determine the number of exempt fundraisers and/or frequency standard, *without* USDA approval.

- **Record Keeping and Monitoring Requirements:** AASA finds the proposed rule to include significant implications for the personnel and fiscal resources of LEAs (ie, unfunded mandate) related to record keeping and monitoring requirements. The regulation itself estimates the administrative costs associated with the recordkeeping (pg. 121-122). The estimated additional annual burden for recordkeeping under the proposed rule is 926,935 hours, estimated to cost an additional \$127.6 million over five years, with no intention of providing any resources.
- **Issue of Non-Compliance:** AASA would like the USDA to explain the consequences state and local education agencies will face if they are found to be in non-compliance with the competitive food standards. The federal government provides no resources to support this element of the school nutrition program. Beyond the burden the unfunded mandate of competitive food represents, AASA finds USDA has nothing it can leverage against SEAs/LEAs in noncompliance and, as such, reiterates our concern that there is not a role for federal policy within competitive foods.

Please don't hesitate to contact me if you have any questions: [nellerson@aasa.org](mailto:nellerson@aasa.org).

Sincerely,



Noelle Ellerson

Assistant Director, Policy Analysis & Advocacy