

111TH CONGRESS
2D SESSION

H. R. 5202

To direct the Secretary of Agriculture to issue guidance to school food authorities on indirect costs, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

MAY 4, 2010

Ms. CHU (for herself, Mr. TONKO, and Mr. POLIS of Colorado) introduced the following bill; which was referred to the Committee on Education and Labor, and in addition to the Committee on the Budget, 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 direct the Secretary of Agriculture to issue guidance to school food authorities on indirect costs, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “National School Lunch
5 Protection Act of 2010”.

6 **SEC. 2. FINDINGS AND PURPOSE.**

7 (a) FINDINGS.—Congress finds the following:

1 (1) Through the National School Lunch Pro-
2 gram (NSLP) and the School Breakfast Program
3 (SBP), school food service has played an integral
4 role in the health and nutrition of American chil-
5 dren, and remains one of the key safety-nets in place
6 to alleviate childhood hunger and malnutrition do-
7 mestically. In 2009, the NSLP served more than
8 31,000,000 students every day, while the SBP fed
9 over 11,000,000 students.

10 (2) The NSLP and SBP are shared responsibil-
11 ities between the Federal, State, and local govern-
12 ments.

13 (3) In 2009 the Federal Government spent
14 more than \$12,000,000,000 to support the NSLP
15 and the SBP, to ensure students across the country
16 received at least one healthy meal every school day.

17 (4) Faced with growing student participation
18 and increased costs, school food service programs
19 across the country are facing unprecedented budget
20 crises.

21 (5) According to a recent study by the School
22 Nutrition Association, 52 percent of school food
23 service programs are charged indirect costs by local
24 educational agencies. Indirect costs are costs in-

1 curred for a common purpose that benefit more than
2 one programmatic objective.

3 (6) According to the study, there is an overall
4 lack of consistency amongst local educational agen-
5 cies nationwide about what method should be used
6 to identify and calculate indirect costs, and what
7 constitute appropriate direct cost charges to school
8 food authorities.

9 (7) School food service must operate on a non-
10 profit basis, balance cost with revenue, and ensure
11 all revenue generated is used to support or improve
12 the food service.

13 (b) PURPOSES.—The purposes of this Act are to—

14 (1) ensure Federal funds are being appro-
15 priately spent to benefit the health and nutrition of
16 American children;

17 (2) study the impact of indirect and direct costs
18 charged to the NSLP and SBP programs;

19 (3) study the types and amounts of indirect and
20 direct costs charged and recovered by local edu-
21 cational agencies; and

22 (4) encourage the Secretary to issue regulations
23 to ensure the effectiveness of Federal support for
24 the NSLP and SBP.

1 **SEC. 3. COST STUDY AND FUNDING.**

2 (a) GUIDANCE ON ALLOWABLE COSTS TO SCHOOL
3 FOOD AUTHORITIES.—Not later than 180 days after the
4 date of enactment of this Act, the Secretary of Agriculture
5 shall issue guidance to school food authorities partici-
6 pating in the school lunch program established under the
7 Richard B. Russell National School Lunch Act (42 U.S.C.
8 1751 et seq.) and the school breakfast program estab-
9 lished under section 4 of the Child Nutrition Act of 1966
10 (42 U.S.C. 1773) covering program rules pertaining to al-
11 lowable costs that may be charged to the nonprofit school
12 food service accounts of such authorities including, indi-
13 rect and direct costs.

14 (b) INDIRECT AND DIRECT COSTS STUDY.—The Sec-
15 retary of Agriculture shall—

16 (1) conduct a study to assess the extent to
17 which school food authorities participating in the
18 school lunch program established under the Richard
19 B. Russell National School Lunch Act (42 U.S.C.
20 1751 et seq.) and the school breakfast program es-
21 tablished by section 4 of the Child Nutrition Act of
22 1966 (42 U.S.C. 1773) pay indirect and direct costs,
23 including assessments of—

24 (A) the allocation of indirect and direct
25 costs to such school food authorities;

1 (B) the methodologies used to establish in-
2 direct cost rates for such school food authori-
3 ties;

4 (C) the types and amounts of indirect and
5 direct costs charged and recovered by local edu-
6 cational agencies;

7 (D) the impact of indirect and direct costs
8 charged to the nonprofit school food service ac-
9 counts of such school food authorities;

10 (E) whether the indirect and direct costs
11 charged or recovered are consistent with re-
12 quirements for the allocation of costs and
13 school food service operations; and

14 (F) the types and amounts of indirect and
15 direct costs that could be charged or recovered
16 under requirements for the allocation of costs
17 and school food service operations but are not
18 charged or recovered; and

19 (2) after completing the study required under
20 paragraph (1), issue additional guidance relating to
21 the types of costs that are reasonable and necessary
22 to provide meals under the Richard B. Russell Na-
23 tional School Lunch Act (42 U.S.C. 1751 et seq.)
24 and section 4 of the Child Nutrition Act of 1966 (42
25 U.S.C. 1773).

1 (c) REGULATIONS.—After conducting the study
2 under subsection (b)(1) and identifying costs under sub-
3 section (b)(2), the Secretary of Agriculture may promul-
4 gate regulations to address—

5 (1) any identified deficiencies in the allocation
6 of indirect and direct costs charged to school food
7 authorities participating in the lunch program under
8 the Richard B. Russell National School Lunch Act
9 (42 U.S.C. 1751 et seq.) and the breakfast program
10 under the Child Nutrition Act of 1966 (42 U.S.C.
11 1773); and

12 (2) the authority of school food authorities to
13 reimburse only those costs identified by the Sec-
14 retary as reasonable and necessary under subsection
15 (b)(2).

16 (d) REPORT.—Not later than October 1, 2013, the
17 Secretary of Agriculture shall submit to the Committee on
18 Education and Labor of the House of Representatives and
19 the Committee on Agriculture, Nutrition, and Forestry of
20 the Senate a report that describes the results of the study
21 conducted under subsection (b)(2).

22 (e) FUNDING.—

23 (1) IN GENERAL.—On October 1, 2010, out of
24 any funds in the Treasury not otherwise appro-
25 priated, the Secretary of the Treasury shall transfer

1 to the Secretary to carry out this section
2 \$2,000,000, to remain available until expended.

3 (2) RECEIPT AND ACCEPTANCE.—The Sec-
4 retary shall be entitled to receive, shall accept, and
5 shall use to carry out this section the funds trans-
6 ferred under paragraph (1), without further appro-
7 priation.

8 (f) BUDGETARY EFFECTS.—The budgetary effects of
9 this Act, for the purpose of complying with the Statutory
10 Pay-As-You-Go-Act of 2010, shall be determined by ref-
11 erence to the latest statement titled “Budgetary Effects
12 of PAYGO Legislation” for this Act, submitted for print-
13 ing in the Congressional Record by the Chairman of the
14 House Budget Committee, provided that such statement
15 has been submitted prior to the vote on passage.

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