To amend the Richard B. Russell National School Lunch Act to improve and expand direct certification procedures for the national school lunch and school breakfast programs, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

NOVEMBER 19, 2009

Mr. LOEBERACK (for himself, Mrs. EMERSON, Mr. GRIJALVA, Mrs. DAVIS of California, Mr. POLIS of Colorado, Mr. MCGOVERN, Ms. CHU, Ms. MCCOLLUM, Ms. WOOLSEY, Mr. ANDREWS, Mr. SCOTT of Virginia, and Mr. AL GREEN of Texas) introduced the following bill; which was referred to the Committee on Education and Labor, and in addition to the Committee on Energy and Commerce, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned.

A BILL

To amend the Richard B. Russell National School Lunch Act to improve and expand direct certification procedures for the national school lunch and school breakfast programs, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the “Hunger Free Schools Act”.

SEC. 2. IMPROVING DIRECT CERTIFICATION.

(a) Performance Awards.—Section 9(b)(4) of the Richard B. Russell National School Lunch Act (42 U.S.C. 1758(b)(4)) is amended—

(1) in the paragraph heading, by striking “FOOD STAMP” and inserting “SUPPLEMENTAL NUTRITION ASSISTANCE PROGRAM”; and

(2) by adding at the end the following:

“(E) Performance Awards.—

“(i) In general.—Effective for each of the schools years beginning July 1, 2010, July 1, 2011, and July 1, 2012, the Secretary shall offer performance awards to States to encourage the States to ensure that all children eligible for direct certification under this paragraph are certified in accordance with this paragraph.

“(ii) Requirements.—For each school year described in clause (i), the Secretary shall—

“(I) consider State data from the prior school year, including estimates contained in the report required under section 4301 of the Food, Conservation, and Energy Act of 2008 (42 U.S.C. 1758a); and
“(II) make performance awards to, as determined by the Secretary—

“(aa) 5 States that demonstrate outstanding performance; and

“(bb) 5 States that demonstrate substantial improvement.

“(iii) FUNDING.—

“(I) IN GENERAL.—On October 1, 2010, and on each October 1 thereafter through October 1, 2012, out of any funds in the Treasury not otherwise appropriated, the Secretary of the Treasury shall transfer to the Secretary, to remain available until expended—

“(aa) $2,000,000 to carry out clause (ii)(II)(aa); and

“(bb) $2,000,000 to carry out clause (ii)(II)(bb).

“(II) RECEIPT AND ACCEPTANCE.—The Secretary shall be entitled to receive, shall accept, and shall use to carry out this clause the funds
transferred under subclause (I), without further appropriation.”.

(b) CONTINUOUS IMPROVEMENT PLANS.—Section 9(b)(4) of the Richard B. Russell National School Lunch Act (42 U.S.C. 1758(b)(4)) (as amended by subsection (a)) is amended by adding at the end the following:

“(F) CONTINUOUS IMPROVEMENT PLANS.—

“(i) IN GENERAL.—Each school year, the Secretary shall—

“(I) identify, using estimates contained in the report required under section 4301 of the Food, Conservation, and Energy Act of 2008 (42 U.S.C. 1758a), States that directly certify less than 95 percent of the total number of children in the State who are eligible for direct certification under this paragraph; and

“(II) require the States identified under subclause (I) to implement a corrective action plan to fully meet the requirements of this paragraph.

“(ii) IMPROVING PERFORMANCE.—A State may include in a corrective action
plan under clause (i)(II) methods to improve direct certification required under this paragraph or paragraph (15) and discretionary certification under paragraph (5).

“(iii) Failure to meet performance standard.—

“(I) In general.—A State that is required to implement a corrective action plan under clause (i)(II) shall be required to submit to the Secretary, for the approval of the Secretary, a direct certification improvement plan for the following school year.

“(II) Requirements.—A direct certification improvement plan under subclause (I) shall include—

“(aa) specific measures that the State will use to identify more children who are eligible for direct certification;

“(bb) a timeline for the State to implement those measures; and
“(cc) goals for the State to improve direct certification results.”.

(c) WITHOUT FURTHER APPLICATION.—Section 9(b)(4) of the Richard B. Russell National School Lunch Act (42 U.S.C. 1758(b)(4)) (as amended by subsection (b)) is amended by adding at the end the following:

“(G) WITHOUT FURTHER APPLICATION.—

“(i) IN GENERAL.—In this paragraph, the term ‘without further application’ means that no action is required by the household of the child.

“(ii) CLARIFICATION.—A requirement that a household return a letter notifying the household of eligibility for direct certification or eligibility for free school meals does not meet the requirements of clause (i).”.

SEC. 3. REPORT ON USING STATEWIDE EDUCATION DATABASES FOR DIRECT CERTIFICATION.

(a) REPORT.—Not later than 2 years after the date of enactment of this Act, the Secretary of Education shall prepare and submit to Congress a report regarding how statewide databases developed by States to track compliance with the requirements of part A of title I of the Ele-
mentary and Secondary Education Act of 1965 (20 U.S.C. 6311 et seq.) can be used for purposes of direct certifi-
cation under section 9(b) of the Richard B. Russell Na-
tional School Lunch Act (42 U.S.C. 1758(b)).

(b) CONTENTS.—The report described in subsection
(a) shall—

(1) identify the States that have, as of the time
of the report, developed statewide databases to track
compliance with the requirements of part A of title
I of the Elementary and Secondary Education Act
of 1965 (20 U.S.C. 6311 et seq.);

(2) describe best practices regarding how such
statewide databases can be used for purposes of di-
rect certification under section 9(b) of the Richard
B. Russell National School Lunch Act (42 U.S.C.
1758(b));

(3) include case studies of States that have ex-
panded such statewide databases so that such state-
wide databases can be used for direct certification
purposes; and

(4) identify States with such statewide data-
bases that would be appropriate for expansion for di-
rect certification purposes.

(c) FUNDING.—
(1) IN GENERAL.—On October 1, 2010, out of any funds in the Treasury not otherwise appropriated, the Secretary of the Treasury shall transfer to the Secretary to carry out this section $500,000, to remain available through September 30, 2013.

(2) RECEIPT AND ACCEPTANCE.—The Secretary shall be entitled to receive, shall accept, and shall use to carry out this section the funds transferred under paragraph (1), without further appropriation.

SEC. 4. EXPANDING DIRECT CERTIFICATION.

(a) DIRECT CERTIFICATION FOR CHILDREN RECEIVING MEDICAID OR SCHIP.—Section 9(b) of the Richard B. Russell National School Lunch Act (42 U.S.C. 1758(b)) is amended by adding at the end the following:

“(14) DIRECT CERTIFICATION FOR CHILDREN RECEIVING MEDICAID OR SCHIP.—

“(A) DEFINITION OF ELIGIBLE CHILD.—

In this paragraph, the term ‘eligible child’ means a child—

“(i)(I) who is eligible for and receiving medical assistance under the State Medicaid program under title XIX of the Social Security Act (42 U.S.C. 1396 et seq.) or child health assistance under the State
children’s health insurance program under title XXI of that Act (42 U.S.C. 1397aa et seq.); and

“(II) whose family income, as used for purposes of determining eligibility for the relevant program in subclause (I), does not exceed 133 percent of the poverty line (as defined in section 673(2) of the Community Services Block Grant Act (42 U.S.C. 9902(2), including any revision required by such section)) applicable to a family of the size used for purposes of determining that eligibility; or

“(ii) a child who is a member of a household (as that term is defined in section 245.2 of title 7, Code of Federal Regulations (or successor provisions)) with a child described in clause (i).

“(B) AGREEMENT.—Subject to subparagraph (D), each State agency shall enter into an agreement with the State agency conducting eligibility determinations for the programs described in subparagraph (A)(i).

“(C) PROCEDURES.—Subject to subparagraph (D) and paragraph (6), the agreement
shall establish procedures under which an eligi-
ble child shall be certified for free lunches
under this Act and free breakfasts under sec-
tion 4 of the Child Nutrition Act of 1966 (42
U.S.C. 1773), without further application (as
defined in paragraph (4)(G)).

“(D) CERTIFICATION.—Subject to sub-
paragraph (D) and paragraph (6), under the
agreement, the local educational agency con-
ducting eligibility determinations for a school
lunch program under this Act and a school
breakfast program under the Child Nutrition
Act of 1966 (42 U.S.C. 1771 et seq.) shall cer-
tify an eligible child as eligible for free lunches
under this Act and free breakfasts under the
Child Nutrition Act of 1966 (42 U.S.C. 1771 et
seq.), without further application (as defined in
paragraph (4)(G)).

“(E) APPLICABILITY.—This paragraph ap-
plies to—

“(i) in the case of the school year be-
beginning July 1, 2010, any State or local
educational agency that elects to partici-
pate in direct certification under this para-
graph;
“(ii) in the case of the school year beginning July 1, 2011, a local educational agency that had an enrollment of 25,000 students or more in the preceding school year;

“(iii) in the case of the school year beginning July 1, 2012, a local educational agency that had an enrollment of 10,000 students or more in the preceding school year; and

“(iv) in the case of the school year beginning July 1, 2013, and each subsequent school year, each local educational agency.

“(F) GRANTS.—

“(i) IN GENERAL.—The Secretary shall provide grants to State agencies that carry out child nutrition programs (as defined in section 25(b)) or conduct eligibility determinations for the programs described in subparagraph (A)(i) for activities associated with implementing this paragraph, including—

“(I) computer system upgrades;

“(II) reprogramming to allow for data matches; and

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“(III) training local educational agency staff.

“(ii) REQUIREMENT.—The Secretary shall use funds made available under this subparagraph to provide—

“(I) initial grants of $50,000 to each State agency; and

“(II) the remainder of the funds through competitive grants based on criteria established by the Secretary.

“(iii) FUNDING.—

“(I) IN GENERAL.—On October 1, 2010, out of any funds in the Treasury not otherwise appropriated, the Secretary of the Treasury shall transfer to the Secretary to carry out this subparagraph $15,000,000, 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 subparagraph the funds transferred under subclause (I), without further appropriation.”.
(b) **DIRECT CERTIFICATION PILOT PROGRAM.—**Section 9(b) of the Richard B. Russell National School Lunch Act (42 U.S.C. 1758(b)) (as amended by subsection (a)) is amended by adding at the end the following:

"(15) **DIRECT CERTIFICATION PILOT PROGRAM.—**

"(A) **IN GENERAL.—**For the school year beginning July 1, 2010, the Secretary shall carry out a pilot program to evaluate the use of program data, including data relating to medical assistance under the State Medicaid program under title XIX of the Social Security Act (42 U.S.C. 1396 et seq.) or child health assistance under the State children’s health insurance program under title XXI of that Act (42 U.S.C. 1397aa et seq.), for direct certification of children for reduced price school meals.

"(B) **REQUIREMENTS.—**The evaluation shall include—

"(i) an analysis of the number of children directly certified for reduced price meals;

"(ii) an assessment of—

"(I) the workload reduction for school districts associated with proc-
essing fewer paper applications and having a smaller verification sample;
and

“(II) the workload associated with directly certifying children for re-
duced price meals;

“(iii) an analysis of the number of children made eligible for reduced price
meals who would have been eligible for paid meals or free meals if a paper appli-
cation had been submitted on behalf of the child; and

“(iv) testing of various mechanisms to ensure that no child receives a lower level
of benefits as a result of the pilot than the child would have received had a paper ap-
plication been submitted and approved.

“(C) REPORT.—Not later than December 31, 2011, the Secretary shall submit to the Committee on Agriculture, Nutrition, and For-
ery of the Senate and the Committee on Edu-
cation and Labor of the House of Representa-
tives a report describing the results of the pilot program under this paragraph.

“(D) FUNDING.—
“(i) IN GENERAL.—On October 1, 2010, out of any funds in the Treasury not otherwise appropriated, the Secretary of the Treasury shall transfer to the Secretary to carry out this paragraph $4,000,000, 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.”.

(e) DIRECT CERTIFICATION OF CHILDREN OF MILITARY PERSONNEL.—Section 9(b) of the Richard B. Russell National School Lunch Act (42 U.S.C. 1758(b)) (as amended by subsection (b)) is amended by adding at the end the following:

“(16) DIRECT CERTIFICATION OF CHILDREN OF MILITARY PERSONNEL.—Subject to paragraph (6), any local educational agency may certify any child as eligible for free lunches or breakfasts, without further application (as defined in paragraph (4)(G)), by directly communicating with the appropriate commander at the military installation or facility concerned to obtain documentation of the status of the
child as a member of a household that is eligible for
a supplemental subsistence allowance for low-income
members with dependents under section 402a of title
37, United States Code.”.

(d) Agreement for Direct Certification and
Cooperation by State Medicaid and CHIP Agen-
cies.—

(1) In general.—Section 1902(a)(7) of the
Social Security Act (42 U.S.C. 1396a(a)(7)) is
amended—

(A) by redesignating subparagraphs (A)
and (B) as clauses (i) and (ii), respectively, and
realigning the left margins accordingly;

(B) in clause (ii) (as so redesignated)—

(i) by striking “at State option,”;

(ii) by inserting “certify or” before
“verify the certification of eligibility”; and

(iii) by adding “and” after the semi-
colon;

(C) by striking “provide safeguards” and
inserting “provide—

“(A) safeguards”; and

(D) by adding at the end the following:

“(B) that, notwithstanding the option
under subsection (e)(13) (relating to Express
Lane eligibility), not later than July 1, 2010, the State shall enter into an agreement with the State agency administering the school lunch program established under the Richard B. Russel National School Lunch Act under which the State shall establish procedures to ensure that—

“(i) any child receiving medical assistance under the State plan under this title or child health assistance under a State child health plan under title XXI whose family income does not exceed 133 percent of the poverty line (as defined in section 673(2) of the Community Services Block Grant Act, including any revision required by such section) applicable to a family of the size involved, shall be certified as eligible for free lunches under the Richard B. Russell National School Lunch Act and free breakfasts under the Child Nutrition Act of 1966 without further application; and

“(ii) the State agencies responsible for administering the State plan under this title, the State child health plan under title
XXI, and for carrying out child nutrition programs (as defined in section 25(b) of the Richard B. Russell National School Lunch Act) cooperate in carrying out paragraphs (3)(F) and (14) of section 9(b) of that Act;”.

(2) EFFECTIVE DATE.—

(A) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this subsection take effect on the date of enactment of this Act.

(B) EXTENSION OF EFFECTIVE DATE FOR STATE LAW AMENDMENT.—In the case of a State plan under title XIX of the Social Security Act (42 U.S.C. 1396 et seq.) which the Secretary of Health and Human Services determines requires State legislation in order for the plan to meet the additional requirements imposed by the amendments made by this section, the State plan shall not be regarded as failing to comply with the requirements of the amendments made by this section solely on the basis of its failure to meet such additional requirements before the first day of the first calendar quarter beginning after the close of the first
regular session of the State legislature that begins after the date of the enactment of this Act. For purposes of the previous sentence, in the case of a State that has a 2-year legislative session, each year of the session is considered to be a separate regular session of the State legislature.

SEC. 5. HUNGER FREE SCHOOLS.

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

“(F) DATA-BASED ELIGIBILITY.—

“(i) IN GENERAL.—A school or local educational agency may elect to receive special assistance payments under clause (ii) in lieu of special assistance payments otherwise made available under this paragraph based on applications for free and reduced price lunches if the school or local educational agency—

“(I) elects to serve all children in the school or local educational agency free lunches and breakfasts under the school lunch program and school
breakfast program established under section 4 of the Child Nutrition Act of 1966 (42 U.S.C. 1773), during a period of 5 successive school years; and

“(II) pays, from sources other than Federal funds, the costs of serving the lunches or breakfasts that are in excess of the value of assistance received under this Act and the Child Nutrition Act of 1966 (42 U.S.C. 1771 et seq.).

“(ii) ALTERNATIVE DATA SOURCES.—Subject to criteria established by the Secretary not later than December 31, 2010, special assistance payments under clause (i) may be based on an estimate of the number of children eligible for free and reduced price lunches under section 9(b)(1)(A) derived from recent data other than applications, including—

“(I) a socioeconomic survey of a representative sample of households of students, which may exclude students who have been directly certified under
paragraphs (4), (5), (14), (15), and (16) of section 9(b);

“(II) data from the American Community Survey of the Bureau of the Census;

“(III) data on receipt of income-tested public benefits by students or the households of students or income data collected by public benefit programs, including—

“(aa) the supplemental nutrition assistance program established under the Food and Nutrition Act of 2008 (7 U.S.C. 2011 et seq.);

“(bb) the medical assistance program under the State Medicaid program under title XIX of the Social Security Act (42 U.S.C. 1396 et seq.);

“(cc) the supplemental security income program established under title XVI of that Act (42 U.S.C. 1381 et seq.); and
“(dd) the program of block
grants to States for temporary
assistance for needy families es-
tablished under part A of title IV
of that Act (42 U.S.C. 601 et
seq.); or
“(IV) other data, including State
or local survey data and State or local
tax records.
“(iii) REVIEW AND APPROVAL.—The
Secretary shall—
“(I) review any proposal sub-
mitted by a school or local educational
agency that relies on the alternative
data sources described in clause (ii) to
develop an estimate of the number of
children eligible for free and reduced
price lunches under section
9(b)(1)(A); and
“(II) approve the proposals that
meet the criteria established under
clause (ii).
“(iv) PAYMENTS.—
“(I) FREE MEALS.—For each
month of the period during which a
school or local educational agency described in clause (i) serves free lunches or breakfasts to all enrolled children, special assistance payments at the rate for free meals shall be made for a percentage of all reimbursable meals served that is equal to the percentage of students estimated to be eligible for free meals.

"(II) REDUCED PRICE MEALS.—

For each month of the period during which the school or local educational agency serves free lunches or breakfasts to all enrolled children, special assistance payments at the rate for reduced price meals shall be made for a percentage of all reimbursable meals served that is equal to the percentage of students estimated to be eligible for reduced price meals.

"(III) OTHER MEALS.—For each month of the period during which the school or local educational agency serves free lunches or breakfasts to all enrolled children, special assistance
payments at the rate provided under section 4 shall be made for the remainder of the reimbursable meals served.

“(v) RENEWALS.—

“(I) IN GENERAL.—A school or local educational agency described in clause (i) may reapply to the Secretary at the end of the period described in clause (i), and at the end of each period thereafter for which the school or local educational agency receives special assistance payments under this subparagraph, for the purpose of continuing to receive the reimbursements and assistance for a subsequent 5-school-year period.

“(II) APPROVAL.—The Secretary shall approve an application under this clause if available socioeconomic data demonstrate that the income level of the population of the school or local educational agency has remained consistent with or below the income level of the population of the school or
local educational agency in the last
year in which reimbursement rates
were determined under clause (ii).

“(III) DATA.—Not later than
December 31, 2010, the Secretary
shall establish criteria regarding the
socioeconomic data that may be used
by a school or local educational agen-
ey when applying for a renewal of the
special assistance payments for a sub-
sequent 5-school-year period.

“(G) HIGH-POVERTY AREAS.—
“(i) IN GENERAL.—A school or local
educational agency may elect to receive
special assistance payments under clause
(ii) in lieu of special assistance payments
otherwise made available under this para-
graph based on applications for free and
reduced price lunches if the school or local
educational agency—

“(I) during a period of 2 succes-
sive school years, selects to serve all
children in the school or local edu-
cational agency free lunches and
breakfasts under the school lunch pro-
gram under this Act and the school
breakfast program established under
section 4 of the Child Nutrition Act of
1966 (42 U.S.C. 1773);

“(II) pays, from sources other
than Federal funds, the costs of serv-
ing the lunches or breakfasts that are
in excess of the value of assistance re-
ceived under this Act and the Child
Nutrition Act of 1966 (42 U.S.C.
1771 et seq.) and during the prior
school year, directly certified under
paragraphs (4), (5), (14), (15), and
(16) of section 9(b) at least 40 per-
cent of the enrolled students; or

“(III) that received payments
under this subparagraph for the prior
school year, directly certifies under
paragraphs (4), (5), (14), (15), and
(16) of section 9(b) at least 30 per-
cent of the enrolled students.

“(ii) PAYMENTS.—

“(I) IN GENERAL.—For each
month of the school year, special as-
sistance payments at the rate for free
meals shall be made under this sub-
paragraph for a percentage of all re-
imbursable meals served in an amount
equal the product obtained by multi-
plying—

“(aa) 1.5; by

“(bb) the percentage of stu-
dents directly certified under
paragraphs (4), (5), (14), (15),
and (16) of section 9(b), up to a
maximum of 100 percent.

“(II) OTHER MEALS.—The per-
centage of meals served that is not de-
scribed in subclause (I) shall be reim-
bursed at the rate provided under sec-
tion 4.

“(iii) ELECTION OF OPTION.—

“(I) IN GENERAL.—Any school
or local educational agency eligible for
the option under clause (i) may elect
to receive special assistance payments
under clause (ii) for the next school
year if the school or local educational
agency provides to the State agency
evidence of the percentage of students
directly certified not later than June 30 of the current school year.

“(II) State agency notification.—Not later than May 1 of each school year, each State agency shall notify—

“(aa) any local educational agency that appears, based on reported verification summary data, to have directly certified at least 40 percent of the enrolled students for the current school year, that the local educational agency may be eligible to elect to receive special assistance payments under clause (ii) for the next school year and explain the procedures for the local educational agency to make such an election; and

“(bb) any local educational agency that appears, based on reported verification summary data, to have directly certified at least 30 percent of the enrolled
students for the current school year, that the local educational agency may become eligible to elect to receive special assistance payments under clause (ii) for a future school year if the local educational agency directly certifies at least 40 percent of the enrolled students.

“(III) LOCAL EDUCATION AGENCY NOTIFICATION.—Not later than May 1 of each school year, each local educational agency shall notify—

“(aa) any school that directly certified at least 40 percent of the enrolled students for the current school year, that the school is eligible to elect to receive special assistance payments under clause (ii) for the next school year and explain the procedures for the school to make such an election; and

“(bb) any school that directly certified at least 30 per-
cent of the enrolled students for
the current school year, that the
school may become eligible to
elect to receive special assistance
payments under clause (ii) for a
future school year if the school
directly certifies at least 40 per-
cent of the enrolled students.

“(IV) Procedures.—Not later
than December 31, 2010, the Sec-
retary shall establish procedures for
State agencies, local educational agen-
cies, and schools to meet the require-
ments of this subparagraph and exer-
cise the options provided under this
subparagraph.”.

(b) Conforming Amendments.—Section
11(a)(1)(B) of the Richard B. Russell National School
Lunch Act (42 U.S.C. 1759a(a)(1)(B)) is amended by
striking “or (E)” and inserting “(E), (F), or (G)”. 