

# FRAC Analysis of H.R. 3873

Updated March 31, 2004

## Title I – Ensuring Access to Child Nutrition Programs

### ***Sec. 101. Exclusion of military housing allowances.***

- This section makes permanent the exclusion of privatized military housing allowances from consideration as income for the purpose of determining the eligibility of children in military households for free or reduced price lunches. (This exclusion was authorized in current law for fiscal years 2002 and 2003, and has been continued through March 31, 2004.)

### ***Sec. 102. Homeless children, runaway youth, and migratory child eligibility.***

- This section codifies current regulations that make homeless children (as defined in the McKinney - Vento Homeless Assistance Act) and runaway children and youth (as defined in the Runaway and Homeless Youth Act) categorically eligible for free school meals. It also provides migrant children (as defined in Section 1309(2) of the Elementary and Secondary Education Act) with categorical eligibility for free school meals.

### ***Sec. 103. Eligibility for severe need assistance.***

- This section eliminates the cost-accounting requirement for severe need assistance in order to reduce paperwork for needy schools. (Schools with at least 40% free or reduced price eligible students can receive extra severe need breakfast reimbursements.)
- It also makes new schools that draw their attendance from severe need schools immediately eligible for severe need assistance for breakfast. (Under current law, no school can be eligible for severe need assistance before the third year that the school operates school lunch.)

### ***Sec. 104. Reauthorization of summer food programs.***

- The Lugar Pilot Projects
  - ▶ The pilot is extended from March 31, 2004 to September 30, 2008.
  - ▶ Included in the pilot are the 14 jurisdictions already participating – Alaska, Arkansas, Idaho, Indiana, Iowa, Kansas, Kentucky, Nebraska, New Hampshire, North Dakota, Oklahoma, Puerto Rico, Texas, and Wyoming – and three additional states. The new states – Colorado, Louisiana, and Mississippi – were made eligible by the same criteria used select the original pilot states (summer nutrition program performance), but updated to the most recent year for which such data is available.
  - ▶ Private non-profit sponsors, which were previously ineligible, would now be eligible for the pilot.
- The Summer Food Service Program is reauthorized until September 30, 2008.

### ***Sec. 105. Child and adult care food program.***

- CACFP Paperwork Reduction Package of Amendments:
  - ▶ Allow a permanent agreement between State agencies and institutions, and between sponsoring organizations and family or group day care home providers.
  - ▶ Reduce paperwork for sponsoring organizations and State agencies by extending the duration of qualifying data for Tier 1 area eligibility.
  - ▶ Reduce paperwork for State CACFP agencies and sponsoring organizations by making the CACFP family child care home sponsoring organization audit disregard consistent with the School Lunch Program.

- ▶ Create a paperwork reduction effort to examine the feasibility of reducing paperwork related to regulations and record keeping requirements for State agencies, family child care homes, child care centers, and sponsoring organizations participating in CACFP.
- Makes permanent CACFP eligibility for the for-profit child care centers serving 25% or more low-income children.
- Extends the limit on CACFP eligibility for homeless shelters from 12 years of age to 18 years of age.
- Extends the income eligibility privatized military housing exemption for children whose parents are in the Armed Forces.
- Extends USDA's Management Improvement Initiative.
- CACFP State agency audit funds are reauthorized at 1.5 percent with the exception of the reduction in audit funds to 1 percent from fiscal year 2005 through fiscal year 2007. (The fiscal year 2005 through fiscal year 2007 reduction in audit funds was made as part of the 1998 Child Nutrition Reauthorization with a promise that the reduction would be addressed before it would be implemented.)

***Sec. 106. Review of best practices in the breakfast program.***

- Subject to the availability of funds, the U.S. Department of Agriculture (USDA) is required to work with a research organization on a review of best practices and model breakfast programs, which will offer recommendations for schools to overcome key obstacles to the growth of the breakfast program. Within 12 months after enactment of this bill, USDA is required to make the review available via the Internet and transmit it to the Congressional Committees that have jurisdiction over the school breakfast program.

***Sec. 107. Area eligibility demonstration.***

- This section makes rural areas in Pennsylvania eligible for the Summer Food Service Program if at least 40 percent of the children are eligible for free or reduced-price school meals. The statute currently requires that 50 percent of more of the children in a geographical area be eligible for school meals to participate in summer food. The State agency is to report to the Secretary on the effect of the demonstration project on participation.

***Sec.108. Seamless Summer administration.***

- This section enacts into law USDA's seamless summer food waiver, which allows schools to feed children during the summer through the School Breakfast and the National School Lunch Programs. Schools receive the free reimbursement rates provided during the school year for the summer meals served under this provision.

***Sec. 109. Year round services for eligible entities.***

- This section creates a pilot in California that allows local government and private non-profit sponsors to serve meals year round through a single nutrition program. The sponsors can serve up to 3 meals and 2 snacks each day and receive the Summer Food Service Program reimbursement rate. \$1 million is provided for fiscal years 2004 through 2008 for this section.

<b>Title II – Improving Program Quality and Integrity</b>
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***Sec. 201. Eligibility and certification for free and reduced price lunches.***

- **Income guidelines.** Income guidelines for determining free or reduced price school lunches are specified as the non-farm income poverty guidelines issued by the Secretary of Health and Human Services. (Current law specifies guidelines issued by the Office of Management and Budget.)

- **Accessibility.** Application forms and descriptive materials are to be in a language that parents can understand, to the extent practicable. Households are allowed to submit applications electronically via the Internet.
- **Notification.** Materials distributed with school lunch applications are required to contain notification that WIC, food stamp, FDPIR and TANF participants are eligible for free or reduced price lunches. The materials are also required to contain notice that income documentation may be requested.
- **Household applications.** Household – or multi-child – applications are made mandatory, so that a State or local educational agency may not request a separate application for each child in the household.
- **Verification.** This section codifies verification procedures (current law grants USDA authority to issue regulations to establish verification procedures).
  - ▶ **Low non-response rate districts.** School districts that had less than 25% non-response rates to requests for income documentation in the prior year, and school districts that receive more than 20,000 applications and that in the prior year had a non-response rate that was 10% lower than that of the second preceding year, are required to select applications for verification under the same methods as in current regulations (3% of approved applications, randomly selected; or 1% of applications, selected from the pool of applications that list income within \$100/month or \$1,200/year of the free or reduced price eligibility guidelines and ½% of applications that list TANF or food stamp case numbers in lieu of income).
  - ▶ **Higher non-response rate districts.** All other districts are required to focus the selection of applications on those considered more “error-prone” (3% of applications, selected from the pool of applications that list income within \$100/month or \$1,200/year of the free or reduced price eligibility guidelines).
  - ▶ **Substitutions.** In accordance with regulations to be developed by USDA, LEAs may, upon individual review, decline to verify up to 2% of applications selected for verification and replace them with other applications.
  - ▶ **Direct Verification.** In accordance with regulations to be developed by USDA, LEAs may contact similar means-tested public programs (food stamps, TANF, FDPIR, Medicaid) in order to verify eligibility for free or reduced price meals before contacting the household for income documentation.
  - ▶ **Accessibility.** All communications regarding verification are to be in a language that parents can understand, to the extent practicable.
- **Direct Certification.**
  - ▶ This section directs, to the extent practicable, State food stamp agencies to enter into agreements with State school nutrition agencies to certify children who live in households receiving food stamps as eligible for free school meals. Notifications are to be in a language that parents can understand, to the extent practicable.
  - ▶ Migrant children and children who live in households receiving TANF may also be directly certified for free school meals.

***Sec. 202. Duration of eligibility for free and reduced price lunches.***

- This section specifies that eligibility for free or reduced price school meals begins on the date of eligibility approval and ends on the beginning date of the subsequent school year, or as otherwise specified by USDA. (Under current regulations, households are required to report any monthly income variations of \$50 per month or more.)

***Sec. 203. Certification by local education agencies.***

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***Sec. 204. Compliance and accountability.***

- These sections move responsibility for the collection of applications and the verification of income eligibility documentation from “local school food authorities” and “local school authorities” to “local

education agencies,” as defined in Sec. 9109 of the Elementary and Secondary Education Act of 1965:

- ▶ The term “local education agency” means a public board of education or other public authority legally constituted within a State for either administrative control or direction of, or to perform a service function for, public elementary schools or secondary schools in a city, county, township, school district, or other political subdivision of a State, or of or for a combination of school districts or counties that is recognized in a State as an administrative agency for its public elementary schools or secondary schools.
- In the case of a private non-profit school food authority, USDA determines the “local education agency.”

### ***Sec. 205. Technology improvement.***

- **Priority for reallocated funds.** This section requires USDA, in reallocation of remaining State Administrative Expense (SAE) funds returned to USDA, to give priority to States that demonstrate need and use the funds for improvements in technology and information management systems.
- **Use of SAE funds.** “Technology and information management systems” are added to the list of expenses that may be paid for by SAE funds.

### ***Sec. 206. Minimum State administrative expense grants.***

- Federal funds expended for afterschool snacks are added to the formula used to calculate State Administrative Expense (SAE) funds.
- For fiscal years 2005-2007, no State shall receive less SAE funds than the amount allocated in fiscal year 2004.
- The minimum amount that States can receive in SAE funds is \$200,000. (Under current law, the minimum amount is \$100,000.)

### ***Sec. 207. District-wide eligibility for special assistance.***

- This section allows Provisions 2 and 3 (which allow schools to eliminate collection and processing of meal applications for several years, in exchange for offering all meals at no charge), to be operated on a district-wide basis. (Under current law, Provisions 2 and 3 may be operated only on a school-by-school basis.)

### ***Sec. 208. Administrative error reduction.***

- **Federal support for training and technical assistance.**
  - ▶ **Training and technical assistance materials.** USDA is required to develop and distribute training and technical assistance materials relating to the administration of school meal programs.
  - ▶ **Additional review requirement.** In addition to other required reviews, State educational agencies are required to conduct administrative reviews (of application, certification, verification, and meal counting and claiming procedures) of local educational agencies (LEAs) that have demonstrated high levels or high risk of administrative error, as determined by USDA. If the reviewed LEA fails to meet performance criteria established by USDA, the LEA is required to submit a corrective action plan to the State agency, and the State agency is required to provide technical assistance and conduct a follow-up review.
  - ▶ **Funding.** To carry out this section, \$3 million/year is provided for fiscal years 2004 and 2005, and \$2 million/year is provided for fiscal years 2006 and 2007.
- **Recovering funds.** If an LEA fails both the initial and follow-up reviews, USDA is allowed to require the State agency to recover funds that would otherwise be paid to the school district for school meal programs, under procedures to be developed by USDA.
  - ▶ **Amount of funds.** The amount recovered equals the value of the error beginning on the date the error was made and the earlier of the date the error is corrected or 60 days (in the case of the first

review conducted under this section) or 90 days (in the case of any subsequent review) from the date the error was made.

- ▶ **Use of funds.** Funds recovered under this section are to be returned to USDA and may be used for administrative practices to improve program integrity and administrative accuracy, to assist State agencies in administrative reviews, and to develop and distribute administrative training and technical assistance materials, or be credited to the child nutrition programs appropriation account.
- ▶ **State share.** A State agency may retain up to 25% of recovered funds, to assist school districts that have repeatedly failed administrative performance criteria. To be eligible for the funds, a State agency must submit to USDA a plan (and receive approval of such plan) describing how the funds will be used to improve school meal programs integrity, including measures to give priority to those school districts from which the funds were recovered.
- **Training and Technical Assistance.**
  - ▶ **Information management systems.** States are required to submit descriptions of how technology and information management systems will be used to improve program integrity by monitoring nutrient content of meals, training schools and school food authorities, and comparing and monitoring electronic data across schools and school food authorities. (Current law requires States to submit general plans for the use of SAE funds.)
  - ▶ **State training.** The State agency is required submit a plan to USDA and to provide annual training in administrative practices to school food authority administrative and other appropriate personnel.
  - ▶ **Federal role.** USDA is required to provide training and technical assistance to assist the State in carrying out administrative training or directly provide training and technical assistance.
  - ▶ **Third-party contracting.** USDA or a State is allowed to contract with a third party in carrying out this subsection, under procedures to be developed by USDA.
  - ▶ **Required participation.** Each school district is required to ensure that an individual conducting or overseeing administrative procedures receives training at least annually, unless determined otherwise by USDA.
  - ▶ **Funding.** \$4 million/year is provided to carry out this section and administrative reviews.
  - ▶ **Allocation.** These funds are to be allocated to the States based upon the number of LEAs with a high level or high risk of administrative error.

## Title III – Promoting Nutrition Quality and Preventing Childhood Obesity

### ***Sec. 301. Local school wellness policy.***

- Requires local educational agencies to develop local wellness policies that include goals for nutrition education, physical activity, and other school-based activities to promote student wellness; nutrition guidelines for all foods sold on school campus during the school day (which use as their base current federal regulations); implementation plans; and the involvement of parents, students and others in the policies' development.

### ***Sec. 302. Supporting nutrition education, improving meal quality, and access to local foods.***

- **Team Nutrition Network.** Authorizes funding on a competitive basis to promote the nutritional health of children through nutrition education, physical activity and other activities that support healthy lifestyles for children; provide assistance to states for the development of state-wide, comprehensive and integrated nutrition education and physical fitness programs; and provide training and technical assistance to States, school and community nutrition programs, and child nutrition food service professionals. Under this section, a State team nutrition network coordinator will be hired by the State to plan, administer and coordinate this program. Evaluation of the Team Nutrition Network is also required by the section.

- **Local Nutrition and Physical Activity Project.** Authorizes funding for up to 100 local education agencies, at least one per state, for pilot projects that promote healthy eating habits and increase physical activity. Evaluation of the projects is required.
- **Nutrition Education Support.** Authorizes USDA to provide technical assistance and grants to improve the quality of school meals through a school meals initiative and to increase access to local foods in schools and institutions through farm to cafeteria activities.

***Sec. 303. Fruits and vegetable commodities.***

- Adds fruits and vegetables to the list of preferred commodities for USDA commodities.

***Sec. 304. Fluid milk.***

- Removes the current requirement for serving whole milk as one of the milks offered to students in the school meal programs, requiring instead fluid milk in a variety of fat contents and allowing flavored and lactose-free milk. In addition, this section allows schools to offer non-dairy beverage substitutes that are nutritionally equivalent to milk for students who can't consume fluid milk because of a medical or other special dietary need if the substitution is requested by a written statement from a parent or a medical authority.

***Sec. 305. Waiver of requirements for weighted averages for nutrient analysis***

- Allows States to grant waivers to schools to use an alternative method to what is currently in the regulations for nutrient analysis as long as their method can adequately document that the menus meet the Dietary Guidelines.

***Sec. 306. Whole grains.***

- Requires USDA to develop regulations that result in an increase in the amount of whole grains served in school meals.

***Sec. 307. Fruit and vegetable pilot programs.***

- **Additional States.** USDA is to make available free fruits and vegetables to students in 25 elementary or secondary schools in each State or Indian reservation selected for participation. The number of additional states is not specified. (Currently, the pilot is operating in 4 states and 1 Indian reservation.)
- **Selection of Schools.** USDA is to ensure, to the extent practicable, that the majority of schools selected have at least 50% low-income students. School plans for implementation are to include partnerships with the fruit or vegetable industry, which shall contribute at least 15% in cash or in kind for the acquisition, handling, promotion and distribution of fruits and vegetables in this pilot.
- **Authorization of Appropriations.** \$11 million is authorized to be appropriated for FY 2004, and such sums necessary for FY 2005 to FY 2008, to carry out this section. (In order for this section to actually receive funds, the Appropriations committees must actively appropriate these funds.)

<p><b>Title IV – Improving the Women, Infants, and Children Program</b></p>
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***Sec. 401. Definition of nutrition education.***

- Expands allowable nutrition education to include related topics such as physical activity and approaches to nutrition education, which includes child development issues.

***Sec. 402. Definition of supplemental foods.***

- Includes in definition foods that promote the health of the WIC population as indicated by relevant nutrition science, public health concerns, and cultural eating patterns.

***Sec. 403. Improving certification.***

- Allows certification of breast-feeding women for up to 1 year.
- Requires local WIC agencies to permit applicants or participants to reschedule an appointment to apply or to be re-certified for WIC.
- Increases flexibility for the physical presence requirement for certification by expanding the waiver options available to accommodate the needs of infants less than 8 weeks of age.

***Sec. 404. Reviews of available supplemental foods.***

- Requires USDA to issue regulations updating the WIC food package within 18 months of receiving the results of the WIC Food Package study by the National Academy of Sciences, Institute of Medicine.
- Mandates a scientific review of the WIC food package every 10 years beginning in 2013 and WIC food package revisions as appropriate based on the results of the reviews.
- Continues to require that to the degree possible USDA shall ensure that the fat, sugar, and salt content of the WIC foods is appropriate.

***Sec. 405. Notification of violations and infant formula benefits.***

- Allows State WIC agencies to round up to the next whole can of formula to ensure that all infants receive the full benefits.
- State agencies will be required to notify vendors of an initial violation in writing prior to documentation of another violation, unless the State agency determines that notifying the vendor would compromise an investigation.

***Sec. 406. Healthy People 2010 initiative.***

- State and local agencies, communities, employers, health care professionals, and the private sector will continue to work to build a supportive breastfeeding environment for women participating in WIC.

***Sec. 407. Competitive bidding.***

- Modifies infant formula rebate bid rules to allow infant formula companies to make additional cent-for-cent adjustments to rebates based on changes in the national wholesale price of infant formula.

***Sec. 408. Fruit and vegetable projects.***

- Allows privately funded demonstration projects in up to 10 local sites to evaluate the addition of fruits and vegetables in the WIC food package.

***Sec. 409. Price levels of retail stores.***

- Vendor eligibility criteria will include a requirement for stores to have shelf prices within the range of similar stores.

**Sec. 410. Management information systems.**

- USDA will be required to implement a national Universal Product Code Database for use by State agencies.
- State WIC Electronic Benefits Transfer programs will be standardized and include a waiver option for current systems.

**Sec. 411. Infant formula fraud prevention.**

- Requires participating vendors to purchase infant formula from a list of State-licensed wholesalers and distributors approved to distribute infant formula.

**Sec. 412. State alliances.**

- Limits the size of State alliances developed for purposes of soliciting competitive bids for infant formula to a maximum of 200,000 infants. Current alliances will be allowed to continue and States serving fewer than 5,000 infants and tribal organizations may request to join any alliance.

**Sec. 413. Limits on expenditures.**

- State agency budget flexibility is increased by raising the spend forward limit from 1 percent to 3 percent.

**Sec. 414. Migrant and community health centers initiative.**

- Changes USDA's reporting requirements.

**Sec. 415. Demonstration projects.**

- Amends projects.

**Sec. 416. Authorization of appropriations.**

- WIC is authorized through 2008.
- Farmers Market Nutrition Program is authorized through 2008.

**Title V – Reauthorization, Miscellaneous Provisions, and Effective Date**

**Sec. 501. Training, technical, and other assistance.**

- Subject to funds made available and appropriated, and in addition to other required trainings and technical assistance, USDA is to provide assistance on:
  - ▶ **Procurement of goods and services.** Training and technical assistance to States, State agencies, schools and school food authorities on the procurement of goods and services, including compliance with the Buy American Act.
  - ▶ **Technological upgrade grants.** Competitive grants, with preference for low-income schools, to aid them in meeting the cost of technological upgrades to prevent overt identification of low-income students, to improve processing and verifying of applications and menu-planning, and to become compatible with statewide reporting systems.

- ▶ **School breakfast grants.** Competitive grants to schools with low participation in the School Breakfast Program to meet the costs of starting, expanding, or conducting outreach on school breakfast programs.

***Sec. 502. Notice of irradiated food.***

- This section regulates the use of irradiated food products in the school meal programs:
  - ▶ Irradiated foods may be made available only at the request of States and school districts.
  - ▶ Reimbursements for irradiated foods are to be equal to those for non-irradiated foods.
  - ▶ Factual information is to be provided to States and schools on irradiation technology, including notice that irradiation is not a substitute for safe food handling techniques.
  - ▶ States and school food authorities are to be provided model procedures for providing factual information about irradiation technology.
  - ▶ Irradiated commodities in the school meal programs are to be clearly labeled and not commingled with non-irradiated commodities.
  - ▶ Schools are encouraged to offer alternatives if irradiated products are served in school meals.

***Sec. 503. Sense of Congress.***

- This section states that “Congress encourages the elimination of initiatives that are duplicative of other Federal efforts,” particularly those that are duplicative of the Child Nutrition Programs.

***Sec. 504. Reauthorization of programs.***

- This section extends a number of items that have expiration dates within the current statute:
  - ▶ Payments for state administrative expenses are extended through fiscal year 2008.
  - ▶ The Commodity Distribution Program is extended through fiscal year 2008.
  - ▶ The Commodity Distribution Reform Act and WIC Amendments are extended through fiscal year 2008.
  - ▶ Purchases of locally produced foods are extended through fiscal year 2008.
  - ▶ The necessary funding for Training, Technical Assistance and Food Service Management Institute is available for fiscal years 2005 through 2008.
  - ▶ Compliance and Accountability extends through 2008 the requirement that the Secretary prescribe and administer a unified system to ensure that local food service authorities participating in the school lunch program comply with the provisions of the Act.

***Sec. 505. Effective dates.***

- The following amendments will take effect the date this Act becomes law:
  - ▶ Sec. 101. Exclusion of military housing allowances.
  - ▶ Sec. 104. Reauthorization of summer food programs.
  - ▶ Sec. 105(a). Eligibility of CACFP private child care centers.
  - ▶ Sec. 202. Duration of eligibility for free and reduced price lunches.
  - ▶ Sec. 410. WIC management information systems.
  - ▶ Sec. 416. WIC authorization of appropriations.
  - ▶ Sec. 504. Reauthorization of programs.
- The following amendments will take effect on July 1, 2005:
  - ▶ Sec. 201. Eligibility and certification for free and reduced price lunches.
  - ▶ Sec. 208(c). Administrative error reduction training and technical assistance.
- All other amendments will take effect on October 1, 2004.