POLICY ALERT

Date: August 1, 2008
Reference: # NSLP/SBP 2008-28
To: National School Lunch Program/School Breakfast Program (NSLP/SBP) Contractors
Subject: Prototype Language for Return of Discounts, Rebates and Credits to School Food Authorities
Effective Date: Immediately

This Policy Alert ACCOMPANIES:
• Policy Alert 2008-15, Procurement Regulations Regarding Cost Reimbursable Contracts and A la Carte Meals; and
• Section 7000, Procurement in your NSLP/SBP Handbook.

Implementation Immediately

Background The final rule, Procurement Regulations for the National School Lunch Program/School Breakfast Program (NSLP/SBP) was published on October 31, 2007. The rule:
1. Limits a school food authority’s (SFA’s) use of nonprofit school food service account funds to cost resulting from proper procurements and contracts; and
2. Requires that allowable costs paid from the nonprofit school food service account be net of all discount, rebates and applicable credits.

Procedure There have been several requests to assist SFAs with their compliance with the final rule. To aid in compliance, we are providing the following prototype contract language requiring the return of purchase incentives to SFAs:

“The School Food Authority (SFA) __________________ shall ensure that __________________ (Company/Food Service Management Company) fully discloses all discounts, rebates, allowances and incentives received by the Company from its suppliers. If the Company receives a discount, rebate, allowance or incentive from any supplier, the company must disclose and return the discount, rebate, allowance or incentive to __________________ (SFA). All discounts, rebates, allowances and incentives must be returned to __________________ (SFA) during a mutually agreed upon timeframe that is beneficial to the SFA.”

continued

This Policy Remains in Effect Until Further Notice
SFAs may also opt to use the following language:

“All allowable costs will be provided from the nonprofit school food service account to the contractor net of all discounts, rebates and other applicable credits accruing to or received by the contractor or any assignee under the contract, to the extent those credits are allocable to the allowable portion of the costs billed to the SFA.”

It is important that SFAs consult with their own legal counsel regarding the use of any particular contract language, to ensure that all Federal, State and local requirements are met.

In addition to ensuring that the contracts contain appropriate language regarding the return of discounts, rebates, allowances, incentives and applicable credits to the SFA, it is critical that the SFAs monitor contract compliance and strictly enforce all contract provisions, including those related to the return of discounts, rebates, allowances, incentives and applicable credits.

**Authority**

United States Department of Agriculture (USDA) Correspondence 2008-SP-20.

**Contact**

If you have any questions please contact your Food and Nutrition Field Operations Office.