



United States  
Department of  
Agriculture

Food and  
Nutrition  
Service

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**DATE:** April 17, 2013

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**SUBJECT:** Paid Lunch Equity: Guidance for SY 2013-14

**TO:** Regional Directors  
Special Nutrition Programs  
All Regions

State Directors  
Child Nutrition Programs  
All States

The interim rule, “National School Lunch Program: School Food Service Account Revenue Amendments Related to the Healthy, Hunger-Free Kids Act of 2010”, published in the Federal Register on June 17, 2011, (76 Federal Register 35301), requires school food authorities (SFAs) participating in the National School Lunch Program to ensure sufficient funds are provided to the nonprofit school food service account for lunches served to students not certified eligible for free or reduced price meals. The rule, and the statutory provision it is based on, Section 12(p) of the Richard B. Russell National School Lunch Act, 42 USC 1760(p), provide two ways for SFAs to meet this requirement: either through gradually raising the prices charged for “paid” lunches or through providing an equivalent amount of funds from non-Federal sources to the nonprofit school food service account.

In recognition of the short timeframes for implementation, the interim rule allowed significant flexibility in complying with the provision in the first year of implementation (School Year (SY) 2011-12). Many of those flexibilities were not applicable in SY 2012-13. FNS received several comments on the interim rule suggesting that we extend those initial flexibilities, making them permanent in the final rule. We also received feedback from SFAs over the course of this school year, specifically that the provision is challenging to implement in situations where the SFA is in strong financial health, despite having paid lunch prices below the level required by the interim rule.

In response to these comments on the interim rule, this memorandum identifies specific flexibilities SFAs may use when implementing the paid lunch equity requirement for SY 2013-2014. It will be essential for State agencies to provide technical assistance to SFAs seeking to use these flexibilities. In addition, we plan to provide support to State agencies in their efforts and will continue gathering information on implementation throughout the coming school year in order to inform considerations about whether to extend these flexibilities beyond SY 2013-2014. This information will also be critical to informing the final rule.

### Sources of Non-Federal Funds

Currently, under Program regulations at 7 CFR 210.14(e)(5)(iii), SFAs may count as a non-Federal revenue source any State or local per-lunch reimbursement specifically provided for *paid lunches*. Additionally the regulations permit SFAs to count as a non-Federal source funds provided specifically for paid lunches by organizations (such as school-related or community groups), and any proportion attributable to paid lunches from direct payments made from school district funds to support lunch service.

Expanding the definition of a non-Federal source to include paid breakfasts will help SFAs meet the PLE requirement. Additionally, it will acknowledge the continuing support by States and locals to improve access to and participation in the breakfast program. For that reason and in response to the feedback we received both on the interim rule and throughout this school year, FNS will expand the definition of allowable non-Federal funds to include support of *all paid meals*. As a result, non-Federal funds provided to an SFA to support paid breakfasts, as well as lunch, may be counted toward the regulatory revenue requirement.

**Therefore, for SY 2013-2014 SFAs may count as a non-Federal source:**

- 1. Per-meal non-Federal reimbursement for any paid meal (breakfast, lunch, etc)**
- 2. Any funds provided by organizations for any paid meal**
- 3. Any proportion attributable to paid meals from direct payments made from school district funds to support lunch service**

### SFAs in Strong Financial Position

The school food service account is required to be non-profit, and current regulations (210.9(b)(2), 210.14(b)) require SFAs not to exceed a three-month operating balance in their account. This requirement is meant to ensure that SFAs are spending their funds only on school meal operations and not profiting from Federal funds.

During the implementation of the interim rule, some State agencies and SFAs have noted that requiring SFAs in strong financial positions to increase prices or contribute funds to the food service account may not further the goals of the Healthy, Hunger-Free Kids Act of 2010 (HHFKA) and the rule. FNS agrees that the goal of the paid lunch equity provision was to bring in new revenue to SFAs, to strengthen their financial standing and financially support the improvements required by the new meal patterns, However, for some SFAs the additional revenue may not be necessary to achieve that goal.

**Therefore, for SY 2013-2014 State agencies, upon request by an SFA, should exempt an SFA from the paid lunch revenue requirements if the SFA: has been certified as meeting the meal pattern requirements, and; can demonstrate that the required increase to paid**

**lunch prices or revenue contributions would cause the SFA to exceed the three-month operating balance limit. In reviewing the request of an SFA, the State agency should also consider whether there are other necessary or desirable uses for the funds to meet Program requirements and goals or to address deficiencies in Program operations.**

State agencies must inform the Food and Nutrition Service (FNS) of the number of SFAs that request the exemption from the paid lunch equity requirement. FNS may seek additional information from State agencies on the considerations and examples of strong financial standing of the SFAs requesting exemptions in order to inform future policy considerations, including a final rule.

While these flexibilities are available for SY 2013-2014, please know that FNS will be carefully evaluating the information and data gathered from State agencies regarding how these policies are being implemented in order to better understand their impact on school food service revenue and whether they further the goals of the HHFKA. State agencies are reminded to distribute this Memorandum to program operators immediately. SFAs should contact their State agencies for additional information. State agencies may direct any questions concerning this guidance to the appropriate Food and Nutrition Service Regional Office.

**Original Signed**

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