

1952, 17 F.R. 3813, 66 Stat. c31, set out as a note preceding section 1 of Appendix to Title 50, War and National Defense.

**§ 1713. Fraud; penalties**

Whoever, for the purpose of causing an increase in any payment authorized to be made under this chapter, or for the purpose of causing any payment to be made where no payment is authorized hereunder, shall knowingly make or cause to be made, or aid or abet in the making of any false statement or representation of a material fact in any application for any payment under subchapter I of this chapter, or knowingly make or cause to be made, or aid or abet in the making of any false statement, representation, affidavit, or document in connection with such an application, or claim, shall be guilty of a misdemeanor and upon conviction thereof shall be fined not more than \$1,000 or imprisoned for not more than one year, or both.

(Dec. 2, 1942, ch. 668, title II, §203, 56 Stat. 1034.)

**§ 1714. Legal services**

No claim for legal services or for any other services rendered in respect of a claim or award for compensation under subchapter I of this chapter to or on account of any person shall be valid unless approved by the Secretary; and any claim so approved shall, in the manner and to the extent fixed by the said Secretary, be paid out of the compensation payable to the claimant; and any person who receives any fee, other consideration, or any gratuity on account of services so rendered, unless such consideration or gratuity is so approved, or who solicits employment for another person or for himself in respect of any claim or award for compensation under said subchapter shall be guilty of a misdemeanor and upon conviction thereof shall, for each offense, be fined not more than \$1,000 or imprisoned not more than one year, or both.

(Dec. 2, 1942, ch. 668, title II, §204, 56 Stat. 1034.)

TRANSFER OF FUNCTIONS

For transfer of functions to Secretary of Labor, see note set out under section 1711 of this title.

**§ 1715. Finality of Secretary's decisions**

The action of the Secretary in allowing or denying any payment under subchapter I of this chapter shall be final and conclusive on all questions of law and fact and not subject to review by any other official of the United States or by any court by mandamus or otherwise, and the Comptroller General is authorized and directed to allow credit in the accounts of any certifying or disbursing officer for payments in accordance with such action.

(Dec. 2, 1942, ch. 668, title II, §205, 56 Stat. 1034.)

TRANSFER OF FUNCTIONS

For transfer of functions to Secretary of Labor, see note set out under section 1711 of this title.

**§ 1716. Presumption of death or detention**

A determination that an individual is dead or a determination that he has been detained by a hostile force or person may be made on the basis

of evidence that he has disappeared under circumstances such as to make such death or detention appear probable.

(Dec. 2, 1942, ch. 668, title II, §206, 56 Stat. 1034; Pub. L. 85-608, title I, §104, Aug. 8, 1958, 72 Stat. 537.)

AMENDMENTS

1958—Pub. L. 85-608 substituted “a hostile force or person” for “the enemy”.

EFFECTIVE DATE OF 1958 AMENDMENT

Amendment by Pub. L. 85-608 effective June 30, 1958, see section 402 of Pub. L. 85-608, set out as a note under section 1651 of this title.

**§ 1717. Assignment of benefits; execution, levy, etc., against benefits**

The right of any person to any benefit under subchapter I of this chapter shall not be transferable or assignable at law or in equity except to the United States, and none of the moneys paid or payable (except money paid hereunder as reimbursement for funeral expenses or as reimbursement with respect to payments of workmen's compensation or in the nature of workmen's compensation benefits), or rights existing under said subchapter, shall be subject to execution, levy, attachment, garnishment, or other legal process or to the operation of any bankruptcy or insolvency law.

(Dec. 2, 1942, ch. 668, title II, §207, 56 Stat. 1035.)

**CHAPTER 13—SCHOOL LUNCH PROGRAMS**

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### § 1751. Congressional declaration of policy

It is declared to be the policy of Congress, as a measure of national security, to safeguard the health and well-being of the Nation's children and to encourage the domestic consumption of nutritious agricultural commodities and other food, by assisting the States, through grants-in-aid and other means, in providing an adequate supply of foods and other facilities for the establishment, maintenance, operation, and expansion of nonprofit school lunch programs.

(June 4, 1946, ch. 281, § 2, 60 Stat. 230; Pub. L. 101-147, title III, § 312(1), Nov. 10, 1989, 103 Stat. 916.)

#### AMENDMENTS

1989—Pub. L. 101-147 substituted “school lunch” for “school-lunch”.

#### EFFECTIVE DATE OF 2010 AMENDMENT

Pub. L. 111-296, title IV, § 445, Dec. 13, 2010, 124 Stat. 3266, provided that: “Except as otherwise specifically provided in this Act [see Short Title of 2010 Amendment note below] or any of the amendments made by this Act, this Act and the amendments made by this Act take effect on October 1, 2010.”

#### EFFECTIVE DATE OF 1989 AMENDMENT

Pub. L. 101-147, § 2, Nov. 10, 1989, 103 Stat. 878, provided that: “Except as otherwise provided in this Act, the amendments made by this Act [see Short Title of 1989 Amendment note below] shall take effect on the date of the enactment of this Act [Nov. 10, 1989].”

#### SHORT TITLE OF 2010 AMENDMENT

Pub. L. 111-296, § 1(a), Dec. 13, 2010, 124 Stat. 3183, provided that: “This Act [enacting sections 1758b, 1769d, 1769e, 1769j], and 1793 of this title and sections 2036a and 3179 of Title 7, Agriculture, amending sections 1396a, 1753, 1755, 1758, 1759a, 1760, 1761, 1762a, 1766, 1769, 1769b-1, 1769c, 1769g, 1769i, 1776, 1779, and 1786 of this title, sections 2013 and 2020 of Title 7, and section 1232g of Title 20, Education, repealing section 1769h of this title, enacting provisions set out as notes under this section and sections 1396a, 1758, and 1766 of this title and section 3179 of Title 7, and repealing provisions set out as a note under this section] may be cited as the ‘Healthy, Hunger-Free Kids Act of 2010’.”

#### SHORT TITLE OF 2004 AMENDMENT

Pub. L. 108-265, § 1(a), June 30, 2004, 118 Stat. 729, provided that: “This Act [enacting sections 1754 and 1769i of this title, amending sections 1396a, 1758, 1759a, 1760, 1761, 1762a, 1766, 1769, 1769b-1, 1769c, 1769g, 1773, 1776, 1786, and 1788 of this title and section 2020 of Title 7, Agriculture, enacting provisions set out as notes under this section and sections 1754, 1758, 1766, 1769c, 1773, and 1786 of this title, and amending provisions set out as a note under section 612c of Title 7] may be cited as the ‘Child Nutrition and WIC Reauthorization Act of 2004’.”

#### SHORT TITLE OF 1998 AMENDMENT

Pub. L. 105-336, § 1(a), Oct. 31, 1998, 112 Stat. 3143, provided that: “This Act [amending sections 1755, 1758, 1759a to 1761, 1762a, 1765 to 1766a, 1769, 1769b-1, 1769c, 1769f to 1769h, 1773, 1776, 1784, 1786, and 1788 of this title, repealing section 1766b of this title, enacting provisions set out as notes under sections 1755, 1761, and 1786 of this title, and amending provisions set out as notes under section 1769 of this title and section 612c of Title 7, Agriculture] may be cited as the ‘William F. Goodling Child Nutrition Reauthorization Act of 1998’.”

#### SHORT TITLE OF 1996 AMENDMENT

Pub. L. 104-149, § 1, May 29, 1996, 110 Stat. 1379, provided that: “This Act [amending section 1758 of this title] may be cited as the ‘Healthy Meals for Children Act’.”

#### SHORT TITLE OF 1994 AMENDMENT

Pub. L. 103-448, § 1(a), Nov. 2, 1994, 108 Stat. 4699, provided that: “This Act [enacting sections 1766b and 1769f to 1769h of this title, amending sections 280c-6, 1396a, 1755, 1756, 1758, 1759a, 1760, 1761, 1762a, 1766, 1769, 1769a, 1769b-1, 1769c, 1773, 1776, 1779, 1786, and 1788 of this title, section 2018 of Title 7, Agriculture, section 1484a of Title 20, Education, and section 3803 of Title 31, Money and Finance, enacting provisions set out as notes under this section and sections 1755, 1758, 1760, 1761, 1762a, 1769f, and 1786 of this title, amending provisions set out as notes under section 1786 of this title and section 612c of Title 7, and repealing provisions set out as a note under section 1786 of this title] may be cited as the ‘Healthy Meals for Healthy Americans Act of 1994’.”

#### SHORT TITLE OF 1992 AMENDMENT

Pub. L. 102-342, § 1, Aug. 14, 1992, 106 Stat. 911, provided that: “This Act [enacting section 1790 of this title, amending sections 1766, 1769, and 1786 of this title, enacting provisions set out as a note under section 1769 of this title, and amending provisions set out as a note under section 612c of Title 7, Agriculture] may be cited as the ‘Child Nutrition Amendments of 1992’.”

#### SHORT TITLE OF 1989 AMENDMENT

Pub. L. 101-147, § 1(a), Nov. 10, 1989, 103 Stat. 877, provided that: “This Act [enacting sections 1766a, 1769b-1, 1769c, 1769d, and 1769e of this title, amending this section and sections 1753, 1755-1758, 1759a, 1760, 1761, 1762a, 1765, 1766, 1769-1769b, 1772, 1773, 1776, 1779, 1783, 1784, 1786, and 1788 of this title, repealing sections 1762 and 1763 of this title, enacting provisions set out as notes under this section and sections 1755, 1758, 1761, 1762a, 1766, 1766a, 1769, 1769c, 1773, 1776, and 1786 of this title, and amending provisions set out as a note under section 1766 of this title] may be cited as the ‘Child Nutrition and WIC Reauthorization Act of 1989’.”

#### SHORT TITLE OF 1986 AMENDMENTS

Pub. L. 99-661, § 4001(a), Nov. 14, 1986, 100 Stat. 4070, provided that: “This division [div. D (§§ 4001-4503) of Pub. L. 99-661, amending sections 1752, 1755, 1758, 1760, 1761, 1762a, 1766, 1769 to 1769b, 1772, 1773, 1776, 1784, 1786, 1788, and 1789 of this title, repealing sections 1767, 1768, and 1769c of this title, and enacting provisions set out as notes under sections 1758, 1760, 1766, 1772, 1773, and 1786 of this title and section 1431e of Title 7, Agriculture] may be cited as the ‘Child Nutrition Amendments of 1986’.”

Pub. L. 99-500, title III, § 301(a), Oct. 18, 1986, 100 Stat. 1783-359, and Pub. L. 99-591, title III, § 301(a), Oct. 30, 1986, 100 Stat. 3341-362, provided that: “This title [amending sections 1752, 1755, 1758, 1760, 1761, 1762a, 1766, 1769 to 1769b, 1772, 1773, 1776, 1784, 1786, 1788, and 1789 of this title and section 1929a of Title 7, Agriculture, repealing sections 1767, 1768, and 1769c of this title, and enacting provisions set out as notes under sections 1758, 1760, 1766, 1772, 1773, and 1786 of this title and sections 1431e and 1929a of Title 7] may be cited as the ‘School Lunch and Child Nutrition Amendments of 1986’.”

#### SHORT TITLE OF 1978 AMENDMENT

Pub. L. 95-627, § 1, Nov. 10, 1978, 92 Stat. 3603, provided: “That this Act [enacting section 1769c of this title, amending sections 1755, 1757, 1758, 1759a to 1761, 1762a, 1766, 1769, 1772 to 1774, 1776, 1784, and 1786 of this title, and enacting provisions set out as notes under sections 1755, 1773 and 1786 of this title] may be cited as the ‘Child Nutrition Amendments of 1978’.”

## SHORT TITLE OF 1977 AMENDMENT

Pub. L. 95-166, §1, Nov. 10, 1977, 91 Stat. 1325, provided: "That this Act [enacting sections 1769, 1769a, and 1788 of this title, amending sections 1754 to 1758, 1759a, 1760, 1761, 1762a, 1763, 1766, 1772 to 1774, 1776, 1779, 1784, and 1786 of this title, and enacting provisions set out as notes under sections 1755 and 1772 of this title] may be cited as the 'National School Lunch Act and Child Nutrition Amendments of 1977'."

## SHORT TITLE OF 1975 AMENDMENT

Pub. L. 94-105, §1, Oct. 7, 1975, 89 Stat. 511, provided: "That this Act [enacting sections 1765, 1766, 1767, 1768, and 1787 of this title, amending sections 1752, 1755, 1756, 1758, 1759, 1759a, 1760, 1761, 1762a, 1772, 1773, 1774, 1784, and 1786 of this title, repealing section 1764 of this title, and enacting provisions set out as notes under sections 1758, 1760, 1761, and 1786 of this title] may be cited as the 'National School Lunch Act and Child Nutrition Act of 1966 Amendments of 1975'."

## SHORT TITLE OF 1974 AMENDMENT

Pub. L. 93-326, §1, June 30, 1974, 88 Stat. 286, provided: "That this Act [enacting section 1762a of this title and amending sections 1752, 1755, 1758, 1763, 1774, and 1786 of this title] may be cited as the 'National School Lunch and Child Nutrition Act Amendments of 1974'."

## SHORT TITLE OF 1973 AMENDMENT

Pub. L. 93-150, §1, Nov. 7, 1973, 87 Stat. 560, provided: "That this Act [amending sections 1753, 1755, 1757, 1758, 1759, 1759a, 1763, 1772, 1773, and 1786 of this title, and enacting provisions set out as notes under this section and section 240 of Title 20, Education] may be cited as the 'National School Lunch and Child Nutrition Act Amendments of 1973'."

## SHORT TITLE

Act June 4, 1946, ch. 281, §1, 60 Stat. 230, as amended by Pub. L. 106-78, title VII, §752(a), Oct. 22, 1999, 113 Stat. 1169, provided: "That this Act [enacting this chapter] may be cited as the 'Richard B. Russell National School Lunch Act'."

## INDIRECT COSTS

Pub. L. 111-296, title III, §307, Dec. 13, 2010, 124 Stat. 3245, provided that:

"(a) GUIDANCE ON INDIRECT COSTS RULES.—Not later than 180 days after the date of enactment of this Act [Dec. 13, 2010], the Secretary [of Agriculture] shall issue guidance to school food authorities participating in the school lunch program established under the Richard B. Russell National School Lunch Act (42 U.S.C. 1751 et seq.) and the school breakfast program established by section 4 of the Child Nutrition Act of 1966 (42 U.S.C. 1773) covering program rules pertaining to indirect costs, including allowable indirect costs that may be charged to the nonprofit school food service account.

"(b) INDIRECT COST STUDY.—The Secretary shall—

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

"(A) the allocation of indirect costs to, and the methodologies used to establish indirect cost rates for, school food authorities participating in the school lunch program established under the Richard B. Russell National School Lunch Act (42 U.S.C. 1751 et seq.) and the school breakfast program established by section 4 of the Child Nutrition Act of 1966 (42 U.S.C. 1773);

"(B) the impact of indirect costs charged to the nonprofit school food service account;

"(C) the types and amounts of indirect costs charged and recovered by school districts;

"(D) whether the indirect costs charged or recovered are consistent with requirements for the allocation of indirect costs and school food service operations; and

"(E) the types and amounts of indirect costs that could be charged or recovered under requirements for the allocation of indirect costs and school food service operations but are not charged or recovered; and

"(2) after completing the study required under paragraph (1), issue additional guidance relating to the types of costs that are reasonable and necessary to provide meals under the Richard B. Russell National School Lunch Act (42 U.S.C. 1751 et seq.) and the Child Nutrition Act of 1966 (42 U.S.C. 1771 et seq.).

"(c) REGULATIONS.—After conducting the study under subsection (b)(1) and identifying costs under subsection (b)(2), the Secretary may promulgate regulations to address—

"(1) any identified deficiencies in the allocation of indirect costs; and

"(2) the authority of school food authorities to reimburse only those costs identified by the Secretary as reasonable and necessary under subsection (b)(2).

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

"(e) 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 \$2,000,000, to remain available until expended.

"(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."

## LOCAL WELLNESS POLICY

Pub. L. 108-265, title II, §204, June 30, 2004, 118 Stat. 780, as amended by Pub. L. 109-97, title VII, §776, Nov. 10, 2005, 119 Stat. 2161, which related to establishment of local school wellness policies for schools under local educational agencies, was repealed by Pub. L. 111-296, title II, §204(b), Dec. 13, 2010, 124 Stat. 3218.

## COORDINATION OF SCHOOL LUNCH, SCHOOL BREAKFAST, AND SUMMER FOOD SERVICE PROGRAMS

Pub. L. 104-193, title VII, §741, Aug. 22, 1996, 110 Stat. 2307, as amended by Pub. L. 106-78, title VII, §752(b)(6), Oct. 22, 1999, 113 Stat. 1169, provided that:

"(a) COORDINATION.—

"(1) IN GENERAL.—The Secretary of Agriculture shall develop proposed changes to the regulations under the school lunch program under the Richard B. Russell National School Lunch Act (42 U.S.C. 1751 et seq.), the summer food service program under section 13 of that Act (42 U.S.C. 1761), and the school breakfast program under section 4 of the Child Nutrition Act of 1966 (42 U.S.C. 1773), for the purpose of simplifying and coordinating those programs into a comprehensive meal program.

"(2) CONSULTATION.—In developing proposed changes to the regulations under paragraph (1), the Secretary of Agriculture shall consult with local, State, and regional administrators of the programs described in such paragraph.

"(b) REPORT.—Not later than November 1, 1997, the Secretary of Agriculture shall submit to the Committee on Agriculture, Nutrition, and Forestry of the Senate and the Committee on Economic and Educational Opportunities of the House of Representatives a report containing the proposed changes developed under subsection (a)."

## SUPPLEMENTAL NUTRITION PROGRAMS; CONGRESSIONAL STATEMENT OF FINDINGS

Pub. L. 103-448, §2, Nov. 2, 1994, 108 Stat. 4700, as amended by Pub. L. 106-78, title VII, §752(b)(15), Oct. 22,

1999, 113 Stat. 1170, provided that: “Congress finds that—

“(1) undernutrition can permanently retard physical growth, brain development, and cognitive functioning of children;

“(2) the longer a child’s nutritional, emotional, and educational needs go unmet, the greater the likelihood of cognitive impairment;

“(3) low-income children who attend school hungry score significantly lower on standardized tests than non-hungry low-income children; and

“(4) supplemental nutrition programs under the Richard B. Russell National School Lunch Act (42 U.S.C. 1751 et seq.) and the Child Nutrition Act of 1966 (42 U.S.C. 1771 et seq.) can help to offset threats posed to a child’s capacity to learn and perform in school that result from inadequate nutrient intake.”

#### STUDY OF ADULTERATION OF JUICE PRODUCTS SOLD TO SCHOOL MEAL PROGRAMS

Pub. L. 103-448, title I, §125, Nov. 2, 1994, 108 Stat. 4734, directed Comptroller General of the United States, not later than 1 year after Nov. 2, 1994, to conduct study and to submit a report to Congress on costs and problems associated with sale of adulterated fruit juice and juice products to the school lunch program under this chapter and school breakfast program under section 1773 of this title.

#### CONSOLIDATION OF SCHOOL LUNCH PROGRAM AND SCHOOL BREAKFAST PROGRAM INTO COMPREHENSIVE MEAL PROGRAM

Pub. L. 103-448, title III, §301, Nov. 2, 1994, 108 Stat. 4749, as amended by Pub. L. 106-78, title VII, §752(b)(15), Oct. 22, 1999, 113 Stat. 1170, provided that:

“(a) IN GENERAL.—Notwithstanding any provision of [the] Richard B. Russell National School Lunch Act (42 U.S.C. 1751 et seq.) or the Child Nutrition Act of 1966 (42 U.S.C. 1771 et seq.), except as otherwise provided in this section, the Secretary of Agriculture shall, not later than 18 months after the date of enactment of this Act [Nov. 2, 1994], develop and implement regulations to consolidate the school lunch program under the Richard B. Russell National School Lunch Act (42 U.S.C. 1751 et seq.) and the school breakfast program under section 4 of the Child Nutrition Act of 1966 (42 U.S.C. 1773) into a comprehensive meal program.

“(b) REQUIREMENTS.—In establishing the comprehensive meal program under subsection (a), the Secretary shall meet the following requirements:

“(1) The Secretary shall ensure that the program continues to serve children who are eligible for free and reduced price meals. The meals shall meet the nutritional requirements of section 9(a)(1) of the Richard B. Russell National School Lunch Act (42 U.S.C. 1758(a)(1)) and section 4(e)(1) of the Child Nutrition Act of 1966 (42 U.S.C. 1773(e)(1)).

“(2) The Secretary shall continue to make breakfast assistance payments in accordance with section 4 of the Child Nutrition Act of 1966 (42 U.S.C. 1773) and food assistance payments in accordance with the Richard B. Russell National School Lunch Act (42 U.S.C. 1751 et seq.).

“(3) The Secretary may not consolidate any aspect of the school lunch program or the school breakfast program with respect to any matter described in any of subparagraphs (A) through (N) of section 12(l)(4) of the Richard B. Russell National School Lunch Act (42 U.S.C. 1760(l)(4)).

“(c) PLAN AND RECOMMENDATIONS.—

“(1) PLAN FOR CONSOLIDATION AND SIMPLIFICATION.—Not later than 180 days prior to implementing the regulations described in subsection (a), the Secretary shall prepare and submit to the Committee on Education and Labor [now Committee on Education and the Workforce] of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate a plan for the consolidation and simplification of the school lunch program and the school breakfast program.

“(2) RECOMMENDATIONS WITH RESPECT TO CHANGE IN PAYMENT AMOUNTS.—If the Secretary proposes to change the amount of the breakfast assistance payment or the food assistance payment under the comprehensive meal program, the Secretary shall not include the change in the consolidation and shall prepare and submit to the Committee on Education and Labor [now Committee on Education and the Workforce], and the Committee on Agriculture, of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate recommendations for legislation to effect the change.”

#### STUDY AND REPORT RELATING TO USE OF PRIVATE FOOD ESTABLISHMENTS AND CATERERS UNDER SCHOOL LUNCH PROGRAM AND SCHOOL BREAKFAST PROGRAM

Pub. L. 103-448, title III, §302, Nov. 2, 1994, 108 Stat. 4750, directed Comptroller General of the United States, in conjunction with the Director of the Office of Technology Assessment, to conduct a study and submit a report to Congress, not later than Sept. 1, 1996, on the use of private food establishments and caterers by schools that participate in the school lunch program under this chapter or the school breakfast program under section 1773 of this title.

#### SCHOOL LUNCH STUDIES

Pub. L. 101-624, title XVII, §1779, Nov. 28, 1990, 104 Stat. 3816, directed Secretary of Agriculture to determine the quantity of bonus commodities lost, by State, since the 1987-88 school year, the amount that school food service authorities charged students for non-free or reduced price meals, and the trends in school participation and student participation, by State and for the United States, and directed Secretary also to determine the cost to produce school lunches and breakfasts, including indirect and local administrative costs, the reasons why schools choose not to participate in the National school lunch program, the State costs incurred to administer the school programs, and the reasons why children eligible for free or reduced price meals do not apply for benefits or participate, with Secretary to submit to Congress a final report on results of the studies not later than Oct. 1, 1993.

#### COMPREHENSIVE STUDY OF BENEFITS OF PROGRAMS; REPORT TO CONGRESS

Pub. L. 93-150, §10, Nov. 7, 1973, 87 Stat. 564, directed Secretary of Agriculture to carry out a comprehensive study to determine if the benefits of the National School Lunch Act and the Child Nutrition Act are accruing to the maximum extent possible to all of the nation’s school children, and to determine if regional cost differentials exist in Alaska and other States so as to require additional reimbursement, such report with recommendations to be submitted to Congress no later than June 30, 1974.

#### § 1752. Authorization of appropriations; “Secretary” defined

For each fiscal year, there is authorized to be appropriated, out of money in the Treasury not otherwise appropriated, such sums as may be necessary to enable the Secretary of Agriculture (hereinafter referred to as “the Secretary”) to carry out the provisions of this chapter, other than sections 1761 and 1766 of this title. Appropriations to carry out the provisions of this chapter and of the Child Nutrition Act of 1966 [42 U.S.C. 1771 et seq.] for any fiscal year are authorized to be made a year in advance of the beginning of the fiscal year in which the funds will become available for disbursement to the States. Notwithstanding any other provision of law, any funds appropriated to carry out the provisions of this chapter and the Child Nutri-

tion Act of 1966 shall remain available for the purposes of the Act for which appropriated until expended.

(June 4, 1946, ch. 281, § 3, 60 Stat. 230; Pub. L. 87-823, § 1, Oct. 15, 1962, 76 Stat. 944; Pub. L. 90-302, § 1, May 8, 1968, 82 Stat. 117; Pub. L. 91-248, § 1(a), May 14, 1970, 84 Stat. 208; Pub. L. 93-326, § 7, June 30, 1974, 88 Stat. 287; Pub. L. 94-105, § 24, Oct. 7, 1975, 89 Stat. 529; Pub. L. 99-500, title III, § 371(a)(2), Oct. 18, 1986, 100 Stat. 1783-368, and Pub. L. 99-591, title III, § 371(a)(2), Oct. 30, 1986, 100 Stat. 3341-371; Pub. L. 99-661, div. D, title V, § 4501(a)(2), Nov. 14, 1986, 100 Stat. 4080.)

#### REFERENCES IN TEXT

The Child Nutrition Act of 1966, referred to in text, is Pub. L. 89-642, Oct. 11, 1966, 80 Stat. 885, as amended, which is classified generally to chapter 13A (§1771 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1771 of this title and Tables.

#### CODIFICATION

Pub. L. 99-591 is a corrected version of Pub. L. 99-500.

#### AMENDMENTS

1986—Pub. L. 99-500, Pub. L. 99-591, and Pub. L. 99-661, which identically directed amendment of section by substituting “sections 1761 and 1766” for “sections 1761, 1766, and 1768” were executed making the substitution for “sections 1761, 1766 and 1768” as the probable intent of Congress.

1975—Pub. L. 94-105 substituted “sections 1761, 1766 and 1768” for “section 1761”.

1974—Pub. L. 93-326 substituted “other than section 1761 of this title” for “other than sections 1759a and 1761 of this title”.

1970—Pub. L. 91-248 provided that appropriations for child food service programs may be made a year in advance of the beginning of the fiscal year in which the funds become available and that funds appropriated for such programs remain available until expended.

1968—Pub. L. 90-302 inserted section 1761 to enumeration of sections excepted from application of this section.

1962—Pub. L. 87-823 struck out “, beginning with the fiscal year ending June 30, 1947,” after “fiscal year” and inserted “, other than section 1759a of this title.”

#### APPROPRIATIONS AS FUNCTIONS OF HEALTH AND HUMAN SERVICES

Pub. L. 90-302, § 1, May 8, 1968, 82 Stat. 117, as amended by Pub. L. 96-88, title V, § 509(b), Oct. 17, 1979, 93 Stat. 695, provided in part that: “Appropriations shall be considered Health and Human Services functions for budget purposes rather than functions of Agriculture.”

### § 1753. Apportionments to States

(a) The sums appropriated for any fiscal year pursuant to the authorizations contained in section 1752 of this title shall be available to the Secretary for supplying agricultural commodities and other food for the program in accordance with the provisions of this chapter.

(b)(1) The Secretary shall make food assistance payments to each State educational agency each fiscal year, at such times as the Secretary may determine, from the sums appropriated for such purpose, in a total amount equal to the product obtained by multiplying—

(A) the number of lunches (consisting of a combination of foods which meet the minimum nutritional requirements prescribed by

the Secretary under section 1758(a) of this title) served during such fiscal year in schools in such State which participate in the school lunch program under this chapter under agreements with such State educational agency; by

(B) the national average lunch payment prescribed in paragraph (2) of this subsection.

(2) The national average lunch payment for each lunch served shall be 10.5 cents (as adjusted pursuant to section 1759a(a) of this title) except that for each lunch served in school food authorities in which 60 percent or more of the lunches served in the school lunch program during the second preceding school year were served free or at a reduced price, the national average lunch payment shall be 2 cents more.

(3) ADDITIONAL REIMBURSEMENT.—

(A) REGULATIONS.—

(i) PROPOSED REGULATIONS.—Notwithstanding section 1758(f) of this title, not later than 18 months after December 13, 2010, the Secretary shall promulgate proposed regulations to update the meal patterns and nutrition standards for the school lunch program authorized under this chapter and the school breakfast program established by section 1773 of this title based on recommendations made by the Food and Nutrition Board of the National Research Council of the National Academy of Sciences.

(ii) INTERIM OR FINAL REGULATIONS.—

(I) IN GENERAL.—Not later than 18 months after promulgation of the proposed regulations under clause (i), the Secretary shall promulgate interim or final regulations.

(II) DATE OF REQUIRED COMPLIANCE.—The Secretary shall establish in the interim or final regulations a date by which all school food authorities participating in the school lunch program authorized under this Act and the school breakfast program established by section 1773 of this title are required to comply with the meal pattern and nutrition standards established in the interim or final regulations.

(iii) REPORT TO CONGRESS.—Not later than 90 days after December 13, 2010, and each 90 days thereafter until the Secretary has promulgated interim or final regulations under clause (ii), the Secretary shall submit to the Committee on Education and Labor of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate a quarterly report on progress made toward promulgation of the regulations described in this subparagraph.

(B) PERFORMANCE-BASED REIMBURSEMENT RATE INCREASE.—Beginning on the later of the date of promulgation of the implementing regulations described in subparagraph (A)(ii), December 13, 2010, or October 1, 2012, the Secretary shall provide additional reimbursement for each lunch served in school food authorities determined to be eligible under subparagraph (D).

(C) ADDITIONAL REIMBURSEMENT.—

(i) IN GENERAL.—Each lunch served in school food authorities determined to be eligible under subparagraph (D) shall receive

an additional 6 cents, adjusted in accordance with section 1759a(a)(3) of this title, to the national lunch average payment for each lunch served.

(ii) **DISBURSEMENT.**—The State agency shall disburse funds made available under this paragraph to school food authorities eligible to receive additional reimbursement.

(D) **ELIGIBLE SCHOOL FOOD AUTHORITY.**—To be eligible to receive an additional reimbursement described in this paragraph, a school food authority shall be certified by the State to be in compliance with the interim or final regulations described in subparagraph (A)(ii).

(E) **FAILURE TO COMPLY.**—Beginning on the later of the date described in subparagraph (A)(ii)(II), December 13, 2010, or October 1, 2012, school food authorities found to be out of compliance with the meal patterns or nutrition standards established by the implementing regulations shall not receive the additional reimbursement for each lunch served described in this paragraph.

(F) **ADMINISTRATIVE COSTS.**—

(i) **IN GENERAL.**—Subject to clauses (ii) and (iii), the Secretary shall make funds available to States for State activities related to training, technical assistance, certification, and oversight activities of this paragraph.

(ii) **PROVISION OF FUNDS.**—The Secretary shall provide funds described in clause (i) to States administering a school lunch program in a manner proportional to the administrative expense allocation of each State during the preceding fiscal year.

(iii) **FUNDING.**—

(I) **IN GENERAL.**—In the later of the fiscal year in which the implementing regulations described in subparagraph (A)(ii) are promulgated or the fiscal year in which this paragraph is enacted, and in the subsequent fiscal year, the Secretary shall use not more than \$50,000,000 of funds made available under section 1752 of this title to make payments to States described in clause (i).

(II) **RESERVATION.**—In providing funds to States under clause (i), the Secretary may reserve not more than \$3,000,000 per fiscal year to support Federal administrative activities to carry out this paragraph.

(June 4, 1946, ch. 281, § 4, 60 Stat. 230; July 12, 1952, ch. 699, §1(a), 66 Stat. 591; Pub. L. 87-688, §3(a), Sept. 25, 1962, 76 Stat. 587; Pub. L. 87-823, §2, Oct. 15, 1962, 76 Stat. 944; Pub. L. 92-433, §4(c), Sept. 26, 1972, 86 Stat. 726; Pub. L. 93-150, §2(a), Nov. 7, 1973, 87 Stat. 560; Pub. L. 97-35, title VIII, §§801(a), 819(g), Aug. 13, 1981, 95 Stat. 521, 533; Pub. L. 101-147, title III, §§301, 312(2), Nov. 10, 1989, 103 Stat. 913, 916; Pub. L. 111-296, title II, §201, Dec. 13, 2010, 124 Stat. 3214.)

#### AMENDMENTS

2010—Subsec. (b)(3). Pub. L. 111-296 added par. (3).

1989—Pub. L. 101-147, §301, inserted “Apportionments to States” as section catchline.

Subsec. (b)(2). Pub. L. 101-147, §312(2), substituted “reduced price” for “reduced-price”.

1981—Subsec. (a). Pub. L. 97-35, §§801(a)(1), (2), 819(g), designated existing provisions as subsec. (a), struck out exclusion of sum specified in section 1754 of this title,

and struck out provisions relating to food assistance payments.

Subsec. (b). Pub. L. 97-35, §801(a)(3), added subsec. (b). 1973—Pub. L. 93-150 increased national average food assistance payments from 8 to 10 cents per lunch.

1972—Pub. L. 92-433 substituted new formula for food assistance payments to State educational agencies by taking into account the number of lunches served during the year, the children in the schools in such State participating in the school lunch program, and the national average payment per lunch set up by the Secretary, with certain limitations, for apportionment formula limiting the apportionable funds to 75 per cent of the available funds for such year, and taking into account the participation rate for the State, the need rate for the State, and providing for a method of apportionment, special provisions for disposal of excess or unused funds and for fiscal years beginning July 1, 1962, July 1, 1963, July 1, 1964 and fixing the funds for American Samoa at \$25,000 for each year for the five fiscal years beginning July 1, 1962.

1962—Pub. L. 87-823 amended section generally, and, among other changes, substituted as factors for apportionment of funds among the States “(1) the participation rate for the State, and (2) the assistance need rate for the State” for “(1) the number of school children in the State and (2) the need for assistance in the State as indicated by the relation of the per capita income of the United States to the per capita income in the State”; inserted, in provision for determination of amount of apportionment in clause designated “second”, “(exclusive of American Samoa for periods ending before July 1, 1967)”; inserted provisions for use of transitional formulas in apportionment of funds for fiscal years beginning in 1962, 1963, and 1964 and apportioning to American Samoa \$25,000 annually for five fiscal years in period beginning July 1, 1962 and ending June 30, 1967; and struck out apportionment formula for Puerto Rico, Guam, American Samoa, and the Virgin Islands, which limited apportionments to 3 per centum of the total fund to be apportioned but required the apportionment to each to be not less than an amount which would result in an allotment per child of school age equal to that for the State with the lowest per capita income, definition of school (incorporated in section 1760(d)(7) of this title), provision for use of latest per capita income figures certified by the Department of Commerce (incorporated in section 1760(d)(6)(ii) of this title), and definition of school children which provided that the number of school children should be the number between ages of five and seventeen.

Pub. L. 87-688 inserted “American Samoa,” after “Guam,” in two places and “the apportionment for American Samoa,” after “the apportionment for Guam.”

1952—Act July 12, 1952, removed Alaska and Hawaii from 3 percent limitation imposed on Puerto Rico and Virgin Islands, made limitation applicable to Guam, and modified effects of 3 percent limitation.

#### EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111-296 effective Oct. 1, 2010, except as otherwise specifically provided, see section 445 of Pub. L. 111-296, set out as a note under section 1751 of this title.

#### EFFECTIVE DATE OF 1981 AMENDMENT

Pub. L. 97-35, title VIII, §820(a), Aug. 13, 1981, 95 Stat. 534, provided that: “The provisions of this title shall take effect as follows:

“(1) The amendments made by the following sections shall take effect on the first day of the month following the date of the enactment of this Act [Aug. 13, 1981] or on September 1, 1981, whichever is earlier:

“(A) section 801 [amending this section and sections 1759a and 1773 of this title];

“(B) that portion of the amendment made by section 810(c) [amending section 1766 of this title] pertaining to the reimbursement rate for supplements;

“(C) that portion of the amendment made by section 810(d)(1) [amending section 1766 of this title] pertaining to the limitation on the number of meals for which reimbursement may be made under the child care food program;

“(D) that portion of the amendment made by section 810(d)(3) [amending section 1766 of this title] which reduces the meal reimbursement factor by 10 percent; and

“(E) section 811 [amending section 1758 of this title].

“(2) The amendments made by sections 802 and 804 [amending sections 1755 and 1756 of this title] shall take effect on July 1, 1981.

“(3) The amendments made by sections 807 [amending section 1772 of this title], 808 [amending sections 1760 and 1784 of this title], and 810(a)(2) [amending section 1766 of this title] shall take effect on the first day of the second month following the date of the enactment of this Act [Aug. 13, 1981].

“(4) The amendments made by the following sections shall take effect October 1, 1981: sections 805 [repealing sections 1754 and 1774 of this title], 806 [amending section 1788 of this title], 809 [amending section 1761 of this title], 810(a)(1) [amending section 1766 of this title], 810(f) [amending section 1766 of this title], 810(g) [amending section 1766 of this title], 812 [amending section 1759a of this title], 814 [amending section 1776 of this title], 817 [enacting section 1774 of this title and amending sections 1759, 1761, 1766, 1773, and 1788 of this title], and 819 [amending this section and sections 1755, 1757, 1759a, 1760, 1762a, 1763, 1766, 1773, 1776, and 1780 of this title].

“(5) The amendments made by section 813 [amending sections 1759a, 1760, 1762a, and 1772 of this title] shall take effect 90 days after the date of the enactment of this Act [Aug. 13, 1981].

“(6) The amendments made by the following provisions shall take effect January 1, 1982: subsections (b), (c), (d), and (e) of section 810 [amending section 1766 of this title], except that—

“(A) the amendment made by section 810(c) pertaining to the reimbursement rate for supplements shall take effect as provided under paragraph (1) of this subsection;

“(B) the amendment made by section 810(d)(1) pertaining to the limitation on the number of meals for which reimbursement may be made shall take effect as provided under paragraph (1) of this subsection; and

“(C) the amendment made by section 810(d)(3) which reduces the meal reimbursement factor by 10 percent shall take effect as provided under paragraph (1) of this subsection.

“(7) The following provisions shall take effect on the date of the enactment of this Act [Aug. 13, 1981]:

“(A) the amendments made by subsections (a) and (b) [amending section 1758 of this title] of section 803 and the provisions of subsections (c) and (d) [amending provisions set out as notes under section 1758 of this title] of section 803;

“(B) the amendment made by section 815 [amending section 1786 of this title];

“(C) the amendment made by section 816 [amending section 1785 of this title]; and

“(D) the provisions of section 818.”

#### EFFECTIVE DATE OF 1972 AMENDMENT

Pub. L. 92-433, §4(c), Sept. 26, 1972, 86 Stat. 726, provided that the amendment made by that section is effective after the fiscal year ending June 30, 1973.

#### EFFECTIVE DATE OF 1962 AMENDMENT

Pub. L. 87-688, §3(b), Sept. 25, 1962, 76 Stat. 587, provided that: “The amendments made by this section [amending this section and sections 1754 and 1760 of this title] shall be applicable only with respect to funds appropriated after the date of enactment of this Act [Sept. 25, 1962].”

#### EFFECTIVE DATE OF 1952 AMENDMENT

Act July 12, 1952, ch. 699, §1(d), 66 Stat. 591, provided that: “The amendments made by this Act [amending this section and sections 1754 and 1760 of this title] shall be effective only with respect to funds appropriated after the date on which this Act is enacted [July 12, 1952].”

#### PROMULGATION OF REGULATIONS

Pub. L. 97-35, title VIII, §820(c), Aug. 13, 1981, 95 Stat. 535, provided that: “Not later than 60 days after the date of the enactment of this Act [Aug. 13, 1981], the Secretary of Agriculture shall promulgate regulations to implement the amendments made by this title [see Tables for classification].”

#### REDUCTION IN GENERAL REIMBURSEMENT FOR FISCAL YEAR ENDING SEPTEMBER 30, 1981

Pub. L. 96-499, title II, §201(a), Dec. 5, 1980, 94 Stat. 2599, provided that the national average payment per lunch under this chapter shall be reduced by 2½ cents for certain school food authorities for fiscal year ending Sept. 30, 1981, and that the amount of reimbursements under section 1776 of this title for fiscal year ending Sept. 30, 1983, and the amount of State revenues appropriated or used for meeting the requirements under section 1756 of this title for the school year ending June 30, 1982, shall not be reduced because of a reduction in the amount of Federal funds expended, prior to repeal by Pub. L. 97-35, title VIII, §820(b)(1), Aug. 13, 1981, 95 Stat. 535, effective Sept. 1, 1981, or the first day of the first month following Aug. 1981, whichever is earlier.

#### USE OF FUNDS APPROPRIATED UNDER SECTION 612c OF TITLE 7 FOR IMPLEMENTING THIS SECTION AND REIMBURSEMENT OF SUCH FUNDS

Pub. L. 92-433, §4(a), Sept. 26, 1972, 86 Stat. 725, authorized Secretary of Agriculture to use so much of the funds appropriated by section 612(c) of title 7, as may be necessary, to carry out the purposes of this section and provide an average rate of reimbursement of not less than 8 cents per meal within each State during the fiscal year 1973 and provided for reimbursement of funds so used.

#### ADDITIONAL FUNDS FOR APPORTIONMENT TO STATES AND FOR SPECIAL ASSISTANCE; CONSULTATION WITH CHILD NUTRITION COUNCIL; REIMBURSEMENT OF SEPARATE FUND FROM SUPPLEMENTAL APPROPRIATION

Pub. L. 92-153, §1, Nov. 5, 1971, 85 Stat. 419, provided: “That, notwithstanding any other provision of law, the Secretary of Agriculture shall until such time as a supplemental appropriation may provide additional funds for such purpose use so much of the funds appropriated by section 32 of the Act of August 24, 1935 (7 U.S.C. 612c), as may be necessary, in addition to the funds now available therefor, to carry out the purposes of section 11 of the [Richard B. Russell] National School Lunch Act [section 1759a of this title] and provide a rate of reimbursement which will assure every needy child of free or reduced price lunches during the fiscal year ending June 30, 1972, and to carry out the purposes of section 4 of the [Richard B. Russell] National School Lunch Act [this section] and provide an average rate of reimbursement of 6 cents per meal within each State. In determining the amount of funds needed and the requirements of the various States therefor, the Secretary shall consult with the National Advisory Council on Child Nutrition and interested parties. Funds expended under the foregoing provisions of this resolution shall be reimbursed out of any supplemental appropriation hereafter enacted [on and after Nov. 5, 1971] for the purpose of carrying out section 4 [this section] and section 11 of the [Richard B. Russell] National School Lunch Act [section 1759a of this title], and such reimbursements shall be deposited into the fund established pursuant to section 32 of the Act of August 24, 1935 [sec-

tion 612c of Title 7, Agriculture], to be available for the purposes of said section 32 [section 612c of Title 7].”

#### APPORTIONMENT OF ADDITIONAL FUNDS TO STATES

Pub. L. 92-433, §4(b), Sept. 26, 1972, 86 Stat. 726, provided that: “Funds made available pursuant to this section shall be apportioned to the States in such manner as will best enable schools to meet their obligations with respect to the service of free and reduced-price lunches and to meet the objective of this section with respect to providing a minimum rate of reimbursement under section 4 of the [Richard B. Russell] National School Lunch Act [this section], and such funds shall be apportioned and paid as expeditiously as may be practicable.”

Pub. L. 92-153, §2, Nov. 5, 1971, 85 Stat. 420, provided that: “Funds made available by this joint resolution [amending sections 1758 and 1759a of this title and enacting provisions set out as notes under this section and sections 1758 and 1773 of this title] shall be apportioned to the States in such manner as will best enable schools to meet their obligations with respect to the service of free and reduced price lunches and to meet the objective of this joint resolution [amending sections 1758 and 1759a of this title and enacting provisions set out as notes under this section and sections 1758 and 1773 of this title] with respect to providing a minimum rate of reimbursement under section 4 of the [Richard B. Russell] National School Lunch Act [this section], and such funds shall be apportioned and paid as expeditiously as may be practicable.”

### § 1754. Nutrition promotion

#### (a) In general

Subject to the availability of funds made available under subsection (g) of this section, the Secretary shall make payments to State agencies for each fiscal year, in accordance with this section, to promote nutrition in food service programs under this chapter and the school breakfast program established under the Child Nutrition Act of 1966 (42 U.S.C. 1771 et seq.).

#### (b) Total amount for each fiscal year

The total amount of funds available for a fiscal year for payments under this section shall equal not more than the product obtained by multiplying—

(1) ½ cent; by

(2) the number of lunches reimbursed through food service programs under this chapter during the second preceding fiscal year in schools, institutions, and service institutions that participate in the food service programs.

#### (c) Payments to States

##### (1) Allocation

Subject to paragraph (2), from the amount of funds available under subsection (g) of this section for a fiscal year, the Secretary shall allocate to each State agency an amount equal to the greater of—

(A) a uniform base amount established by the Secretary; or

(B) an amount determined by the Secretary, based on the ratio that—

(i) the number of lunches reimbursed through food service programs under this chapter in schools, institutions, and service institutions in the State that participate in the food service programs; bears to

(ii) the number of lunches reimbursed through the food service programs in

schools, institutions, and service institutions in all States that participate in the food service programs.

#### (2) Reductions

The Secretary shall reduce allocations to State agencies qualifying for an allocation under paragraph (1)(B), in a manner determined by the Secretary, to the extent necessary to ensure that the total amount of funds allocated under paragraph (1) is not greater than the amount appropriated under subsection (g) of this section.

#### (d) Use of payments

##### (1) Use by State agencies

A State agency may reserve, to support dissemination and use of nutrition messages and material developed by the Secretary, up to—

(A) 5 percent of the payment received by the State for a fiscal year under subsection (c) of this section; or

(B) in the case of a small State (as determined by the Secretary), a higher percentage (as determined by the Secretary) of the payment.

##### (2) Disbursement to schools and institutions

Subject to paragraph (3), the State agency shall disburse any remaining amount of the payment to school food authorities and institutions participating in food service programs described in subsection (a) of this section to disseminate and use nutrition messages and material developed by the Secretary.

##### (3) Summer food service program for children

In addition to any amounts reserved under paragraph (1), in the case of the summer food service program for children established under section 1761 of this title, the State agency may—

(A) retain a portion of the funds made available under subsection (c) of this section (as determined by the Secretary); and

(B) use the funds, in connection with the program, to disseminate and use nutrition messages and material developed by the Secretary.

#### (e) Documentation

A State agency, school food authority, and institution receiving funds under this section shall maintain documentation of nutrition promotion activities conducted under this section.

#### (f) Reallocation

The Secretary may reallocate, to carry out this section, any amounts made available to carry out this section that are not obligated or expended, as determined by the Secretary.

#### (g) Authorization of appropriations

There are authorized to be appropriated such sums as are necessary to carry out this section, to remain available until expended.

(June 4, 1946, ch. 281, §5, as added Pub. L. 108-265, title I, §101, June 30, 2004, 118 Stat. 730.)

#### REFERENCES IN TEXT

The Child Nutrition Act of 1966, referred to in subsec. (a), is Pub. L. 89-642, Oct. 11, 1966, 80 Stat. 885, as amended, which is classified generally to chapter 13A



(§1771 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1771 of this title and Tables.

#### PRIOR PROVISIONS

A prior section 1754, acts June 4, 1946, ch. 281, § 5, 60 Stat. 231; July 12, 1952, ch. 699, §1(b), 66 Stat. 591; Sept. 25, 1962, Pub. L. 87-688, §3(a), 76 Stat. 587; Oct. 15, 1962, Pub. L. 87-823, §3(a), 76 Stat. 945; Nov. 10, 1977, Pub. L. 95-166, § 3, 91 Stat. 1332, related to amount, apportionment, etc., for food service equipment assistance, prior to repeal by Pub. L. 97-35, title VIII, §§805(a), 820(a)(4), Aug. 13, 1981, 95 Stat. 527, 534, effective Oct. 1, 1981.

#### EFFECTIVE DATE

Pub. L. 108-265, title V, §502, June 30, 2004, 118 Stat. 789, as amended by Pub. L. 108-447, div. A, title VII, §788(f), Dec. 8, 2004, 118 Stat. 2851, provided that:

“(a) IN GENERAL.—Except as otherwise provided in this Act [see Short Title of 2004 Amendment note set out under section 1751 of this title], this Act and the amendments made by this Act take effect on the date of enactment of this Act [June 30, 2004].

“(b) SPECIAL EFFECTIVE DATES.—

“(1) JULY 1, 2004.—The amendments made by sections 106, 107, 126(c), and 201 [amending sections 1758, 1773, and 1776 of this title] take effect on July 1, 2004.

“(2) OCTOBER 1, 2004.—The amendments made by sections 119(c), 119(g), 202(a), 203(a), 203(b), 203(c)(1), 203(c)(5), 203(e)(8), 203(e)(10), 203(e)(13), 203(f), 203(h)(1), and 203(h)(2) [amending sections 1766, 1776, and 1786 of this title] take effect on October 1, 2004.

“(3) JANUARY 1, 2005.—The amendments made by sections 116(f)(1) and 116(f)(3) [amending section 1769 of this title] take effect on January 1, 2005.

“(4) JULY 1, 2005.—The amendments made by sections 102, 104 (other than section 104(a)(1)), 105, 111, and 126(b) [amending sections 1396a, 1758, 1759a, and 1769c of this title and section 2020 of Title 7, Agriculture] take effect on July 1, 2005.

“(5) OCTOBER 1, 2005.—The amendments made by sections 116(d) and 203(e)(9) [amending sections 1761 and 1786 of this title] take effect on October 1, 2005.”

### § 1755. Direct expenditures for agricultural commodities and other foods

#### (a) Administrative expenses; nutritional education; pilot projects; cash-in-lieu of commodities study; refusal of commodities and receipt of other commodities available to the State in lieu of the refused commodities

The funds provided by appropriation or transferred from other accounts for any fiscal year for carrying out the provisions of this chapter, and for carrying out the provisions of the Child Nutrition Act of 1966 [42 U.S.C. 1771 et seq.], other than section 3 thereof [42 U.S.C. 1772] less

(1) not to exceed 3½ per centum thereof which per centum is hereby made available to the Secretary for the Secretary’s administrative expenses under this chapter and under the Child Nutrition Act of 1966 [42 U.S.C. 1771 et seq.];

(2) the amount apportioned by the Secretary pursuant to section 1753 of this title and the amount appropriated pursuant to sections 1759a and 1761 of this title and sections 4 and 7 of the Child Nutrition Act of 1966 [42 U.S.C. 1773 and 1776]; and

(3) not to exceed 1 per centum of the funds provided for carrying out the programs under this chapter and the programs under the Child Nutrition Act of 1966 [42 U.S.C. 1771 et seq.], other than section 3 [42 U.S.C. 1772], which per centum is hereby made available to the Sec-

retary to supplement the nutritional benefits of these programs through grants to States and other means for nutritional training and education for workers, cooperators, and participants in these programs, for pilot projects and the cash-in-lieu of commodities study required to be carried out under section 1769 of this title, and for necessary surveys and studies of requirements for food service programs in furtherance of the purposes expressed in section 1751 of this title, and section 2 of the Child Nutrition Act of 1966 [42 U.S.C. 1771],

shall be available to the Secretary during such year for direct expenditure by the Secretary for agricultural commodities and other foods to be distributed among the States and schools and service institutions participating in the food service programs under this chapter and under the Child Nutrition Act of 1966 [42 U.S.C. 1771 et seq.] in accordance with the needs as determined by the local school and service institution authorities. Except as provided in the next 2 sentences, any school participating in food service programs under this chapter may refuse to accept delivery of not more than 20 percent of the total value of agricultural commodities and other foods tendered to it in any school year; and if a school so refuses, that school may receive, in lieu of the refused commodities, other commodities to the extent that other commodities are available to the State during that year. Any school food authority may refuse some or all of the fresh fruits and vegetables offered to the school food authority in any school year and shall receive, in lieu of the offered fruits and vegetables, other more desirable fresh fruits and vegetables that are at least equal in value to the fresh fruits and vegetables refused by the school food authority. The value of any fresh fruits and vegetables refused by a school under the preceding sentence for a school year shall not be used to determine the 20 percent of the total value of agricultural commodities and other foods tendered to the school food authority in the school year under the second sentence. The provisions of law contained in the proviso of section 713c of title 15, facilitating operations with respect to the purchase and disposition of surplus agricultural commodities under section 612c of title 7, shall, to the extent not inconsistent with the provision of this chapter, also be applicable to expenditures of funds by the Secretary under this chapter. In making purchases of such agricultural commodities and other foods, the Secretary shall not issue specifications which restrict participation of local producers unless such specifications will result in significant advantages to the food service programs authorized by this chapter and the Child Nutrition Act of 1966.

#### (b) Delivery of commodities

The Secretary shall deliver, to each State participating in the school lunch program under this chapter, commodities valued at the total level of assistance authorized under subsection (c)<sup>1</sup> of this section for each school year for the

<sup>1</sup> See References in Text note below.

school lunch program in the State, not later than September 30 of the following school year.

**(c) Level of commodity assistance; computation of index; calculation of total assistance to each State; emphasis on high protein foods; per meal value of donated foods**

(1)(A) The national average value of donated foods, or cash payments in lieu thereof, shall be 11 cents, adjusted on July 1, 1982, and each July 1 thereafter to reflect changes in the Price Index for Food Used in Schools and Institutions. The Index shall be computed using 5 major food components in the Bureau of Labor Statistics' Producer Price Index (cereal and bakery products, meats, poultry and fish, dairy products, processed fruits and vegetables, and fats and oils). Each component shall be weighed using the same relative weight as determined by the Bureau of Labor Statistics.

(B) The value of food assistance for each meal shall be adjusted each July 1 by the annual percentage change in a 3-month average value of the Price Index for Foods Used in Schools and Institutions for March, April, and May each year. Such adjustment shall be computed to the nearest  $\frac{1}{4}$  cent.

(C) For each school year, the total commodity assistance or cash in lieu thereof available to a State for the school lunch program shall be calculated by multiplying the number of lunches served in the preceding school year by the rate established by subparagraph (B). After the end of each school year, the Secretary shall reconcile the number of lunches served by schools in each State with the number of lunches served by schools in each State during the preceding school year and increase or reduce subsequent commodity assistance or cash in lieu thereof provided to each State based on such reconciliation.

(D) Among those commodities delivered under this section, the Secretary shall give special emphasis to high protein foods, meat, and meat alternates (which may include domestic seafood commodities and their products).

(E) Notwithstanding any other provision of this section, not less than 75 percent of the assistance provided under this subsection shall be in the form of donated foods for the school lunch program.

(2) To the maximum extent feasible, each State agency shall offer to each school food authority under its jurisdiction that participates in the school lunch program and receives commodities, agricultural commodities and their products, the per meal value of which is not less than the national average value of donated foods established under paragraph (1). Each such offer shall include the full range of such commodities and products that are available from the Secretary to the extent that quantities requested are sufficient to allow efficient delivery to and within the State.

**(d) Termination of commodity assistance based upon school breakfast program**

Beginning with the school year ending June 30, 1981, the Secretary shall not offer commodity assistance based upon the number of breakfasts served to children under section 4 of the Child Nutrition Act of 1966 [42 U.S.C. 1773].

**(e) Minimum percentage of commodity assistance**

(1) Subject to paragraph (2), in each school year the Secretary shall ensure that not less than 12 percent of the assistance provided under section 1753 of this title, this section, and section 1759a of this title shall be in the form of—

(A) commodity assistance provided under this section, including cash in lieu of commodities and administrative costs for procurement of commodities under this section; or

(B) during the period beginning October 1, 2003, and ending September 30, 2020, commodities provided by the Secretary under any provision of law.

(2) If amounts available to carry out the requirements of the sections described in paragraph (1) are insufficient to meet the requirement contained in paragraph (1) for a school year, the Secretary shall, to the extent necessary, use the authority provided under section 1762a(a) of this title to meet the requirement for the school year.

(June 4, 1946, ch. 281, § 6, 60 Stat. 231; Pub. L. 87-823, §3(b), Oct. 15, 1962, 76 Stat. 945; Pub. L. 90-302, §2(a), May 8, 1968, 82 Stat. 117; Pub. L. 91-248, §3, May 14, 1970, 84 Stat. 209; Pub. L. 93-13, §2, Mar. 30, 1973, 87 Stat. 10; Pub. L. 93-150, §5, Nov. 7, 1973, 87 Stat. 562; Pub. L. 93-326, §3, June 30, 1974, 88 Stat. 286; Pub. L. 94-105, §§4, 11, Oct. 7, 1975, 89 Stat. 511, 515; Pub. L. 95-166, §§5, 7, 10(1), 19(a), Nov. 10, 1977, 91 Stat. 1334-1336, 1345; Pub. L. 95-627, §§5(b), 12(a), Nov. 10, 1978, 92 Stat. 3619, 3625; Pub. L. 96-499, title II, §202(b), Dec. 5, 1980, 94 Stat. 2600; Pub. L. 97-35, title VIII, §§802, 819(h), Aug. 13, 1981, 95 Stat. 524, 533; Pub. L. 99-500, title III, §§321, 371(c)(2), Oct. 18, 1986, 100 Stat. 1783-360, 1783-369, and Pub. L. 99-591, title III, §§321, 371(c)(2), Oct. 30, 1986, 100 Stat. 3341-364, 3341-372; Pub. L. 99-661, div. D, title II, §4201, title V, §4501(c)(2), Nov. 14, 1986, 100 Stat. 4071, 4080; Pub. L. 100-237, §3(j), Jan. 8, 1988, 101 Stat. 1738; Pub. L. 101-147, title I, §131(a), title III, §302, Nov. 10, 1989, 103 Stat. 906, 913; Pub. L. 103-448, title I, §§101-103, Nov. 2, 1994, 108 Stat. 4700, 4701; Pub. L. 105-336, title I, §101(a), Oct. 31, 1998, 112 Stat. 3144; Pub. L. 106-170, title IV, §411, Dec. 17, 1999, 113 Stat. 1917; Pub. L. 106-224, title II, §241(b), June 20, 2000, 114 Stat. 410; Pub. L. 107-171, title IV, §4301(a), May 13, 2002, 116 Stat. 330; Pub. L. 111-80, title VII, §749(a), Oct. 21, 2009, 123 Stat. 2131; Pub. L. 111-296, title IV, §401, Dec. 13, 2010, 124 Stat. 3259.)

REFERENCES IN TEXT

The Child Nutrition Act of 1966, referred to in subsec. (a), is Pub. L. 89-642, Oct. 11, 1966, 80 Stat. 885, as amended, which is classified generally to chapter 13A (§1771 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1771 of this title and Tables.

Subsection (c) of this section, referred to in subsec. (b), was repealed and subsec. (e) was redesignated (c) by Pub. L. 105-336, title I, §101(a), Oct. 31, 1998, 112 Stat. 3144.

CODIFICATION

Pub. L. 99-591 is a corrected version of Pub. L. 99-500.

AMENDMENTS

2010—Subsec. (e)(1)(B). Pub. L. 111-296 substituted “2020” for “2010”.

2009—Subsec. (e)(1)(B). Pub. L. 111-80 substituted “2010” for “2009”.

2002—Subsec. (e)(1)(B). Pub. L. 107-171 substituted “2003” for “2001”.

2000—Subsec. (e)(1)(B). Pub. L. 106-224 substituted “2001” for “2000”.

1999—Subsec. (e)(1). Pub. L. 106-170 designated existing provisions as introductory provisions and subpar. (A) and added subpar. (B).

1998—Subsecs. (c) to (g). Pub. L. 105-336 redesignated subsecs. (e) to (g) as (c) to (e), respectively, and struck out former subsecs. (c) and (d) which read as follows:

“(c) Notwithstanding any other provision of law, the Secretary, until such time as a supplemental appropriation may provide additional funds for the purpose of subsection (b) of this section, shall use funds appropriated by section 612c of title 7 to make any payments to States authorized under such subsection. Any section 612c of title 7 funds utilized to make such payments shall be reimbursed out of any supplemental appropriation hereafter enacted for the purpose of carrying out subsection (b) of this section and such reimbursement shall be deposited into the fund established pursuant to section 612c of title 7 to be available for the purpose of said section 612c of title 7.

“(d) Any funds made available under subsection (b) or (c) of this section shall not be subject to the State matching provisions of section 1756 of this title.”

1994—Subsec. (a). Pub. L. 103-448, §101, substituted in second sentence “Except as provided in the next 2 sentences, any school” for “Any school” and inserted after second sentence “Any school food authority may refuse some or all of the fresh fruits and vegetables offered to the school food authority in any school year and shall receive, in lieu of the offered fruits and vegetables, other more desirable fresh fruits and vegetables that are at least equal in value to the fresh fruits and vegetables refused by the school food authority. The value of any fresh fruits and vegetables refused by a school under the preceding sentence for a school year shall not be used to determine the 20 percent of the total value of agricultural commodities and other foods tendered to the school food authority in the school year under the second sentence.”

Subsec. (b). Pub. L. 103-448, §102, amended subsec. (b) generally. Prior to amendment, subsec. (b) related to cash donations in lieu of commodity donations during school year for school food service programs and withholding of funds for States administered by Secretary for disbursement to participating schools to be used to purchase commodities and other food for their food service programs.

Subsec. (g). Pub. L. 103-448, §103, added subsec. (g).

1989—Subsec. (a). Pub. L. 101-147, §302, substituted “the Secretary’s” for “his” in par. (1), substituted “the Secretary” for “him” in par. (2), and, in concluding provisions, substituted “expenditure by the Secretary” for “expenditure by him” and made technical amendments to the references to section 713c of title 15 and section 612c of title 7 involving underlying provisions of original act and requiring no change in text.

Subsec. (e)(1). Pub. L. 101-147, §131(a)(1), amended par. (1) generally. Prior to amendment, par. (1) read as follows: “The national average value of donated foods, or cash payments in lieu thereof, shall be 11 cents, adjusted on July 1, 1982, and each July 1 thereafter to reflect changes in the Price Index for Food Used in Schools and Institutions. The Index shall be computed using five major food components in the Bureau of Labor Statistics’ Producer Price Index (cereal and bakery products, meats, poultry and fish, dairy products, processed fruits and vegetables, and fats and oils). Each component shall be weighted using the same relative weight as determined by the Bureau of Labor Statistics. The value of food assistance for each meal shall be adjusted each July 1 by the annual percentage change in a three-month simple average value of the Price Index for Foods Used in Schools and Institutions for March, April, and May each year. Such adjustment shall be computed to the nearest one-fourth cent.

Among those commodities delivered under this section, the Secretary shall give special emphasis to high protein foods, meat, and meat alternates (which may include domestic seafood commodities and their products). Notwithstanding any other provision of this section, not less than 75 per centum of the assistance provided under this subsection (e) shall be in the form of donated foods for the school lunch program.”

Subsec. (e)(2). Pub. L. 101-147, §131(a)(2), substituted “To the maximum extent feasible, each State agency” for “Each State agency”.

1988—Subsec. (e). Pub. L. 100-237 designated existing provisions as par. (1) and added par. (2).

1986—Subsecs. (a)(3), (b). Pub. L. 99-500, Pub. L. 99-591, and Pub. L. 99-661, amended section identically, in subsec. (a)(3), making technical amendment to reference to section 1769 of this title to reflect renumbering of corresponding section of original act and, in subsec. (b), substituting “June 1” for “May 15” and “July 1” for “June 15”.

1981—Subsec. (a)(2). Pub. L. 97-35, §819(h), struck out references to section 1754 of this title, and section 5 of the Child Nutrition Act of 1966.

Subsec. (e). Pub. L. 97-35, §802, substituted provisions requiring value to be set at 11 cents, as adjusted on July 1, 1982, and each July 1, thereafter, for provisions requiring value to be set at not less than 10 cents, as adjusted on an annual basis each school year after June 30, 1975.

1980—Subsec. (f). Pub. L. 96-499 added subsec. (f).

1978—Subsec. (e). Pub. L. 95-627, §5(b), substituted provision relating to Price Index for Food Used in Schools and Institutions for provision relating to Consumer Price Index.

Pub. L. 95-627, §12(a), which provided for inserting “(which may include domestic seafood commodities and their products)” after “alternatives” was executed by inserting that parenthetical after “alternates” as the probable intent of Congress.

1977—Subsec. (a). Pub. L. 95-166, §§7, 10(1), inserted provision which authorized refusal of commodities and receipt of other commodities available to State, in lieu of refused commodities, and in cl. (3) authorized grants for pilot projects and cash-in-lieu of commodities study required to be carried out under section 1769 of this title.

Subsec. (b). Pub. L. 95-166, §5, in revising subsec. (b), changed commodity distribution program to a school year from a fiscal year basis, and among other changes, extended deadline for estimated valuation and payment to May 15 and June 15 from February 15 and March 15, and struck out provision respecting apportionment among State educational agencies on basis of meals served in all the States during the fiscal year and specific reference to regulations of the Department of Agriculture under title 7, subtitle (b), chapter II, subchapter (a), parts 210 and 220.

Subsec. (e). Pub. L. 95-166, §19(a), substituted “school years” and “school year after June 30, 1975” for “fiscal years” and “fiscal year after June 30, 1975”, respectively.

1975—Subsec. (a). Pub. L. 94-105, §11(a), inserted provision prohibiting issuance of specifications in purchase of agricultural commodities and other foods unless such specifications result in significant advantages to the authorized food service programs.

Subsec. (b). Pub. L. 94-105, §4, substituted references to all schools of States for references to only nonprofit private schools of States in provisions covering Secretary’s direct administration of school food service programs.

Subsec. (e). Pub. L. 94-105, §11(b), inserted provision mandating that not less than 75 per centum of assistance under this subsection shall be in form of donated foods for the school lunch program.

1974—Subsec. (e). Pub. L. 93-326 added subsec. (e).

1973—Subsec. (a). Pub. L. 93-13 designated existing provisions as subsec. (a).

Subsec. (b). Pub. L. 93-150, in revising text to make provisions applicable each fiscal year rather than only

for fiscal year ending June 30, 1973, substituted in; first sentence, “As of February 15 of each fiscal year” and “during that fiscal year” for “As of March 15, 1973” and “during the fiscal year ending June 30, 1973”; second sentence, “for that fiscal year”, “March 15 of that fiscal year”, and “as of February 15 of such fiscal year” for “for the fiscal year ending June 30, 1973”, “April 15, 1973”, and “as of March 15, 1973”; third sentence, “during the preceding fiscal year” for “during the fiscal year ending June 30, 1972”; and proviso of third sentence, “during that fiscal year” for “during the fiscal year ending June 30, 1972.”

Pub. L. 93-13 added subsec. (b).

Subsec. (c). Pub. L. 93-150 reenacted provisions without change.

Pub. L. 93-13 added subsec. (c).

Subsec. (d). Pub. L. 93-150 reenacted provisions without change.

Pub. L. 93-13 added subsec. (d).

1970—Pub. L. 91-248 increased amount authorized for administrative expenses by 3½ percent of the amount appropriated to carry out this chapter and the Child Nutrition Act of 1966, other than section 1772 of this title, made such amount available for the Secretary’s administrative expenses, authorized use of up to 1 percent of the funds appropriated for this chapter and the Child Nutrition Act of 1966, other than section 1772 of this title, for nutritional training and education and studies of food service requirements in connection with those programs, reduced, to the extent funds were used for administrative expenses other than for this chapter or nutritional training or education or studies, the share of this chapter’s appropriations which may be used for direct expenditure by the Secretary for agricultural commodities and other foods, and authorized distribution of such foods to schools and service institutions participating in food service programs under this chapter and the Child Nutrition Act of 1966.

1968—Pub. L. 90-302 inserted “except section 1761 of this title” after “The funds appropriated for any fiscal year for carrying out the provisions of this chapter.”

1962—Pub. L. 87-823 substituted “, less the amount apportioned by him pursuant to sections 1753, 1754, and 1759 of this title, and less the amount appropriated pursuant to section 1759a of this title” for “and less the amount apportioned to him pursuant to sections 1753, 1754, and 1759 of this title”.

#### EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111-296 effective Oct. 1, 2010, except as otherwise specifically provided, see section 445 of Pub. L. 111-296, set out as a note under section 1751 of this title.

#### EFFECTIVE DATE OF 2002 AMENDMENT

Pub. L. 107-171, title IV, §4301(b), May 13, 2002, 116 Stat. 330, provided that: “The amendment made by this section [amending this section] takes effect on the date of enactment of this Act [May 13, 2002].”

#### EFFECTIVE DATE OF 1998 AMENDMENT

Pub. L. 105-336, title IV, §401, Oct. 31, 1998, 112 Stat. 3170, provided that: “Except as otherwise provided in this Act [see Short Title of 1998 Amendment note set out under section 1751 of this title], this Act and the amendments made by this Act shall take effect on October 1, 1998.”

#### EFFECTIVE DATE OF 1994 AMENDMENT

Pub. L. 103-448, title IV, §401, Nov. 2, 1994, 108 Stat. 4751, provided that: “Except as otherwise provided in this Act [see Short Title of 1994 Amendment note set out under section 1751 of this title], this Act and the amendments made by this Act shall become effective on October 1, 1994.”

#### EFFECTIVE DATE OF 1989 AMENDMENT

Pub. L. 101-147, title I, §131(c), Nov. 10, 1989, 103 Stat. 907, provided that: “The amendments made by this sec-

tion [amending this section and section 1766 of this title] shall become effective on July 1, 1989.”

#### EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by sections 802 and 819(h) of Pub. L. 97-35 effective July 1, 1981, and Oct. 1, 1981, respectively, see section 820(a)(2), (4) of Pub. L. 97-35, set out as a note under section 1753 of this title.

#### EFFECTIVE DATE OF 1978 AMENDMENT

Pub. L. 95-627, §14, Nov. 10, 1978, 92 Stat. 3625, provided that: “The provisions of this Act [enacting section 1769c of this title, amending this section and sections 1757, 1760, 1761, 1762a, 1766, 1769, 1773, 1774, 1776, 1784, and 1786 of this title and enacting provisions set out as notes under this section, sections 1751, 1773, and 1786 of this title], except sections 4, 5, and 8, shall become effective October 1, 1978. The provisions of section 4 of this Act [amending section 1759a of this title] shall become effective Jan[uary 1, 1979. The provisions of sections 5 [amending this section and sections 1759a, 1761, and 1772 of this title] and 8 [amending section 1758 of this title] of this Act shall become effective July 1, 1979, except that the Secretary may make the necessary changes in the income poverty guidelines for the special supplemental food program under section 17 of the Child Nutrition Act of 1966 [section 1786 of this title] not earlier than October 1, 1978, and not later than July 1, 1979.”

#### EFFECTIVE DATE OF 1977 AMENDMENT

Pub. L. 95-166, §19, Nov. 10, 1977, 91 Stat. 1345, provided that the amendment made by that section is effective July 1, 1977.

#### REDUCTION IN COMMODITY ASSISTANCE FOR FISCAL YEAR ENDING SEPTEMBER 30, 1981

Pub. L. 96-499, title II, §202(a), Dec. 5, 1980, 94 Stat. 2600, provided that for the fiscal year ending Sept. 30, 1981, the national average value of donated foods or cash payments in lieu thereof, as determined under subsec. (e) of this section, shall be reduced by 2 cents, prior to repeal by Pub. L. 97-35, title VIII, §820(b)(2), Aug. 13, 1981, 95 Stat. 535, effective July 1, 1981.

#### CONGRESSIONAL FINDINGS AND DECLARATION OF PURPOSE

Pub. L. 93-13, §1, Mar. 30, 1973, 87 Stat. 9, provided that: “The Congress finds that the volume and variety of Federal food donations to the school lunch and child nutrition programs are significantly below the amounts programed and budgeted for the fiscal year ending June 30, 1973, and that schools participating in these programs are confronted with serious financial problems in obtaining sufficient supplies of the foods required to meet the nutritional standards established by law for these programs. It is, therefore, the purpose of this Act [amending this section] to provide an effective and immediate solution to this nutritional crisis.”

### § 1755a. Whole grain products

#### (a) Purpose

The purpose of this section is to encourage greater awareness and interest in the number and variety of whole grain products available to schoolchildren, as recommended by the 2005 Dietary Guidelines for Americans.

#### (b) Definition of eligible whole grains and whole grain products

In this section, the terms “whole grains” and “whole grain products” have the meaning given the terms by the Food and Nutrition Service in the HealthierUS School Challenge.

#### (c) Purchase of whole grains and whole grain products

In addition to the commodities delivered under section 6 of the Richard B. Russell Na-

tional School Lunch Act (42 U.S.C. 1755), the Secretary shall purchase whole grains and whole grain products for use in—

(1) the school lunch program established under the Richard B. Russell National School Lunch Act (42 U.S.C. 1751 et seq.); and

(2) the school breakfast program established by section 1773 of this title.

**(d) Evaluation**

Not later than September 30, 2011, the Secretary shall conduct an evaluation of the activities conducted under subsection (c) that includes—

(1) an evaluation of whether children participating in the school lunch and breakfast programs increased their consumption of whole grains;

(2) an evaluation of which whole grains and whole grain products are most acceptable for use in the school lunch and breakfast programs;

(3) any recommendations of the Secretary regarding the integration of whole grain products in the school lunch and breakfast programs; and

(4) an evaluation of any other outcomes determined to be appropriate by the Secretary.

**(e) Report**

As soon as practicable after the completion of the evaluation under subsection (d), the Secretary shall submit to the Committee on Agriculture, Nutrition, and Forestry of the Senate and the Committee on Education and Labor of the House of Representative a report describing the results of the evaluation.

(Pub. L. 110-234, title IV, § 4305, May 22, 2008, 122 Stat. 1131; Pub. L. 110-246, § 4(a), title IV, § 4305, June 18, 2008, 122 Stat. 1664, 1892.)

REFERENCES IN TEXT

The Richard B. Russell National School Lunch Act, referred to in subsec. (c), is act June 4, 1946, ch. 281, 60 Stat. 230, which is classified generally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 1751 of this title and Tables.

CODIFICATION

Pub. L. 110-234 and Pub. L. 110-246 enacted identical sections. Pub. L. 110-234 was repealed by section 4(a) of Pub. L. 110-246.

Section was enacted as part of the Food, Conservation, and Energy Act of 2008, and not as part of the Richard B. Russell National School Lunch Act which comprises this chapter.

CHANGE OF NAME

Committee on Education and Labor of House of Representatives changed to Committee on Education and the Workforce of House of Representatives by House Resolution No. 5, One Hundred Twelfth Congress, Jan. 5, 2011.

EFFECTIVE DATE

Enactment of this section and repeal of Pub. L. 110-234 by Pub. L. 110-246 effective May 22, 2008, the date of enactment of Pub. L. 110-234, except as otherwise provided, see section 4 of Pub. L. 110-246, set out as a note under section 8701 of Title 7, Agriculture.

Section effective Oct. 1, 2008, see section 4407 of Pub. L. 110-246, set out as an Effective Date of 2008 Amendment note under section 1161 of Title 2, The Congress.

DEFINITION OF “SECRETARY”

“Secretary” as meaning the Secretary of Agriculture, see section 8701 of Title 7, Agriculture.

**§ 1756. Payments to States**

**(a) State revenue matching requirements; special provisions for lower than average income per capita States**

(1) Funds appropriated to carry out section 1753 of this title during any fiscal year shall be available for payment to the States for disbursement by State educational agencies in accordance with such agreements, not inconsistent with the provisions of this chapter, as may be entered into by the Secretary and such State educational agencies for the purpose of assisting schools within the States in obtaining agricultural commodities and other foods for consumption by children in furtherance of the school lunch program authorized under this chapter. For any school year, such payments shall be made to a State only if, during such school year, the amount of the State revenues (excluding State revenues derived from the operation of the program) appropriated or used specifically for program purposes (other than any State revenues expended for salaries and administrative expenses of the program at the State level) is not less than 30 percent of the funds made available to such State under section 1753 of this title for the school year beginning July 1, 1980.

(2) If, for any school year, the per capita income of a State is less than the average per capita income of all the States, the amount required to be expended by a State under paragraph (1) for such year shall be an amount bearing the same ratio to the amount equal to 30 percent of the funds made available to such State under section 1753 of this title for the school year beginning July 1, 1980, as the per capita income of such State bears to the average per capita income of all the States.

**(b) Disbursements; private schools**

The State revenues provided by any State to meet the requirement of subsection (a) of this section shall, to the extent the State deems practicable, be disbursed to schools participating in the school lunch program under this chapter. No State in which the State educational agency is prohibited by law from disbursing State appropriated funds to private schools shall be required to match Federal funds made available for meals served in such schools, or to disburse, to such schools, any of the State revenues required to meet the requirements of subsection (a) of this section.

**(c) Certification of payments by Secretary**

The Secretary shall certify to the Secretary of the Treasury, from time to time, the amounts to be paid to any State under this section and shall specify when such payments are to be made. The Secretary of the Treasury shall pay to the State, at the time or times fixed by the Secretary, the amounts so certified.

**(d) Combined Federal and State commodity purchases**

Notwithstanding any other provision of law, the Secretary may enter into an agreement with

a State agency, acting on the request of a school food service authority, under which funds payable to the State under section 1753 or 1759a of this title may be used by the Secretary for the purpose of purchasing commodities for use by the school food service authority in meals served under the school lunch program under this chapter.

(June 4, 1946, ch. 281, § 7, 60 Stat. 232; Pub. L. 91-248, § 4, May 14, 1970, 84 Stat. 209; Pub. L. 92-433, § 10, Sept. 26, 1972, 86 Stat. 731; Pub. L. 94-105, § 5, Oct. 7, 1975, 89 Stat. 511; Pub. L. 95-166, § 19(b), Nov. 10, 1977, 91 Stat. 1345; Pub. L. 97-35, title VIII, § 804, Aug. 13, 1981, 95 Stat. 526; Pub. L. 101-147, title III, § 303, Nov. 10, 1989, 103 Stat. 913; Pub. L. 103-448, title I, § 104, Nov. 2, 1994, 108 Stat. 4701.)

#### AMENDMENTS

1994—Subsec. (d), Pub. L. 103-448 added subsec. (d).  
1989—Pub. L. 101-147, § 303(a), inserted "Payments to States" as section catchline.

Subsec. (a)(2), Pub. L. 101-147, § 303(b), substituted "the" for "the the" before "school year beginning".

1981—Subsec. (a), Pub. L. 97-35 designated existing provisions as subsec. (a) and substituted provisions relating to funds appropriated to carry out section 1753 of this title during any fiscal year, for provisions relating to funds appropriated to carry out sections 1753 and 1754 of this title during any fiscal year.

Subsecs. (b), (c), Pub. L. 97-35 added subsecs. (b) and (c).

1977—Pub. L. 95-166, among other changes, substituted in first sentence "Funds appropriated to carry out" and "food service equipment assistance" for "Funds apportioned to any State pursuant to" and "nonfood assistance"; substituted in third sentence "fiscal or school year thereafter" for "fiscal year thereafter"; substituted in fourth sentence "fiscal or school year" for "fiscal year"; and substituted sixth sentence "For the school year beginning in 1976, State revenue (other than revenues derived from the program) appropriated or used specifically for program purposes (other than salaries and administrative expenses at the State, as distinguished from local, level) shall constitute at least 8 percent of the matching requirement for the preceding school year, or, at the discretion of the Secretary, fiscal year, and for each school year thereafter, at least 10 percent of the matching requirement for the preceding school year" for "For the fiscal year beginning July 1, 1971, and the fiscal year beginning July 1, 1972, State revenue (other than revenues derived from the program) appropriated or utilized specifically for program purposes (other than salaries and administrative expenses at the State, as distinguished from local, level) shall constitute at least 4 per centum of the matching requirement for the preceding fiscal year; for each of the two succeeding fiscal years, at least 6 per centum of the matching requirement for the preceding fiscal year; for each of the subsequent two fiscal years, at least 8 per centum of the matching requirement for the preceding fiscal year; and for each fiscal year thereafter at least 10 per centum of the matching requirement for the preceding fiscal year".

1975—Pub. L. 94-105 made requirements of section that each dollar of Federal assistance be matched by \$3 from sources within the State inapplicable with respect to the payments made to participating schools under section 1753 of this title, with the proviso that such inapplicability not affect the level of State matching required by the sixth sentence of the section.

1972—Pub. L. 92-433 substituted "per centum of the matching requirement for the preceding fiscal year" for "per centum of the matching requirement" in four places.

1970—Pub. L. 91-248 inserted provision requiring that State revenues represent a prescribed minimum of the

local funds required to match Federal funds apportioned under this chapter, required that amounts derived by the State from the program, or expended by it for salaries or administrative expenses at the State level, would not count toward meeting the State revenue share of the matching requirement, and required State funds disbursed to each school, to the extent practicable, on the basis of its share of the funds apportioned for the regular school lunch program, the special assistance program to schools to assure lunches for low-income children, the school breakfast program for needy children, and the nonfood assistance program for schools drawing from poor economic areas.

#### EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103-448 effective Oct. 1, 1994, see section 401 of Pub. L. 103-448, set out as a note under section 1755 of this title.

#### EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97-35 effective July 1, 1981, see section 820(a)(2) of Pub. L. 97-35, set out as a note under section 1753 of this title.

#### EFFECTIVE DATE OF 1977 AMENDMENT

Pub. L. 95-166, § 19, Nov. 10, 1977, 91 Stat. 1345, provided that the amendment made by that section is effective July 1, 1977.

### § 1757. State disbursement to schools

#### (a) Disbursement by State educational agency

Funds paid to any State during any fiscal year pursuant to section 1753 of this title shall be disbursed by the State educational agency, in accordance with such agreements approved by the Secretary, as may be entered into by such State agency and the schools in the State, to those schools in the State which the State educational agency, taking into account need and attendance, determines are eligible to participate in the school lunch program.

#### (b) Permanent, amendable agreements

The agreements described in subsection (a) of this section shall be permanent agreements that may be amended as necessary.

#### (c) Suspension or termination of agreements

The State educational agency may suspend or terminate any such agreement in accordance with regulations prescribed by the Secretary.

#### (d) Use of funds

Use of funds paid to States may include, in addition to the purchase price of agricultural commodities and other foods, the cost of processing, distributing, transporting, storing or handling thereof.

#### (e) Limitation

In no event shall such disbursement for food to any school for any fiscal year exceed an amount determined by multiplying the number of lunches served in the school in the school lunch program under this chapter during such year by the maximum per meal reimbursement rate for the State, for the type of lunch served, as prescribed by the Secretary.

#### (f) Increase in meal reimbursement

In any fiscal year in which the national average payment per lunch determined under section 1753 of this title is increased above the amount prescribed in the previous fiscal year, the maxi-

mum per meal reimbursement rate, for the type of lunch served, shall be increased by a like amount.

**(g) In advance or as reimbursement**

Lunch assistance disbursements to schools under this section and under section 1759a of this title may be made in advance or by way of reimbursement in accordance with procedures prescribed by the Secretary.

(June 4, 1946, ch. 281, § 8, 60 Stat. 232; Pub. L. 92-433, § 8, Sept. 26, 1972, 86 Stat. 729; Pub. L. 93-150, § 2(b), Nov. 7, 1973, 87 Stat. 560; Pub. L. 95-166, § 3, Nov. 10, 1977, 91 Stat. 1332; Pub. L. 95-627, § 10(d)(1), Nov. 10, 1978, 92 Stat. 3624; Pub. L. 97-35, title VIII, § 819(d), Aug. 13, 1981, 95 Stat. 533; Pub. L. 101-147, title II, § 201, title III, §§ 304, 312(1), Nov. 10, 1989, 103 Stat. 908, 914, 916; Pub. L. 104-193, title VII, § 701(a), Aug. 22, 1996, 110 Stat. 2287.)

AMENDMENTS

1996—Pub. L. 104-193 designated first and second sentences as subsecs. (a) and (b), respectively, substituted “in subsection (a) of this section” for “in the preceding sentence” in subsec. (b), designated third sentence as subsec. (c) and substituted “The State educational agency may” for “Nothing in the preceding sentence shall be construed to limit the ability of the State educational agency to”, struck out fourth and fifth sentences, designated sixth sentence as subsec. (d) and substituted “Use of funds paid to States” for “Such food costs”, and designated seventh to ninth sentences as subsecs. (e) to (g), respectively. Prior to amendment, fourth and fifth sentences read as follows: “Such disbursement to any school shall be made only for the purpose of assisting it to obtain agricultural commodities and other foods for consumption by children in the school lunch program. The terms ‘child’ and ‘children’ as used in this chapter shall be deemed to include individuals regardless of age who are determined by the State educational agency, in accordance with regulations prescribed by the Secretary, to have 1 or more mental or physical handicaps and who are attending any child care institution as defined in section 1766 of this title or any nonresidential public or nonprofit private school of high school grade or under for the purpose of participating in a school program established for individuals with mental or physical handicaps: *Provided*, That no institution that is not otherwise eligible to participate in the program under section 1766 of this title shall be deemed so eligible because of this sentence.”

1989—Pub. L. 101-147, § 312(1), substituted “school lunch” for “school-lunch” in three places.

Pub. L. 101-147, § 304, which directed the amendment of subsec. (d) by substituting “individuals” for “persons”, “to have 1 or more mental or physical handicaps” for “to be mentally or physically handicapped”, and “for individuals with mental or physical handicaps” for “for mentally or physically handicapped”, was executed by making the substitutions in the undesignated text before the proviso as the probable intent of Congress because the section contains no subsection designations.

Pub. L. 101-147, § 201, inserted after first sentence “The agreements described in the preceding sentence shall be permanent agreements that may be amended as necessary. Nothing in the preceding sentence shall be construed to limit the ability of the State educational agency to suspend or terminate any such agreement in accordance with regulations prescribed by the Secretary.”

1981—Pub. L. 97-35 substituted references to per meal reimbursement rate, for references to Federal food-cost contribution rate wherever appearing, and struck out reference to section 1754 of this title, and food service equipment assistance.

1978—Pub. L. 95-627 inserted provision relating to definition of “child” and “children”.

1977—Pub. L. 95-166 substituted “food service equipment assistance” for “nonfood assistance”.

1973—Pub. L. 93-150 provided that in any fiscal year in which the national average payment per lunch determined under section 1753 of this title is increased above the amount prescribed in the previous fiscal year, the maximum Federal food-cost contribution rate, for the type of lunch served, shall be increased by a like amount.

1972—Pub. L. 92-433 substituted provision that disbursement to schools be made for the purpose of assisting them to finance the costs of agricultural commodities, for provision that such disbursement be made for the purpose of reimbursing them for such costs and inserted provision that lunch assistance disbursements to schools under this section and section 1759a of this title may be made in advance or by way of reimbursement according to procedure prescribed by the Secretary.

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97-35 effective Oct. 1, 1981, see section 820(a)(4) of Pub. L. 97-35, set out as a note under section 1753 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-627 effective Oct. 1, 1978, see section 14 of Pub. L. 95-627, set out as a note under section 1755 of this title.

**§ 1758. Program requirements**

**(a) Nutritional requirements**

(1)(A) Lunches served by schools participating in the school lunch program under this chapter shall meet minimum nutritional requirements prescribed by the Secretary on the basis of tested nutritional research, except that the minimum nutritional requirements—

(i) shall not be construed to prohibit the substitution of foods to accommodate the medical or other special dietary needs of individual students; and

(ii) shall, at a minimum, be based on the weekly average of the nutrient content of school lunches.

(B) The Secretary shall provide technical assistance and training, including technical assistance and training in the preparation of lower-fat versions of foods commonly used in the school lunch program under this chapter, to schools participating in the school lunch program to assist the schools in complying with the nutritional requirements prescribed by the Secretary pursuant to subparagraph (A) and in providing appropriate meals to children with medically certified special dietary needs. The Secretary shall provide additional technical assistance to schools that are having difficulty maintaining compliance with the requirements.

**(2) FLUID MILK.—**

(A) IN GENERAL.—Lunches served by schools participating in the school lunch program under this chapter—

(i) shall offer students a variety of fluid milk. Such milk shall be consistent with the most recent Dietary Guidelines for Americans published under section 5341 of title 7;

(ii) may offer students flavored and unflavored fluid milk and lactose-free fluid milk; and

(iii) shall provide a substitute for fluid milk for students whose disability restricts

their diet, on receipt of a written statement from a licensed physician that identifies the disability that restricts the student's diet and that specifies the substitute for fluid milk.

**(B) SUBSTITUTES.—**

(i) **STANDARDS FOR SUBSTITUTION.**—A school may substitute for the fluid milk provided under subparagraph (A), a nondairy beverage that is nutritionally equivalent to fluid milk and meets nutritional standards established by the Secretary (which shall, among other requirements to be determined by the Secretary, include fortification of calcium, protein, vitamin A, and vitamin D to levels found in cow's milk) for students who cannot consume fluid milk because of a medical or other special dietary need other than a disability described in subparagraph (A)(iii).

(ii) **NOTICE.**—The substitutions may be made if the school notifies the State agency that the school is implementing a variation allowed under this subparagraph, and if the substitution is requested by written statement of a medical authority or by a student's parent or legal guardian that identifies the medical or other special dietary need that restricts the student's diet, except that the school shall not be required to provide beverages other than beverages the school has identified as acceptable substitutes.

(iii) **EXCESS EXPENSES BORNE BY SCHOOL FOOD AUTHORITY.**—Expenses incurred in providing substitutions under this subparagraph that are in excess of expenses covered by reimbursements under this chapter shall be paid by the school food authority.

**(C) RESTRICTIONS ON SALE OF MILK PROHIBITED.**—A school that participates in the school lunch program under this chapter shall not directly or indirectly restrict the sale or marketing of fluid milk products by the school (or by a person approved by the school) at any time or any place—

- (i) on the school premises; or
- (ii) at any school-sponsored event.

(3) Students in senior high schools that participate in the school lunch program under this chapter (and, when approved by the local school district or nonprofit private schools, students in any other grade level) shall not be required to accept offered foods they do not intend to consume, and any such failure to accept offered foods shall not affect the full charge to the student for a lunch meeting the requirements of this subsection or the amount of payments made under this chapter to any such school for such lunch.

**(4) PROVISION OF INFORMATION.—**

**(A) GUIDANCE.**—Prior to the beginning of the school year beginning July 2004, the Secretary shall issue guidance to States and school food authorities to increase the consumption of foods and food ingredients that are recommended for increased serving consumption in the most recent Dietary Guidelines for Americans published under section 5341 of title 7.

**(B) RULES.**—Not later than 2 years after June 30, 2004, the Secretary shall promulgate rules, based on the most recent Dietary Guidelines for Americans, that reflect specific recommendations, expressed in serving recommendations, for increased consumption of foods and food ingredients offered in school nutrition programs under this chapter and the Child Nutrition Act of 1966 (42 U.S.C. 1771 et seq.).

**(C) PROCUREMENT AND PROCESSING OF FOOD SERVICE PRODUCTS AND COMMODITIES.**—The Secretary shall—

(i) identify, develop, and disseminate to State departments of agriculture and education, school food authorities, local educational agencies, and local processing entities, model product specifications and practices for foods offered in school nutrition programs under this chapter and the Child Nutrition Act of 1966 (42 U.S.C. 1771 et seq.) to ensure that the foods reflect the most recent Dietary Guidelines for Americans published under section 5341 of title 7;

(ii) not later than 1 year after December 13, 2010—

(I) carry out a study to analyze the quantity and quality of nutritional information available to school food authorities about food service products and commodities; and

(II) submit to Congress a report on the results of the study that contains such legislative recommendations as the Secretary considers necessary to ensure that school food authorities have access to the nutritional information needed for menu planning and compliance assessments; and

(iii) to the maximum extent practicable, in purchasing and processing commodities for use in school nutrition programs under this chapter and the Child Nutrition Act of 1966 (42 U.S.C. 1771 et seq.), purchase the widest variety of healthful foods that reflect the most recent Dietary Guidelines for Americans.

**(5) WATER.**—Schools participating in the school lunch program under this chapter shall make available to children free of charge, as nutritionally appropriate, potable water for consumption in the place where meals are served during meal service.

**(b) Eligibility**

(1)(A) Not later than June 1 of each fiscal year, the Secretary shall prescribe income guidelines for determining eligibility for free and reduced price lunches during the 12-month period beginning July 1 of such fiscal year and ending June 30 of the following fiscal year. The income guidelines for determining eligibility for free lunches shall be 130 percent of the applicable family size income levels contained in the non-farm income poverty guidelines prescribed by the Office of Management and Budget, as adjusted annually in accordance with subparagraph (B). The income guidelines for determining eligibility for reduced price lunches for any school year shall be 185 percent of the applicable family size income levels contained in the non-



farm income poverty guidelines prescribed by the Office of Management and Budget, as adjusted annually in accordance with subparagraph (B). The Office of Management and Budget guidelines shall be revised at annual intervals, or at any shorter interval deemed feasible and desirable.

(B) The revision required by subparagraph (A) of this paragraph shall be made by multiplying—

- (i) the official poverty line (as defined by the Office of Management and Budget); by
- (ii) the percentage change in the Consumer Price Index during the annual or other interval immediately preceding the time at which the adjustment is made.

Revisions under this subparagraph shall be made not more than 30 days after the date on which the consumer price index data required to compute the adjustment becomes available.

(2)(A) Following the determination by the Secretary under paragraph (1) of this subsection of the income eligibility guidelines for each school year, each State educational agency shall announce the income eligibility guidelines, by family size, to be used by schools in the State in making determinations of eligibility for free and reduced price lunches. Local school authorities shall, each year, publicly announce the income eligibility guidelines for free and reduced price lunches on or before the opening of school.

(B) APPLICATIONS AND DESCRIPTIVE MATERIAL.—

(i) IN GENERAL.—Applications for free and reduced price lunches, in such form as the Secretary may prescribe or approve, and any descriptive material, shall be distributed to the parents or guardians of children in attendance at the school, and shall contain only the family size income levels for reduced price meal eligibility with the explanation that households with incomes less than or equal to these values would be eligible for free or reduced price lunches.

(ii) INCOME ELIGIBILITY GUIDELINES.—Forms and descriptive material distributed in accordance with clause (i) may not contain the income eligibility guidelines for free lunches.

(iii) CONTENTS OF DESCRIPTIVE MATERIAL.—

(I) IN GENERAL.—Descriptive material distributed in accordance with clause (i) shall contain a notification that—

(aa) participants in the programs listed in subclause (II) may be eligible for free or reduced price meals; and

(bb) documentation may be requested for verification of eligibility for free or reduced price meals.

(II) PROGRAMS.—The programs referred to in subclause (I)(aa) are—

(aa) the special supplemental nutrition program for women, infants, and children established by section 17 of the Child Nutrition Act of 1966 (42 U.S.C. 1786);

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

(cc) the food distribution program on Indian reservations established under section 4(b) of the Food and Nutrition Act of 2008 (7 U.S.C. 2013(b)); and

(dd) a State program funded under the program of block grants to States for temporary assistance for needy families established under part A of title IV of the Social Security Act (42 U.S.C. 601 et seq.).

(3) HOUSEHOLD APPLICATIONS.—

(A) DEFINITION OF HOUSEHOLD APPLICATION.—

In this paragraph, the term “household application” means an application for a child of a household to receive free or reduced price school lunches under this chapter, or free or reduced price school breakfasts under the Child Nutrition Act of 1966 (42 U.S.C. 1771 et seq.), for which an eligibility determination is made other than under paragraph (4) or (5).

(B) ELIGIBILITY DETERMINATION.—

(i) IN GENERAL.—An eligibility determination shall be made on the basis of a complete household application executed by an adult member of the household or in accordance with guidance issued by the Secretary.

(ii) ELECTRONIC SIGNATURES AND APPLICATIONS.—A household application may be executed using an electronic signature if—

(I) the application is submitted electronically; and

(II) the electronic application filing system meets confidentiality standards established by the Secretary.

(C) CHILDREN IN HOUSEHOLD.—

(i) IN GENERAL.—The household application shall identify the names of each child in the household for whom meal benefits are requested.

(ii) SEPARATE APPLICATIONS.—A State educational agency or local educational agency may not request a separate application for each child in the household that attends schools under the same local educational agency.

(D) VERIFICATION OF SAMPLE.—

(i) DEFINITIONS.—In this subparagraph:

(I) ERROR PRONE APPLICATION.—The term “error prone application” means an approved household application that—

(aa) indicates monthly income that is within \$100, or an annual income that is within \$1,200, of the income eligibility limitation for free or reduced price meals; or

(bb) in lieu of the criteria established under item (aa), meets criteria established by the Secretary.

(II) NON-RESPONSE RATE.—The term “non-response rate” means (in accordance with guidelines established by the Secretary) the percentage of approved household applications for which verification information has not been obtained by a local educational agency after attempted verification under subparagraphs (F) and (G).

(ii) VERIFICATION OF SAMPLE.—Each school year, a local educational agency shall verify eligibility of the children in a sample of household applications approved for the school year by the local educational agency, as determined by the Secretary in accordance with this subsection.

(iii) SAMPLE SIZE.—Except as otherwise provided in this paragraph, the sample for a

local educational agency for a school year shall equal the lesser of—

(I) 3 percent of all applications approved by the local educational agency for the school year, as of October 1 of the school year, selected from error prone applications; or

(II) 3,000 error prone applications approved by the local educational agency for the school year, as of October 1 of the school year.

(iv) ALTERNATIVE SAMPLE SIZE.—

(I) IN GENERAL.—If the conditions described in subclause (IV) are met, the verification sample size for a local educational agency shall be the sample size described in subclause (II) or (III), as determined by the local educational agency.

(II) 3,000/3 PERCENT OPTION.—The sample size described in this subclause shall be the lesser of 3,000, or 3 percent of, applications selected at random from applications approved by the local educational agency for the school year, as of October 1 of the school year.

(III) 1,000/1 PERCENT PLUS OPTION.—

(aa) IN GENERAL.—The sample size described in this subclause shall be the sum of—

(AA) the lesser of 1,000, or 1 percent of, all applications approved by the local educational agency for the school year, as of October 1 of the school year, selected from error prone applications; and

(BB) the lesser of 500, or ½ of 1 percent of, applications approved by the local educational agency for the school year, as of October 1 of the school year, that provide a case number (in lieu of income information) showing participation in a program described in item (bb) selected from those approved applications that provide a case number (in lieu of income information) verifying the participation.

(bb) PROGRAMS.—The programs described in this item are—

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

(BB) the food distribution program on Indian reservations established under section 4(b) of the Food and Nutrition Act of 2008 (7 U.S.C. 2013(b)); and

(CC) a State program funded under the program of block grants to States for temporary assistance for needy families established under part A of title IV of the Social Security Act (42 U.S.C. 601 et seq.) that the Secretary determines complies with standards established by the Secretary that ensure that the standards under the State program are comparable to or more restrictive than those in effect on June 1, 1995.

(IV) CONDITIONS.—The conditions referred to in subclause (I) shall be met for

a local educational agency for a school year if—

(aa) the nonresponse rate for the local educational agency for the preceding school year is less than 20 percent; or

(bb) the local educational agency has more than 20,000 children approved by application by the local educational agency as eligible for free or reduced price meals for the school year, as of October 1 of the school year, and—

(AA) the nonresponse rate for the preceding school year is at least 10 percent below the nonresponse rate for the second preceding school year; or

(BB) in the case of the school year beginning July 2005, the local educational agency attempts to verify all approved household applications selected for verification through use of public agency records from at least 2 of the programs or sources of information described in subparagraph (F)(i).

(v) ADDITIONAL SELECTED APPLICATIONS.—A sample for a local educational agency for a school year under clauses (iii) and (iv)(III)(AA) shall include the number of additional randomly selected approved household applications that are required to comply with the sample size requirements in those clauses.

(E) PRELIMINARY REVIEW.—

(i) REVIEW FOR ACCURACY.—

(I) IN GENERAL.—Prior to conducting any other verification activity for approved household applications selected for verification, the local educational agency shall ensure that the initial eligibility determination for each approved household application is reviewed for accuracy by an individual other than the individual making the initial eligibility determination, unless otherwise determined by the Secretary.

(II) WAIVER.—The requirements of subclause (I) shall be waived for a local educational agency if the local educational agency is using a technology-based solution that demonstrates a high level of accuracy, to the satisfaction of the Secretary, in processing an initial eligibility determination in accordance with the income eligibility guidelines of the school lunch program.

(ii) CORRECT ELIGIBILITY DETERMINATION.—If the review indicates that the initial eligibility determination is correct, the local educational agency shall verify the approved household application.

(iii) INCORRECT ELIGIBILITY DETERMINATION.—If the review indicates that the initial eligibility determination is incorrect, the local educational agency shall (as determined by the Secretary)—

(I) correct the eligibility status of the household;

(II) notify the household of the change;

(III) in any case in which the review indicates that the household is not eligible for free or reduced-price meals, notify the

household of the reason for the ineligibility and that the household may reapply with income documentation for free or reduced-price meals; and

(IV) in any case in which the review indicates that the household is eligible for free or reduced-price meals, verify the approved household application.

(F) DIRECT VERIFICATION.—

(i) IN GENERAL.—Subject to clauses (ii) and (iii), to verify eligibility for free or reduced price meals for approved household applications selected for verification, the local educational agency may (in accordance with criteria established by the Secretary) first obtain and use income and program participation information from a public agency administering—

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

(II) the food distribution program on Indian reservations established under section 4(b) of the Food and Nutrition Act of 2008 (7 U.S.C. 2013(b));

(III) the temporary assistance for needy families program funded under part A of title IV of the Social Security Act (42 U.S.C. 601 et seq.);

(IV) the State medicaid program under title XIX of the Social Security Act (42 U.S.C. 1396 et seq.); or

(V) a similar income-tested program or other source of information, as determined by the Secretary.

(ii) FREE MEALS.—Public agency records that may be obtained and used under clause (i) to verify eligibility for free meals for approved household applications selected for verification shall include the most recent available information (other than information reflecting program participation or income before the 180-day period ending on the date of application for free meals) that is relied on to administer—

(I) a program or source of information described in clause (i) (other than clause (i)(IV)); or

(II) the State plan for medical assistance under title XIX of the Social Security Act (42 U.S.C. 1396 et seq.) in—

(aa) a State in which the income eligibility limit applied under section 1902(l)(2)(C) of that Act (42 U.S.C. 1396a(l)(2)(C)) is not more than 133 percent of the official poverty line described in section 1902(l)(2)(A) of that Act (42 U.S.C. 1396a(l)(2)(A)); or

(bb) a State that otherwise identifies households that have income that is not more than 133 percent of the official poverty line described in section 1902(l)(2)(A) of that Act (42 U.S.C. 1396a(l)(2)(A)).

(iii) REDUCED PRICE MEALS.—Public agency records that may be obtained and used under clause (i) to verify eligibility for reduced price meals for approved household applications selected for verification shall include the most recent available information (other than information reflecting program partici-

pation or income before the 180-day period ending on the date of application for reduced price meals) that is relied on to administer—

(I) a program or source of information described in clause (i) (other than clause (i)(IV)); or

(II) the State plan for medical assistance under title XIX of the Social Security Act (42 U.S.C. 1396 et seq.) in—

(aa) a State in which the income eligibility limit applied under section 1902(l)(2)(C) of that Act (42 U.S.C. 1396a(l)(2)(C)) is not more than 185 percent of the official poverty line described in section 1902(l)(2)(A) of that Act (42 U.S.C. 1396a(l)(2)(A)); or

(bb) a State that otherwise identifies households that have income that is not more than 185 percent of the official poverty line described in section 1902(l)(2)(A) of that Act (42 U.S.C. 1396a(l)(2)(A)).

(iv) EVALUATION.—Not later than 3 years after June 30, 2004, the Secretary shall complete an evaluation of—

(I) the effectiveness of direct verification carried out under this subparagraph in decreasing the portion of the verification sample that must be verified under subparagraph (G) while ensuring that adequate verification information is obtained; and

(II) the feasibility of direct verification by State agencies and local educational agencies.

(v) EXPANDED USE OF DIRECT VERIFICATION.—If the Secretary determines that direct verification significantly decreases the portion of the verification sample that must be verified under subparagraph (G), while ensuring that adequate verification information is obtained, and can be conducted by most State agencies and local educational agencies, the Secretary may require a State agency or local educational agency to implement direct verification through 1 or more of the programs described in clause (i), as determined by the Secretary, unless the State agency or local educational agency demonstrates (under criteria established by the Secretary) that the State agency or local educational agency lacks the capacity to conduct, or is unable to implement, direct verification.

(G) HOUSEHOLD VERIFICATION.—

(i) IN GENERAL.—If an approved household application is not verified through the use of public agency records, a local educational agency shall provide to the household written notice that—

(I) the approved household application has been selected for verification; and

(II) the household is required to submit verification information to confirm eligibility for free or reduced price meals.

(ii) PHONE NUMBER.—The written notice in clause (i) shall include a toll-free phone number that parents and legal guardians in households selected for verification can call for assistance with the verification process.

(iii) FOLLOWUP ACTIVITIES.—If a household does not respond to a verification request, a local educational agency shall make at least 1 attempt to obtain the necessary verification from the household in accordance with guidelines and regulations promulgated by the Secretary.

(iv) CONTRACT AUTHORITY FOR SCHOOL FOOD AUTHORITIES.—A local educational agency may contract (under standards established by the Secretary) with a third party to assist the local educational agency in carrying out clause (iii).

(H) VERIFICATION DEADLINE.—

(i) GENERAL DEADLINE.—

(I) IN GENERAL.—Subject to subclause (II), not later than November 15 of each school year, a local educational agency shall complete the verification activities required for the school year (including followup activities).

(II) EXTENSION.—Under criteria established by the Secretary, a State may extend the deadline established under subclause (I) for a school year for a local educational agency to December 15 of the school year.

(ii) ELIGIBILITY CHANGES.—Based on the verification activities, the local educational agency shall make appropriate modifications to the eligibility determinations made for household applications in accordance with criteria established by the Secretary.

(I) LOCAL CONDITIONS.—In the case of a natural disaster, civil disorder, strike, or other local condition (as determined by the Secretary), the Secretary may substitute alternatives for—

(i) the sample size and sample selection criteria established under subparagraph (D); and

(ii) the verification deadline established under subparagraph (H).

(J) INDIVIDUAL REVIEW.—In accordance with criteria established by the Secretary, the local educational agency may, on individual review—

(i) decline to verify no more than 5 percent of approved household applications selected under subparagraph (D); and

(ii) replace the approved household applications with other approved household applications to be verified.

(K) FEASIBILITY STUDY.—

(i) IN GENERAL.—The Secretary shall conduct a study of the feasibility of using computer technology (including data mining) to reduce—

(I) overcertification errors in the school lunch program under this chapter;

(II) waste, fraud, and abuse in connection with this paragraph; and

(III) errors, waste, fraud, and abuse in other nutrition programs, as determined to be appropriate by the Secretary.

(ii) REPORT.—Not later than 180 days after June 30, 2004, the Secretary shall submit to the Committee on Education and the Work-

force of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate a report describing—

(I) the results of the feasibility study conducted under this subsection;

(II) how a computer system using technology described in clause (i) could be implemented;

(III) a plan for implementation; and

(IV) proposed legislation, if necessary, to implement the system.

(4) DIRECT CERTIFICATION FOR CHILDREN IN SUPPLEMENTAL NUTRITION ASSISTANCE PROGRAM HOUSEHOLDS.—

(A) IN GENERAL.—Subject to subparagraph (D), each State agency shall enter into an agreement with the State agency conducting eligibility determinations for the supplemental nutrition assistance program established under the Food and Nutrition Act of 2008 (7 U.S.C. 2011 et seq.).

(B) PROCEDURES.—Subject to paragraph (6), the agreement shall establish procedures under which a child who is a member of a household receiving assistance under the supplemental nutrition assistance program shall be certified as eligible for free lunches under this chapter and free breakfasts under the Child Nutrition Act of 1966 (42 U.S.C. 1771 et seq.), without further application.

(C) CERTIFICATION.—Subject to paragraph (6), under the agreement, the local educational agency conducting eligibility determinations for a school lunch program under this chapter and a school breakfast program under the Child Nutrition Act of 1966 (42 U.S.C. 1771 et seq.) shall certify a child who is a member of a household receiving assistance under the supplemental nutrition assistance program as eligible for free lunches under this chapter and free breakfasts under the Child Nutrition Act of 1966 (42 U.S.C. 1771 et seq.), without further application.

(D) APPLICABILITY.—This paragraph applies to—

(i) in the case of the school year beginning July 2006, a school district that had an enrollment of 25,000 students or more in the preceding school year;

(ii) in the case of the school year beginning July 2007, a school district that had an enrollment of 10,000 students or more in the preceding school year; and

(iii) in the case of the school year beginning July 2008 and each subsequent school year, each local educational agency.

(E) PERFORMANCE AWARDS.—

(i) IN GENERAL.—Effective for each of the school years beginning July 1, 2011, July 1, 2012, and July 1, 2013, 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 1758a of this title; and

(II) make performance awards to not more than 15 States that demonstrate, as determined by the Secretary—

- (aa) outstanding performance; and
- (bb) substantial improvement.

(iii) USE OF FUNDS.—A State agency that receives a performance award under clause (i)—

(I) shall treat the funds as program income; and

(II) may transfer the funds to school food authorities for use in carrying out the program.

(iv) FUNDING.—

(I) IN GENERAL.—On October 1, 2011, and each subsequent October 1 through October 1, 2013, out of any funds in the Treasury not otherwise appropriated, the Secretary of the Treasury shall transfer to the Secretary—

- (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.

(v) PAYMENTS NOT SUBJECT TO JUDICIAL REVIEW.—A determination by the Secretary whether, and in what amount, to make a performance award under this subparagraph shall not be subject to administrative or judicial review.

(F) CONTINUOUS IMPROVEMENT PLANS.—

(i) DEFINITION OF REQUIRED PERCENTAGE.—In this subparagraph, the term “required percentage” means—

- (I) for the school year beginning July 1, 2011, 80 percent;
- (II) for the school year beginning July 1, 2012, 90 percent; and
- (III) for the school year beginning July 1, 2013, and each school year thereafter, 95 percent.

(ii) REQUIREMENTS.—Each school year, the Secretary shall—

(I) identify, using data from the prior year, including estimates contained in the report required under section 1758a of this title, States that directly certify less than the required percentage of the total number of children in the State who are eligible for direct certification under this paragraph;

(II) require the States identified under subclause (I) to implement a continuous improvement plan to fully meet the requirements of this paragraph, which shall include a plan to improve direct certification for the following school year; and

(III) assist the States identified under subclause (I) to develop and implement a continuous improvement plan in accordance with subclause (II).

(iii) FAILURE TO MEET PERFORMANCE STANDARD.—

(I) IN GENERAL.—A State that is required to develop and implement a continuous improvement plan under clause (ii)(II) shall be required to submit the continuous improvement plan to the Secretary, for the approval of the Secretary.

(II) REQUIREMENTS.—At a minimum, a continuous 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, including improvements or modifications to technology, information systems, or databases;
- (bb) a timeline for the State to implement those measures; and
- (cc) goals for the State to improve direct certification results.

(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).

(5) DISCRETIONARY CERTIFICATION.—Subject to paragraph (6), any local educational agency may certify any child as eligible for free lunches or breakfasts, without further application, by directly communicating with the appropriate State or local agency to obtain documentation of the status of the child as—

(A) a member of a family that is receiving assistance under the temporary assistance for needy families program funded under part A of title IV of the Social Security Act (42 U.S.C. 601 et seq.) that the Secretary determines complies with standards established by the Secretary that ensure that the standards under the State program are comparable to or more restrictive than those in effect on June 1, 1995;

(B) a homeless child or youth (defined as 1 of the individuals described in section 11434a(2) of this title);

(C) served by the runaway and homeless youth grant program established under the Runaway and Homeless Youth Act (42 U.S.C. 5701 et seq.);

(D) a migratory child (as defined in section 6399 of title 20); or

(E)(i) a foster child whose care and placement is the responsibility of an agency that administers a State plan under part B or E of title IV of the Social Security Act [42 U.S.C. 620 et seq., 670 et seq.]; or

(ii) a foster child who a court has placed with a caretaker household.

(6) USE OR DISCLOSURE OF INFORMATION.—

(A) IN GENERAL.—The use or disclosure of any information obtained from an application for free or reduced price meals, or from a State or local agency referred to in paragraph (3)(F), (4), or (5), shall be limited to—

(i) a person directly connected with the administration or enforcement of this chapter or the Child Nutrition Act of 1966 (42 U.S.C. 1771 et seq.) (including a regulation promulgated under either this chapter or that Act);

(ii) a person directly connected with the administration or enforcement of—

(I) a Federal education program;

(II) a State health or education program administered by the State or local educational agency (other than a program carried out under title XIX or XXI of the Social Security Act (42 U.S.C. 1396 et seq.; 42 U.S.C. 1397aa et seq.)); or

(III) a Federal, State, or local means-tested nutrition program with eligibility standards comparable to the school lunch program under this chapter;

(iii)(I) the Comptroller General of the United States for audit and examination authorized by any other provision of law; and

(II) notwithstanding any other provision of law, a Federal, State, or local law enforcement official for the purpose of investigating an alleged violation of any program covered by this paragraph or paragraph (3)(F), (4), or (5);

(iv) a person directly connected with the administration of the State medicaid program under title XIX of the Social Security Act (42 U.S.C. 1396 et seq.) or the State children's health insurance program under title XXI of that Act (42 U.S.C. 1397aa et seq.) solely for the purposes of—

(I) identifying children eligible for benefits under, and enrolling children in, those programs, except that this subclass shall apply only to the extent that the State and the local educational agency or school food authority so elect; and

(II) verifying the eligibility of children for programs under this chapter or the Child Nutrition Act of 1966 (42 U.S.C. 1771 et seq.); and

(v) a third party contractor described in paragraph (3)(G)(iv).

(B) LIMITATION ON INFORMATION PROVIDED.—Information provided under clause (ii) or (v) of subparagraph (A) shall be limited to the income eligibility status of the child for whom application for free or reduced price meal benefits is made or for whom eligibility information is provided under paragraph (3)(F), (4), or (5), unless the consent of the parent or guardian of the child for whom application for benefits was made is obtained.

(C) CRIMINAL PENALTY.—A person described in subparagraph (A) who publishes, divulges, discloses, or makes known in any manner, or to any extent not authorized by Federal law (including a regulation), any information obtained under this subsection shall be fined not more than \$1,000 or imprisoned not more than 1 year, or both.

(D) REQUIREMENTS FOR WAIVER OF CONFIDENTIALITY.—A State that elects to exercise the option described in subparagraph (A)(iv)(I) shall ensure that any local educational agency or school food authority acting in accordance with that option—

(i) has a written agreement with 1 or more State or local agencies administering health programs for children under titles XIX and XXI of the Social Security Act (42 U.S.C. 1396 et seq. and 1397aa et seq.) that requires the health agencies to use the information obtained under subparagraph (A) to seek to enroll children in those health programs; and

(ii)(I) notifies each household, the information of which shall be disclosed under subparagraph (A), that the information disclosed will be used only to enroll children in health programs referred to in subparagraph (A)(iv); and

(II) provides each parent or guardian of a child in the household with an opportunity to elect not to have the information disclosed.

(E) USE OF DISCLOSED INFORMATION.—A person to which information is disclosed under subparagraph (A)(iv)(I) shall use or disclose the information only as necessary for the purpose of enrolling children in health programs referred to in subparagraph (A)(iv).

(7) FREE AND REDUCED PRICE POLICY STATEMENT.—

(A) IN GENERAL.—After the initial submission, a local educational agency shall not be required to submit a free and reduced price policy statement to a State educational agency under this chapter unless there is a substantive change in the free and reduced price policy of the local educational agency.

(B) ROUTINE CHANGE.—A routine change in the policy of a local educational agency (such as an annual adjustment of the income eligibility guidelines for free and reduced price meals) shall not be sufficient cause for requiring the local educational agency to submit a policy statement.

(8) COMMUNICATIONS.—

(A) IN GENERAL.—Any communication with a household under this subsection or subsection (d) of this section shall be in an understandable and uniform format and, to the maximum extent practicable, in a language that parents and legal guardians can understand.

(B) ELECTRONIC AVAILABILITY.—In addition to the distribution of applications and descriptive material in paper form as provided for in this paragraph, the applications and material may be made available electronically via the Internet.

(9) ELIGIBILITY FOR FREE AND REDUCED PRICE LUNCHES.—

(A) FREE LUNCHES.—Any child who is a member of a household whose income, at the time the application is submitted, is at an annual rate which does not exceed the applicable family size income level of the income eligibility guidelines for free lunches, as determined under paragraph (1), shall be served a free lunch.

(B) REDUCED PRICE LUNCHES.—

(i) IN GENERAL.—Any child who is a member of a household whose income, at the time the application is submitted, is at an annual rate greater than the applicable fam-

ily size income level of the income eligibility guidelines for free lunches, as determined under paragraph (1), but less than or equal to the applicable family size income level of the income eligibility guidelines for reduced price lunches, as determined under paragraph (1), shall be served a reduced price lunch.

(ii) **MAXIMUM PRICE.**—The price charged for a reduced price lunch shall not exceed 40 cents.

(C) **DURATION.**—Except as otherwise specified in paragraph (3)(E), (3)(H)(ii), and section 1759a(a) of this title, eligibility for free or reduced price meals for any school year shall remain in effect—

(i) beginning on the date of eligibility approval for the current school year; and

(ii) ending on a date during the subsequent school year determined by the Secretary.

(10) No physical segregation of or other discrimination against any child eligible for a free lunch or a reduced price lunch under this subsection shall be made by the school nor shall there be<sup>1</sup> any overt identification of any child by special tokens or tickets, announced or published lists of names, or by other means.

(11) Any child who has a parent or guardian who (A) is responsible for the principal support of such child and (B) is unemployed shall be served a free or reduced price lunch, respectively, during any period (i) in which such child's parent or guardian continues to be unemployed and (ii) the income of the child's parents or guardians during such period of unemployment falls within the income eligibility criteria for free lunches or reduced price lunches, respectively, based on the current rate of income of such parents or guardians. Local educational agencies shall publicly announce that such children are eligible for a free or reduced price lunch, and shall make determinations with respect to the status of any parent or guardian of any child under clauses (A) and (B) of the preceding sentence on the basis of a statement executed in such form as the Secretary may prescribe by such parent or guardian. No physical segregation of, or other discrimination against, any child eligible for a free or reduced price lunch under this paragraph shall be made by the school nor shall there be any overt identification of any such child by special tokens or tickets, announced or published lists of names, or by any other means.

(12)(A) A child shall be considered automatically eligible for a free lunch and breakfast under this chapter and the Child Nutrition Act of 1966 (42 U.S.C. 1771 et seq.), respectively, without further application or eligibility determination, if the child is—

(i) a member of a household receiving assistance under the supplemental nutrition assistance program authorized under the Food and Nutrition Act of 2008 (7 U.S.C. 2011 et seq.);

(ii) a member of a family (under the State program funded under part A of title IV of the Social Security Act (42 U.S.C. 601 et seq.)) that the Secretary determines complies with stand-

ards established by the Secretary that ensure that the standards under the State program are comparable to or more restrictive than those in effect on June 1, 1995;

(iii) enrolled as a participant in a Head Start program authorized under the Head Start Act (42 U.S.C. 9831 et seq.), on the basis of a determination that the child meets the eligibility criteria prescribed under section 645(a)(1)(B) of the Head Start Act (42 U.S.C. 9840(a)(1)(B));

(iv) a homeless child or youth (defined as 1 of the individuals described in section 11434a(2) of this title);

(v) served by the runaway and homeless youth grant program established under the Runaway and Homeless Youth Act (42 U.S.C. 5701 et seq.);

(vi) a migratory child (as defined in section 6399 of title 20); or

(vii)(I) a foster child whose care and placement is the responsibility of an agency that administers a State plan under part B or E of title IV of the Social Security Act [42 U.S.C. 620 et seq., 670 et seq.]; or

(II) a foster child who a court has placed with a caretaker household.

(B) **Proof of receipt of supplemental nutrition assistance program benefits or assistance under the State program funded under part A of title IV of the Social Security Act (42 U.S.C. 601 et seq.)** that the Secretary determines complies with standards established by the Secretary that ensure that the standards under the State program are comparable to or more restrictive than those in effect on June 1, 1995, or of enrollment or participation in a Head Start program on the basis described in subparagraph (A)(iii), shall be sufficient to satisfy any verification requirement imposed under this subsection.

(13) **EXCLUSION OF CERTAIN MILITARY HOUSING ALLOWANCES.**—The amount of a basic allowance provided under section 403 of title 37 on behalf of a member of a uniformed service for housing that is acquired or constructed under subchapter IV of chapter 169 of title 10, or any related provision of law, shall not be considered to be income for the purpose of determining the eligibility of a child who is a member of the household of the member of a uniformed service for free or reduced price lunches under this chapter.

(14) **COMBAT PAY.**—

(A) **DEFINITION OF COMBAT PAY.**—In this paragraph, the term “combat pay” means any additional payment under chapter 5 of title 37, or otherwise designated by the Secretary to be appropriate for exclusion under this paragraph, that is received by or from a member of the United States Armed Forces deployed to a designated combat zone, if the additional pay—

(i) is the result of deployment to or service in a combat zone; and

(ii) was not received immediately prior to serving in a combat zone.

(B) **EXCLUSION.**—Combat pay shall not be considered to be income for the purpose of determining the eligibility for free or reduced price meals of a child who is a member of the household of a member of the United States Armed Forces.

<sup>1</sup> So in original. Probably should be “be”.

## (15) DIRECT CERTIFICATION FOR CHILDREN RECEIVING MEDICAID BENEFITS.—

## (A) DEFINITIONS.—In this paragraph:

(i) ELIGIBLE CHILD.—The term “eligible child” means a child—

(I)(aa) who is eligible for and receiving medical assistance under the Medicaid program; and

(bb) who is a member of a family with an income as measured by the Medicaid program before the application of any expense, block, or other income disregard, that does not exceed 133 percent of the poverty line (as defined in section 9902(2) of this title, including any revision required by such section) applicable to a family of the size used for purposes of determining eligibility for the Medicaid program; or

(II) 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 regulations)<sup>2</sup> with a child described in subclause (I).

(ii) MEDICAID PROGRAM.—The term “Medicaid program” means the program of medical assistance established under title XIX of the Social Security Act (42 U.S.C. 1396 et seq.).

## (B) DEMONSTRATION PROJECT.—

(i) IN GENERAL.—The Secretary, acting through the Administrator of the Food and Nutrition Service and in cooperation with selected State agencies, shall conduct a demonstration project in selected local educational agencies to determine whether direct certification of eligible children is an effective method of certifying children for free lunches and breakfasts under subsection (b)(1)(A) and section 4(e)(1)(A) of the Child Nutrition Act of 1966 (42 U.S.C. 1773(e)(1)(A)).

(ii) SCOPE OF PROJECT.—The Secretary shall carry out the demonstration project under this subparagraph—

(I) for the school year beginning July 1, 2012, in selected local educational agencies that collectively serve 2.5 percent of students certified for free and reduced price meals nationwide, based on the most recent available data;

(II) for the school year beginning July 1, 2013, in selected local educational agencies that collectively serve 5 percent of students certified for free and reduced price meals nationwide, based on the most recent available data; and

(III) for the school year beginning July 1, 2014, and each subsequent school year, in selected local educational agencies that collectively serve 10 percent of students certified for free and reduced price meals nationwide, based on the most recent available data.

(iii) PURPOSES OF THE PROJECT.—At a minimum, the purposes of the demonstration project shall be—

(I) to determine the potential of direct certification with the Medicaid program to

reach children who are eligible for free meals but not certified to receive the meals;

(II) to determine the potential of direct certification with the Medicaid program to directly certify children who are enrolled for free meals based on a household application; and

(III) to provide an estimate of the effect on Federal costs and on participation in the school lunch program under this chapter and the school breakfast program established by section 4 of the Child Nutrition Act of 1966 (42 U.S.C. 1773) of direct certification with the Medicaid program.

(iv) COST ESTIMATE.—For each of 2 school years of the demonstration project, the Secretary shall estimate the cost of the direct certification of eligible children for free school meals through data derived from—

(I) the school meal programs authorized under this chapter and the Child Nutrition Act of 1966 (42 U.S.C. 1771 et seq.);

(II) the Medicaid program; and

(III) interviews with a statistically representative sample of households.

## (C) AGREEMENT.—

(i) IN GENERAL.—Not later than July 1 of the first school year during which a State agency will participate in the demonstration project, the State agency shall enter into an agreement with the 1 or more State agencies conducting eligibility determinations for the Medicaid program.

(ii) WITHOUT FURTHER APPLICATION.—Subject to paragraph (6), the agreement described in subparagraph (D) shall establish procedures under which an eligible child shall be certified for free lunches under this chapter and free breakfasts under section 4 of the Child Nutrition Act of 1966 (42 U.S.C. 1773), without further application (as defined in paragraph (4)(G)).

(D) CERTIFICATION.—For the school year beginning on July 1, 2012, and each subsequent school year, subject to paragraph (6), the local educational agencies participating in the demonstration project shall certify an eligible child as eligible for free lunches under this chapter 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) SITE SELECTION.—

(i) IN GENERAL.—To be eligible to participate in the demonstration project under this subsection, a State agency shall submit to the Secretary an application at such time, in such manner, and containing such information as the Secretary may require.

(ii) CONSIDERATIONS.—In selecting States and local educational agencies for participation in the demonstration project, the Secretary may take into consideration such factors as the Secretary considers to be appropriate, which may include—

(I) the rate of direct certification;

(II) the share of individuals who are eligible for benefits under the supplemental nutrition assistance program established

<sup>2</sup>So in original. Another closing parenthesis probably should appear.



under the Food and Nutrition Act of 2008 (7 U.S.C. 2011 et seq.) who participate in the program, as determined by the Secretary;

(III) the income eligibility limit for the Medicaid program;

(IV) the feasibility of matching data between local educational agencies and the Medicaid program;

(V) the socioeconomic profile of the State or local educational agencies; and

(VI) the willingness of the State and local educational agencies to comply with the requirements of the demonstration project.

(F) ACCESS TO DATA.—For purposes of conducting the demonstration project under this paragraph, the Secretary shall have access to—

(i) educational and other records of State and local educational and other agencies and institutions receiving funding or providing benefits for 1 or more programs authorized under this chapter or the Child Nutrition Act of 1966 (42 U.S.C. 1771 et seq.); and

(ii) income and program participation information from public agencies administering the Medicaid program.

(G) REPORT TO CONGRESS.—

(i) IN GENERAL.—Not later than October 1, 2014, the Secretary shall submit to the Committee on Education and Labor of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate, an interim report that describes the results of the demonstration project required under this paragraph.

(ii) FINAL REPORT.—Not later than October 1, 2015, the Secretary shall submit a final report to the committees described in clause (i).

(H) 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 subparagraph (G) \$5,000,000, to remain available until expended.

(ii) RECEIPT AND ACCEPTANCE.—The Secretary shall be entitled to receive, shall accept, and shall use to carry out subparagraph (G) the funds transferred under clause (i), without further appropriation.

**(c) Operation on nonprofit basis; donation of agricultural commodities**

School lunch programs under this chapter shall be operated on a nonprofit basis. Commodities purchased under the authority of section 612c of title 7, may be donated by the Secretary to schools, in accordance with the needs as determined by local school authorities, for utilization in the school lunch program under this chapter as well as to other schools carrying out nonprofit school lunch programs and institutions authorized to receive such commodities. The requirements of this section relating to the service of meals without cost or at a reduced cost shall apply to the lunch program of any school utilizing commodities donated under any provision of law.

**(d) Social Security numbers and other documentation required as condition of eligibility**

(1) The Secretary shall require as a condition of eligibility for receipt of free or reduced price lunches that the member of the household who executes the application furnish the last 4 digits of the social security account number of the parent or guardian who is the primary wage earner responsible for the care of the child for whom the application is made, or that of another appropriate adult member of the child's household, as determined by the Secretary.

(2) No member of a household may be provided a free or reduced price lunch under this chapter unless—

(A) appropriate documentation relating to the income of such household (as prescribed by the Secretary) has been provided to the appropriate local educational agency so that the local educational agency may calculate the total income of such household;

(B) documentation showing that the household is participating in the supplemental nutrition assistance program under the Food and Nutrition Act of 2008 [7 U.S.C. 2011 et seq.] has been provided to the appropriate local educational agency;

(C) documentation has been provided to the appropriate local educational agency showing that the family is receiving assistance under the State program funded under part A of title IV of the Social Security Act [42 U.S.C. 601 et seq.] that the Secretary determines complies with standards established by the Secretary that ensure that the standards under the State program are comparable to or more restrictive than those in effect on June 1, 1995;

(D) documentation has been provided to the appropriate local educational agency showing that the child meets the criteria specified in clauses (iv) or (v) of subsection (b)(12)(A) of this section;

(E) documentation has been provided to the appropriate local educational agency showing the status of the child as a migratory child (as defined in section 6399 of title 20);

(F)(i) documentation has been provided to the appropriate local educational agency showing the status of the child as a foster child whose care and placement is the responsibility of an agency that administers a State plan under part B or E of title IV of the Social Security Act [42 U.S.C. 620 et seq., 670 et seq.]; or

(ii) documentation has been provided to the appropriate local educational agency showing the status of the child as a foster child who a court has placed with a caretaker household; or

(G) documentation has been provided to the appropriate local educational agency showing the status of the child as an eligible child (as defined in subsection (b)(15)(A)).

**(e) Limitation on meal contracting**

A school or school food authority participating in a program under this chapter may not contract with a food service company to provide a la carte food service unless the company agrees to offer free, reduced price, and full-price reimbursable meals to all eligible children.

**(f) Nutritional requirements**

(1) IN GENERAL.—Schools that are participating in the school lunch program or school breakfast program shall serve lunches and breakfasts that—

(A) are consistent with the goals of the most recent Dietary Guidelines for Americans published under section 5341 of title 7; and

(B) consider the nutrient needs of children who may be at risk for inadequate food intake and food insecurity.

(2) To assist schools in meeting the requirements of this subsection, the Secretary—

(A) shall—

(i) develop, and provide to schools, standardized recipes, menu cycles, and food product specification and preparation techniques; and

(ii) provide to schools information regarding nutrient standard menu planning, assisted nutrient standard menu planning, and food-based menu systems; and

(B) may provide to schools information regarding other approaches, as determined by the Secretary.

(3) USE OF ANY REASONABLE APPROACH.—

(A) IN GENERAL.—A school food service authority may use any reasonable approach, within guidelines established by the Secretary in a timely manner, to meet the requirements of this subsection, including—

(i) using the school nutrition meal pattern in effect for the 1994–1995 school year; and

(ii) using any of the approaches described in paragraph (3).

(B) NUTRIENT ANALYSIS.—The Secretary may not require a school to conduct or use a nutrient analysis to meet the requirements of this subsection.

(4) WAIVER OF REQUIREMENT FOR WEIGHTED AVERAGES FOR NUTRIENT ANALYSIS.—During the period ending on September 30, 2010, the Secretary shall not require the use of weighted averages for nutrient analysis of menu items and foods offered or served as part of a meal offered or served under the school lunch program under this chapter or the school breakfast program under section 4 of the Child Nutrition Act of 1966 (42 U.S.C. 1773).

**(g) Justification of production records; paperwork reduction**

Not later than 1 year after November 2, 1994, the Secretary shall provide a notification to Congress that justifies the need for production records required under section 210.10(b) of title 7, Code of Federal Regulations, and describes how the Secretary has reduced paperwork relating to the school lunch and school breakfast programs.

**(h) Food safety****(1) In general**

A school participating in the school lunch program under this chapter or the school breakfast program under section 4 of the Child Nutrition Act of 1966 (42 U.S.C. 1773) shall—

(A) at least twice during each school year, obtain a food safety inspection conducted by a State or local governmental agency responsible for food safety inspections;

(B) post in a publicly visible location a report on the most recent inspection conducted under subparagraph (A); and

(C) on request, provide a copy of the report to a member of the public.

**(2) State and local government inspections**

Nothing in paragraph (1) prevents any State or local government from adopting or enforcing any requirement for more frequent food safety inspections of schools.

**(3) Audits and reports by States**

For each of fiscal years 2011 through 2015, each State shall annually—

(A) audit food safety inspections of schools conducted under paragraphs (1) and (2); and

(B) submit to the Secretary a report of the results of the audit.

**(4) Audit by the Secretary**

For each of fiscal years 2011 through 2015, the Secretary shall annually audit State reports of food safety inspections of schools submitted under paragraph (3).

**(5) School food safety program****(A) In general**

Each school food authority shall implement a school food safety program, in the preparation and service of each meal served to children, that complies with any hazard analysis and critical control point system established by the Secretary.

**(B) Applicability**

Subparagraph (A) shall apply to any facility or part of a facility in which food is stored, prepared, or served for the purposes of the school nutrition programs under this chapter or section 4 of the Child Nutrition Act of 1966 (42 U.S.C. 1773).

**(i) Single permanent agreement between State agency and school food authority; common claims form****(1) In general**

If a single State agency administers any combination of the school lunch program under this chapter, the school breakfast program under section 4 of the Child Nutrition Act of 1966 (42 U.S.C. 1773), the summer food service program for children under section 1761 of this title, or the child and adult care food program under section 1766 of this title, the agency shall—

(A) require each school food authority to submit to the State agency a single agreement with respect to the operation by the authority of the programs administered by the State agency; and

(B) use a common claims form with respect to meals and supplements served under the programs administered by the State agency.

**(2) Additional requirement**

The agreement described in paragraph (1)(A) shall be a permanent agreement that may be amended as necessary.

**(j) Purchases of locally produced foods**

The Secretary shall—

(1) encourage institutions receiving funds under this chapter and the Child Nutrition Act of 1966 (42 U.S.C. 1771 et seq.) to purchase unprocessed agricultural products, both locally grown and locally raised, to the maximum extent practicable and appropriate;

(2) advise institutions participating in a program described in paragraph (1) of the policy described in that paragraph and paragraph (3) and post information concerning the policy on the website maintained by the Secretary; and

(3) allow institutions receiving funds under this chapter and the Child Nutrition Act of 1966 (42 U.S.C. 1771 et seq.), including the Department of Defense Fresh Fruit and Vegetable Program, to use a geographic preference for the procurement of unprocessed agricultural products, both locally grown and locally raised.

**(k) Information on the school nutrition environment**

**(1) In general**

The Secretary shall—

(A) establish requirements for local educational agencies participating in the school lunch program under this chapter and the school breakfast program established by section 4 of the Child Nutrition Act of 1966 (42 U.S.C. 1773) to report information about the school nutrition environment, for all schools under the jurisdiction of the local educational agencies, to the Secretary and to the public in the State on a periodic basis; and

(B) provide training and technical assistance to States and local educational agencies on the assessment and reporting of the school nutrition environment, including the use of any assessment materials developed by the Secretary.

**(2) Requirements**

In establishing the requirements for reporting on the school nutrition environment under paragraph (1), the Secretary shall—

(A) include information pertaining to food safety inspections, local wellness policies, meal program participation, the nutritional quality of program meals, and other information as determined by the Secretary; and

(B) ensure that information is made available to the public by local educational agencies in an accessible, easily understood manner in accordance with guidelines established by the Secretary.

**(3) Authorization of appropriations**

There are authorized to be appropriated to carry out this subsection such sums as are necessary for each of fiscal years 2011 through 2015.

**(l) Food donation program**

**(1) In general**

Each school and local educational agency participating in the school lunch program under this chapter may donate any food not consumed under such program to eligible local food banks or charitable organizations.

**(2) Guidance**

**(A) In general**

Not later than 180 days after November 18, 2011, the Secretary shall develop and publish guidance to schools and local educational agencies participating in the school lunch program under this chapter to assist such schools and local educational agencies in donating food under this subsection.

**(B) Updates**

The Secretary shall update such guidance as necessary.

**(3) Liability**

Any school or local educational agency making donations pursuant to this subsection shall be exempt from civil and criminal liability to the extent provided under section 1791 of this title.

**(4) Definition**

In this subsection, the term “eligible local food banks or charitable organizations” means any food bank or charitable organization which is exempt from tax under section 501(c)(3) of title 26.

(June 4, 1946, ch. 281, §9, 60 Stat. 233; Pub. L. 90-302, §2(b), May 8, 1968, 82 Stat. 117; Pub. L. 91-248, §6(a), (b), (d), (e), May 14, 1970, 84 Stat. 210; Pub. L. 92-153, §5, Nov. 5, 1971, 85 Stat. 420; Pub. L. 92-433, §5, Sept. 26, 1972, 86 Stat. 726; Pub. L. 93-150, §9, Nov. 7, 1973, 87 Stat. 564; Pub. L. 93-326, §4, June 30, 1974, 88 Stat. 286; Pub. L. 94-105, §6, Oct. 7, 1975, 89 Stat. 512; Pub. L. 95-166, §8, Nov. 10, 1977, 91 Stat. 1335; Pub. L. 95-627, §8, Nov. 10, 1978, 92 Stat. 3622; Pub. L. 97-35, title VIII, §§803(a), (b), 811, Aug. 13, 1981, 95 Stat. 524, 525, 529; Pub. L. 99-500, title III, §§322-324, Oct. 18, 1986, 100 Stat. 1783-361, and Pub. L. 99-591, title III, §§322-324, Oct. 30, 1986, 100 Stat. 3341-364; Pub. L. 99-661, div. D, title II, §§4202-4204, Nov. 14, 1986, 100 Stat. 4072; Pub. L. 100-356, §1, June 28, 1988, 102 Stat. 669; Pub. L. 101-147, title I, §101, title II, §202(a)(1), (2)(A), (b), title III, §§305, 312(1), (2), Nov. 10, 1989, 103 Stat. 878, 908, 914, 916; Pub. L. 103-448, title I, §§105(a), 106-109(a), 110, Nov. 2, 1994, 108 Stat. 4701-4705; Pub. L. 104-149, §2, May 29, 1996, 110 Stat. 1379; Pub. L. 104-193, title I, §109(g), title VII, §§702, 703, Aug. 22, 1996, 110 Stat. 2170, 2288, 2289; Pub. L. 105-336, title I, §102, Oct. 31, 1998, 112 Stat. 3144; Pub. L. 106-224, title II, §242(a), June 20, 2000, 114 Stat. 411; Pub. L. 107-171, title IV, §§4302(a), 4303, May 13, 2002, 116 Stat. 330, 331; Pub. L. 108-134, §1, Nov. 22, 2003, 117 Stat. 1389; Pub. L. 108-211, §1, Mar. 31, 2004, 118 Stat. 566; Pub. L. 108-265, title I, §§102-104(b)(1), (d)(1), (2), 105(a), 106-108(a), 109-112, June 30, 2004, 118 Stat. 731-734, 737, 738, 745-747; Pub. L. 108-447, div. A, title VII, §788(a), Dec. 8, 2004, 118 Stat. 2851; Pub. L. 110-134, §29(c)(1), Dec. 12, 2007, 121 Stat. 1449; Pub. L. 110-234, title IV, §§4002(b)(1)(A), (B), (E), (2)(Z), 4302, May 22, 2008, 122 Stat. 1095-1097, 1125; Pub. L. 110-246, §4(a), title IV, §§4002(b)(1)(A), (B), (E), (2)(Z), 4302, June 18, 2008, 122 Stat. 1664, 1857, 1859, 1887; Pub. L. 111-80, title VII, §§734(a), 749(b), (c), Oct. 21, 2009, 123 Stat. 2125, 2131; Pub. L. 111-296, title I, §§101-103(b), title II, §§202, 203, 209, 242, title III, §§301, 302, title IV, §§402, 441(a)(1), Dec. 13, 2010, 124 Stat. 3185-3191, 3216,

3222, 3236, 3240, 3259, 3261; Pub. L. 112-55, div. A, title VII, § 734, Nov. 18, 2011, 125 Stat. 587.)

## REFERENCES IN TEXT

The Child Nutrition Act of 1966, referred to in text, is Pub. L. 89-642, Oct. 11, 1966, 80 Stat. 885, which is classified generally to chapter 13A (§1771 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1771 of this title and Tables.

The Food and Nutrition Act of 2008, referred to in text, is Pub. L. 88-525, Aug. 31, 1964, 78 Stat. 703, which is classified generally to chapter 51 (§2011 et seq.) of Title 7, Agriculture. For complete classification of this Act to the Code, see Short Title note set out under section 2011 of Title 7 and Tables.

The Social Security Act, referred to in text, is act Aug. 14, 1935, ch. 531, 49 Stat. 620. Parts A, B, and E of title IV, title XIX, and title XXI of the Act are classified generally to parts A (§601 et seq.), B (§620 et seq.), and E (§670 et seq.) of subchapter IV, subchapter XIX (§1396 et seq.), and subchapter XXI (§1397aa et seq.), respectively, of chapter 7 of this title. For complete classification of this Act to the Code, see section 1305 of this title and Tables.

The Runaway and Homeless Youth Act, referred to in subsec. (b)(5)(C), (12)(A)(v), is title III of Pub. L. 93-415, Sept. 7, 1974, 88 Stat. 1129, which is classified generally to subchapter III (§5701 et seq.) of chapter 72 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 5601 of this title and Tables.

The Head Start Act, referred to in subsec. (b)(12)(A)(iii), is subchapter B (§§635-657) of chapter 8 of subtitle A of title VI of Pub. L. 97-35, Aug. 13, 1981, 95 Stat. 499, which is classified generally to subchapter II (§9831 et seq.) of chapter 105 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 9801 of this title and Tables.

## CODIFICATION

Pub. L. 110-234 and Pub. L. 110-246 made identical amendments to this section. The amendments by Pub. L. 110-234 were repealed by section 4(a) of Pub. L. 110-246.

Pub. L. 99-591 is a corrected version of Pub. L. 99-500.

## AMENDMENTS

2011—Subsec. (l). Pub. L. 112-55 added subsec. (l).

2010—Subsec. (a)(2)(A)(i). Pub. L. 111-296, §202, added cl. (i) and struck out former cl. (i) which read as follows: “shall offer students fluid milk in a variety of fat contents:”.

Subsec. (a)(4)(C). Pub. L. 111-296, §242, added subpar. (C).

Subsec. (a)(5). Pub. L. 111-296, §203, added par. (5).

Subsec. (b)(4). Pub. L. 111-296, §101(a)(1), substituted “supplemental nutrition assistance program” for “food stamp” in heading.

Subsec. (b)(4)(E). Pub. L. 111-296, §101(a)(2), added subpar. (E).

Subsec. (b)(4)(F). Pub. L. 111-296, §101(b), added subpar. (F).

Subsec. (b)(4)(G). Pub. L. 111-296, §101(c), added subpar. (G).

Subsec. (b)(5)(E). Pub. L. 111-296, §102(a), added subpar. (E).

Subsec. (b)(12)(A)(iv). Pub. L. 111-296, §102(b)(1), inserted closing parenthesis before semicolon at end.

Subsec. (b)(12)(A)(vii). Pub. L. 111-296, §102(b)(2)-(4), added cl. (vii).

Subsec. (b)(15). Pub. L. 111-296, §103(a), added par. (15).

Subsec. (d)(1). Pub. L. 111-296, §301, inserted “the last 4 digits of” before “the social security account number” in first sentence and struck out second sentence which read as follows: “The Secretary shall require that social security account numbers of all adult members of the household be provided if verification of the data contained in the application is sought under subsection (b)(3)(G) of this section.”

Subsec. (d)(2)(F). Pub. L. 111-296, §102(c), added subpar. (F).

Subsec. (d)(2)(G). Pub. L. 111-296, §103(b), added subpar. (G).

Subsec. (f). Pub. L. 111-296, §441(a)(1), inserted subsec. heading, added par. (1), redesignated former pars. (3) to (5) as (2) to (4), respectively, and struck out former pars. (1) and (2) which related to nutritional requirements and grants of waivers from such requirements by State educational agencies.

Subsec. (h)(3). Pub. L. 111-296, §402(1), substituted “2011 through 2015” for “2006 through 2010” in introductory provisions.

Subsec. (h)(4). Pub. L. 111-296, §402(2), substituted “2011 through 2015” for “2006 through 2010”.

Subsec. (h)(5). Pub. L. 111-296, §302, designated existing provisions as subpar. (A), inserted heading, and added subpar. (B).

Subsec. (k). Pub. L. 111-296, §209, added subsec. (k).

2009—Subsec. (b)(14). Pub. L. 111-80, §734(a), added par. (14).

Subsec. (f)(5). Pub. L. 111-80, §749(b), substituted “2010” for “2009”.

Subsec. (h)(3), (4). Pub. L. 111-80, §749(c), substituted “2010” for “2009”.

2008—Subsec. (b)(2)-(4). Pub. L. 110-246, §4002(b)(1)(A), (B), (2)(Z), substituted “supplemental nutrition assistance program” for “food stamp program” wherever appearing and “Food and Nutrition Act of 2008” for “Food Stamp Act of 1977” wherever appearing.

Subsec. (b)(12)(A)(i). Pub. L. 110-246, §4002(b)(1)(A), (B), (2)(Z), substituted “supplemental nutrition assistance program” for “food stamp program” and “Food and Nutrition Act of 2008” for “Food Stamp Act of 1977”.

Subsec. (b)(12)(B). Pub. L. 110-246, §4002(b)(1)(E), (2)(Z), substituted “supplemental nutrition assistance program benefits” for “food stamps”.

Subsec. (d)(2)(B). Pub. L. 110-246, §4002(b)(1)(A), (B), (2)(Z), substituted “supplemental nutrition assistance program” for “food stamp program” and “Food and Nutrition Act of 2008” for “Food Stamp Act of 1977”.

Subsec. (j). Pub. L. 110-246, §4302, amended subsec. (j) generally. Prior to amendment, subsec. (j) related to encouragement of purchases of locally produced foods, provision of startup grants, and authorization of appropriations.

2007—Subsec. (b)(12)(A)(iii). Pub. L. 110-134 substituted “the child meets the eligibility criteria prescribed under section 645(a)(1)(B) of the Head Start Act (42 U.S.C. 9840(a)(1)(B))” for “the child is a member of a family that meets the low-income criteria prescribed under section 645(a)(1)(A) of the Head Start Act (42 U.S.C. 9840(a)(1)(A))”.

2004—Subsec. (a)(2). Pub. L. 108-265, §102, added par. (2) and struck out former par. (2) which read as follows: “Lunches served by schools participating in the school lunch program under this chapter—

“(A) shall offer students fluid milk; and

“(B) shall offer students a variety of fluid milk consistent with prior year preferences unless the prior year preference for any such variety of fluid milk is less than 1 percent of the total milk consumed at the school.”

Subsec. (a)(4). Pub. L. 108-265, §103, added par. (4).

Subsec. (b)(2)(B). Pub. L. 108-265, §104(a)(2)(A), inserted subpar. heading, designated first and second sentences as cls. (i) and (ii), respectively, and inserted headings, in cl. (ii) substituted “Forms and descriptive material distributed in accordance with clause (i)” for “Such forms and descriptive material”, and added cl. (iii).

Subsec. (b)(2)(C)(i). Pub. L. 108-265, §104(a)(2)(B), redesignated par. (2)(C)(i) as par. (3).

Subsec. (b)(2)(C)(ii) to (vii), (D). Pub. L. 108-265, §104(a)(2)(C), struck out subpars. (C)(ii) to (vii) and (D), which related to direct certification of children in households receiving other assistance, disclosure of eligibility information, limitations, sanction for wrongful disclosure, waiver of confidentiality, use of disclosed

information, and submission of price policy statement by school food authority.

Subsec. (b)(3). Pub. L. 108-265, §105(a), added par. (3) and struck out former par. (3) which read as follows: "Except as provided in clause (ii), each eligibility determination shall be made on the basis of a complete application executed by an adult member of the household. The Secretary, State, or local food authority may verify any data contained in such application. A local school food authority shall undertake such verification of information contained in any such application as the Secretary may by regulation prescribe and, in accordance with such regulations, shall make appropriate changes in the eligibility determination with respect to such application on the basis of such verification."

Pub. L. 108-265, §104(a)(2)(B), redesignated par. (2)(C)(i) as par. (3).

Pub. L. 108-265, §104(a)(1), redesignated par. (3) as (9).  
Subsec. (b)(4). Pub. L. 108-265, §104(a)(2)(C), added par. (4).

Pub. L. 108-265, §104(a)(1), redesignated par. (4) as (10).  
Subsec. (b)(5). Pub. L. 108-265, §104(d)(1), struck out "(A) IN GENERAL.—" before "Subject to paragraph (6)", redesignated cls. (i) to (iv) as subpars. (A) to (D), respectively, and struck out former subpar. (B). Prior to amendment, text of subpar. (B) read as follows: "Subject to paragraph (6), any local educational agency may certify any child as eligible for free lunches or breakfasts, without further application, by directly communicating with the appropriate State or local agency to obtain documentation of the status of the child as a member of a household that is receiving food stamps under the Food Stamp Act of 1977 (7 U.S.C. 2011 et seq.)."

Pub. L. 108-265, §104(b)(1), as amended by Pub. L. 108-447, added par. (5).

Pub. L. 108-265, §104(a)(1), redesignated par. (5) as (11).

Subsec. (b)(6). Pub. L. 108-265, §104(b)(1), added par. (6).

Pub. L. 108-265, §104(a)(1), redesignated par. (6) as (12).

Subsec. (b)(7). Pub. L. 108-265, §104(b)(1), added par. (7).

Pub. L. 108-265, §104(a)(1), redesignated par. (7) as (13).

Pub. L. 108-211 substituted "June 30, 2004" for "March 31, 2004".

Subsec. (b)(8). Pub. L. 108-265, §104(b)(1), added par. (8).

Subsec. (b)(9). Pub. L. 108-265, §106, inserted par. heading, designated existing provisions as subpars. (A) and (B), inserted subpar. headings, in subpar. (B) designated existing provisions as cls. (i) and (ii) and inserted cl. headings, and added subpar. (C).

Pub. L. 108-265, §104(a)(1), redesignated par. (3) as (9).  
Subsec. (b)(10). Pub. L. 108-265, §104(a)(1), redesignated par. (4) as (10).

Subsec. (b)(11). Pub. L. 108-265, §108(a)(1), substituted "Local educational agencies" for "Local school authorities" in second sentence.

Pub. L. 108-265, §104(a)(1), redesignated par. (5) as (11).

Subsec. (b)(12). Pub. L. 108-265, §104(a)(1), redesignated par. (6) as (12).

Subsec. (b)(12)(A)(iv) to (vi). Pub. L. 108-265, §107(a), added cls. (iv) to (vi).

Subsec. (b)(12)(B). Pub. L. 108-265, §104(d)(2)(A), substituted "this subsection" for "paragraph (2)(C)".

Subsec. (b)(13). Pub. L. 108-265, §109, substituted "The" for "For each of fiscal years 2002 and 2003 and through June 30, 2004, the".

Pub. L. 108-265, §104(a)(1), redesignated par. (7) as (13).

Subsec. (d)(1). Pub. L. 108-265, §104(d)(2)(B), substituted "subsection (b)(3)(G)" for "subsection (b)(2)(C)" in second sentence.

Subsec. (d)(2)(A). Pub. L. 108-265, §108(a)(2), substituted "appropriate local educational agency" for "appropriate local school food authority" and "the local educational agency" for "such authority".

Subsec. (d)(2)(B), (C). Pub. L. 108-265, §108(a)(2)(A), substituted "local educational agency" for "local school food authority".

Subsec. (d)(2)(D), (E). Pub. L. 108-265, §107(b), added subpars. (D) and (E).

Subsec. (f)(5). Pub. L. 108-265, §110, substituted "September 30, 2009" for "September 30, 2003".

Subsec. (h). Pub. L. 108-265, §111(1), struck out "inspections" after "safety" in heading.

Subsec. (h)(1). Pub. L. 108-265, §111(2), substituted "A school" for "Except as provided in paragraph (2), a school", inserted subpar. (A) designation, substituted "at least twice" for "at least once", and added subpars. (B) and (C).

Subsec. (h)(2) to (5). Pub. L. 108-265, §111(3), added pars. (2) to (5) and struck out heading and text of former par. (2). Text read as follows: "Paragraph (1) shall not apply to a school if a food safety inspection of the school is required by a State or local governmental agency responsible for food safety inspections."

Subsec. (j)(2)(A). Pub. L. 108-265, §112, substituted "2009" for "2007".

2003—Subsec. (b)(7). Pub. L. 108-134 inserted "and through March 31, 2004" after "and 2003".

2002—Subsec. (b)(7). Pub. L. 107-171, §4302(a), added par. (7).

Subsec. (j). Pub. L. 107-171, §4303, added subsec. (j).

2000—Subsec. (b)(2)(C)(iii)(IV). Pub. L. 106-224, §242(a)(1), added subcl. (IV).

Subsec. (b)(2)(C)(vi), (vii). Pub. L. 106-224, §242(a)(2), added cls. (vi) and (vii).

1998—Subsec. (f)(2). Pub. L. 105-336, §102(a)(1), substituted "paragraph (1)" for "subparagraph (A)".

Subsec. (f)(3), (4). Pub. L. 105-336, §102(a)(2), substituted "this subsection" for "this paragraph" wherever appearing.

Subsec. (f)(5). Pub. L. 105-336, §102(b), added par. (5).

Subsec. (h). Pub. L. 105-336, §102(c), added subsec. (h).

Subsec. (i). Pub. L. 105-336, §102(d), added subsec. (i).

1996—Subsec. (a)(2). Pub. L. 104-193, §702(a)(1), redesignated par. (2)(A) as (2) and cls. (i) and (ii) of former subpar. (A) as subpars. (A) and (B), respectively, and struck out former subpar. (B) which read as follows:

"(B)(i) The Secretary shall purchase in each calendar year to carry out the school lunch program under this chapter, and the school breakfast program under section 4 of the Child Nutrition Act of 1966 (42 U.S.C. 1773), lowfat cheese on a bid basis in a quantity that is the milkfat equivalent of the quantity of milkfat the Secretary estimates the Commodity Credit Corporation will purchase each calendar year as a result of the elimination of the requirement that schools offer students fluid whole milk and fluid unflavored lowfat milk, based on data provided by the Director of Office of Management and Budget.

"(ii) Not later than 30 days after the Secretary provides an estimate required under clause (i), the Director of the Congressional Budget Office shall provide to the appropriate committees of Congress a report on whether the Director concurs with the estimate of the Secretary.

"(iii) The quantity of lowfat cheese that is purchased under this subparagraph shall be in addition to the quantity of cheese that is historically purchased by the Secretary to carry out school feeding programs. The Secretary shall take such actions as are necessary to ensure that purchases under this subparagraph shall not displace commercial purchases of cheese by schools."

Subsec. (a)(3), (4). Pub. L. 104-193, §702(a)(2), (3), redesignated par. (4) as (3) and struck out former par. (3) which read as follows: "The Secretary shall establish, in cooperation with State educational agencies, administrative procedures, which shall include local educational agency and student participation, designed to diminish waste of foods which are served by schools participating in the school lunch program under this chapter without endangering the nutritional integrity of the lunches served by such schools."

Subsec. (b)(2)(C)(ii)(II). Pub. L. 104-193, §109(g)(1)(A), substituted "State program funded" for "program for aid to families with dependent children" and inserted before period at end "that the Secretary determines complies with standards established by the Secretary that ensure that the standards under the State pro-

gram are comparable to or more restrictive than those in effect on June 1, 1995”.

Subsec. (b)(2)(D). Pub. L. 104-193, § 703, added subpar. (D).

Subsec. (b)(6)(A)(ii). Pub. L. 104-193, § 109(g)(1)(B)(i), substituted “a family (under the State program funded” for “an AFDC assistance unit (under the aid to families with dependent children program authorized” and “that the Secretary determines complies with standards established by the Secretary that ensure that the standards under the State program are comparable to or more restrictive than those in effect on June 1, 1995” for “, in a State where the standard of eligibility for the assistance does not exceed 130 percent of the poverty line (as defined in section 9902(2) of this title)”.

Subsec. (b)(6)(B). Pub. L. 104-193, § 109(g)(1)(B)(ii), substituted “assistance under the State program funded under part A of title IV of the Social Security Act (42 U.S.C. 601 et seq.) that the Secretary determines complies with standards established by the Secretary that ensure that the standards under the State program are comparable to or more restrictive than those in effect on June 1, 1995” for “aid to families with dependent children”.

Subsec. (c). Pub. L. 104-193, § 702(b)(2), struck out “Each school shall, insofar as practicable, utilize in its lunch program commodities designated from time to time by the Secretary as being in abundance, either nationally or in the school area or commodities donated by the Secretary.” after “operated on a nonprofit basis.”, “The Secretary is authorized to prescribe terms and conditions respecting the use of commodities donated under such section 612c of title 7, under section 1431 of title 7 and under section 1446a-1 of title 7, as will maximize the nutritional and financial contributions of such donated commodities in such schools and institutions.” after “authorized to receive such commodities.”, and “None of the requirements of this section in respect to the amount for ‘reduced cost’ meals and to eligibility for meals without cost shall apply to schools (as defined in section 1760(d)(6) of this title which are private and nonprofit as defined in the last sentence of section 1760(d)(6) of this title) which participate in the school lunch program under this chapter until such time as the State educational agency, or in the case of such schools which participate under the provisions of section 1759 of this title the Secretary certifies that sufficient funds from sources other than children’s payments are available to enable such schools to meet these requirements.” at end.

Pub. L. 104-193, § 702(b)(1), substituted “provision of law” for “of the provisions of law referred to in the preceding sentence” in fifth sentence.

Subsec. (d)(2)(C). Pub. L. 104-193, § 109(g)(2), substituted “State program funded” for “program for aid to families with dependent children” and inserted before period at end “that the Secretary determines complies with standards established by the Secretary that ensure that the standards under the State program are comparable to or more restrictive than those in effect on June 1, 1995”.

Subsec. (f). Pub. L. 104-193, § 702(c)(1)–(3), struck out “(2)” designation before “(A) Except as provided”, redesignated subpars. (A) to (D) as pars. (1) to (4), respectively, and struck out former par. (1) which read as follows: “Not later than the first day of the 1996-97 school year, the Secretary, State educational agencies, schools, and school food service authorities shall, to the maximum extent practicable, inform students who participate in the school lunch and school breakfast programs, and parents and guardians of the students, of—

“(A) the nutritional content of the lunches and breakfasts that are served under the programs; and

“(B) the consistency of the lunches and breakfasts with the guidelines contained in the most recent ‘Dietary Guidelines for Americans’ that is published under section 5341 of title 7 (referred to in this subsection as the ‘Guidelines’), including the consistency

of the lunches and breakfasts with the guideline for fat content.”

Subsec. (f)(1). Pub. L. 104-193, § 702(c)(4), added par. (1) and struck out former par. (1), as redesignated by Pub. L. 104-193, § 702(c)(3), which read as follows: “Except as provided in subparagraph (B), not later than the first day of the 1996-97 school year, schools that are participating in the school lunch or school breakfast program shall serve lunches and breakfasts under the programs that are consistent with the Guidelines (as measured in accordance with subsection (a)(1)(A)(ii) of this section and section 4(e)(1)).”

Subsec. (f)(2)(D). Pub. L. 104-149 added subpar. (D) and struck out former subpar. (D) which read as follows: “Schools may use any of the approaches described in subparagraph (C) to meet the requirements of this paragraph. In the case of schools that elect to use food-based menu systems to meet the requirements of this paragraph, the Secretary may not require the schools to conduct or use nutrient analysis.”

Subsec. (f)(3). Pub. L. 104-193, § 702(c)(5), redesignated cls. (i) and (ii) as subpars. (A) and (B), respectively, and subcls. (I) and (II) of subpar. (A) as cls. (i) and (ii), respectively.

Subsec. (f)(4). Pub. L. 104-193, § 702(c)(6), redesignated cls. (i) and (ii) as subpars. (A) and (B), respectively, in subpar. (A), redesignated subcls. (I) and (II) as cls. (i) and (ii), respectively, and in subpar. (A)(ii), substituted “paragraph (3)” for “subparagraph (C)”.

Subsec. (h). Pub. L. 104-193, § 702(d), struck out subsec. (h) which read as follows: “In carrying out this chapter and the Child Nutrition Act of 1966 (42 U.S.C. 1771 et seq.), a State educational agency may use resources provided through the nutrition education and training program authorized under section 19 of the Child Nutrition Act of 1966 (42 U.S.C. 1788) for training aimed at improving the quality and acceptance of school meals.”

1994—Subsec. (a)(1). Pub. L. 103-448, §§ 105(a), 106(a), designated existing provisions as subpar. (A) and cl. (i) of subpar. (A) and added cl. (ii) of subpar. (A) and subpar. (B).

Subsec. (a)(2). Pub. L. 103-448, § 107, amended par. (2) generally. Prior to amendment, par. (2) read as follows: “Lunches served by schools participating in the school lunch program under this chapter shall offer students fluid whole milk and fluid unflavored lowfat milk.”

Subsec. (b)(2)(C)(iii) to (v). Pub. L. 103-448, § 108, added cls. (iii) to (v) and struck out former cl. (iii), which read as follows: “School food service authorities shall only use information obtained under clause (ii) for the purpose of determining eligibility for participation in programs under this chapter and the Child Nutrition Act of 1966.”

Subsec. (b)(6)(A). Pub. L. 103-448, § 109(a)(1), struck out “a member of” after “if the child is” in introductory provisions, inserted “a member of” after “(i)” and “(ii)”, and added cl. (iii).

Subsec. (b)(6)(B). Pub. L. 103-448, § 109(a)(2), inserted “, or of enrollment or participation in a Head Start program on the basis described in subparagraph (A)(iii),” after “aid to families with dependent children”.

Subsecs. (f) to (h). Pub. L. 103-448, §§ 106(b), (c), 110, added subsecs. (f) to (h).

1989—Subsec. (a). Pub. L. 101-147, § 101(a), amended subsec. (a), as amended identically by Pub. L. 99-500 and 99-591, § 322, and Pub. L. 99-661, § 4202, to read as if only the amendment by Pub. L. 99-661 was enacted, resulting in no change in text, see 1986 Amendment note below.

Subsec. (a)(1). Pub. L. 101-147, § 312(1), substituted “school lunch” for “school-lunch”.

Subsec. (a)(2). Pub. L. 101-147, § 101(b), amended par. (2) generally. Prior to amendment, par. (2) read as follows: “In addition to such other forms of milk as the Secretary may determine, the lunches shall offer whole milk as a beverage.”

Subsec. (b). Pub. L. 101-147, §§ 305(b)(1), 312(2), substituted “reduced price” for “reduced-price” and “family size” for “family-size” wherever appearing.

Pub. L. 101-147, §202(a)(1), (2)(A), amended subsec. (b), as amended identically by Pub. L. 99-500 and Pub. L. 99-591, §323, and Pub. L. 99-661, §4203, and as amended by Pub. L. 100-356, §1, to read as if only the amendment by Pub. L. 99-661 was enacted, and further amended subsec. (b) identically to the amendments that were made by Pub. L. 100-356, §1, resulting in no change in text, see 1986 and 1988 Amendment notes below.

Subsec. (b)(2)(C). Pub. L. 101-147, §202(b)(1), amended subpar. (C) generally. Prior to amendment, subpar. (C) read as follows: "Eligibility determinations shall be made on the basis of a complete application executed by an adult member of the household. The Secretary, States, and local school food authorities may seek verification of the data contained in the application. Local school food authorities shall undertake such verification of the information contained in these applications as the Secretary may by regulation prescribe and, in accordance with such regulations, make appropriate changes in the eligibility determinations on the basis of such verification."

Subsec. (c). Pub. L. 101-147, §§305(b)(2), 312(1), substituted "School lunch" for "School-lunch", substituted "school lunch" for "school-lunch" wherever appearing, and made technical amendments to the references to sections 612c, 1431, and 1446a-1 of title 7 involving underlying provisions of original act and requiring no change in text.

Subsec. (d)(1). Pub. L. 101-147, §§202(b)(2)(A), 312(2), substituted "reduced price" for "reduced-price" and "number of the parent or guardian who is the primary wage earner responsible for the care of the child for whom the application is made, or that of another appropriate adult member of the child's household, as determined by the Secretary. The Secretary shall require that social security account numbers of all adult members of the household be provided if verification of the data contained in the application is sought under subsection (b)(2)(C) of this section." for "numbers of all adult members of the household of which such person is a member."

Subsec. (d)(2). Pub. L. 101-147, §312(2), substituted "reduced price" for "reduced-price".

Subsec. (d)(2)(A). Pub. L. 101-147, §202(b)(2)(B)(i), amended subpar. (A) generally. Prior to amendment, subpar. (A) read as follows: "appropriate documentation, as prescribed by the Secretary, of the income of such household has been provided to the appropriate local school food authority; or".

Subsec. (d)(2)(C). Pub. L. 101-147, §202(b)(2)(B)(ii), (iii), added subpar. (C).

Subsec. (e). Pub. L. 101-147, §312(2), substituted "reduced price" for "reduced-price".

Pub. L. 101-147, §305(a), amended subsec. (e), as amended identically by Pub. L. 99-500 and Pub. L. 99-591, §324, and Pub. L. 99-661, §4204, to read as if only the amendment by Pub. L. 99-661 was enacted, resulting in no change in text, see 1986 Amendment note below.

1988—Subsec. (b)(1)(A). Pub. L. 100-356 substituted "The" for "For the school years ending June 30, 1982, and June 30, 1983, the" in second sentence and struck out provisions which equated income guidelines for determining eligibility for free lunches with gross income eligibility standards for participation in food stamp program.

1986—Subsec. (a). Pub. L. 99-500 and Pub. L. 99-591, §322, and Pub. L. 99-661, §4202, amended subsec. (a) identically, designating existing provisions as pars. (1), (3), and (4) and adding par. (2).

Subsec. (b)(6). Pub. L. 99-500 and Pub. L. 99-591, §323, and Pub. L. 99-661, §4203, amended subsec. (b) identically, adding par. (6).

Subsec. (e). Pub. L. 99-500 and Pub. L. 99-591, §324, and Pub. L. 99-661, §4204, amended section identically, adding subsec. (e).

1981—Subsec. (a). Pub. L. 97-35, §811, struck out "in any junior high school or middle school" after "grade level".

Subsec. (b). Pub. L. 97-35, §803(a), in par. (1) substituted provisions relating to income eligibility guide-

lines, for provisions relating to income poverty guidelines, redesignated former par. (2) as (5) and, as so redesignated, struck out "solely" after "sentence", and added pars. (2) to (4).

Subsec. (d). Pub. L. 97-35, §803(b), added subsec. (d).

1978—Subsec. (b)(1). Pub. L. 95-627 substituted guidelines prescribed by the Office of Management and Budget for the Consumer Price Index for purposes of determining the income poverty guidelines.

1977—Subsec. (a). Pub. L. 95-166 inserted parenthetical text authorizing students in any grade level in any junior high school or middle school, when approved by local school district or nonprofit private school, to refuse to accept offered foods they do not intend to consume.

1975—Subsec. (a). Pub. L. 94-105, §6(a), directed Secretary to establish administrative procedures designed to diminish food waste in school lunch programs and made provision for senior high school students to refuse food which they do not intend to consume without affecting lunch charges or payments to schools for lunches served.

Subsec. (b)(1). Pub. L. 94-105, §6(b), designated existing provisions as subsec. (b)(1), struck out "if a school elects to serve reduced-price lunches" after "reduced price not to exceed 20 cents", inserted provision for a reduced price lunch for any child eligible under reduced price lunch income guidelines, established income guidelines for reduced price lunches, beginning with fiscal year ending June 30, 1976, at 95 per centum above applicable family size income levels in income poverty guidelines, and provided for a reduced price lunch not to exceed 20 cents to any child belonging to a household whose income falls between guidelines for a free lunch and 95 per centum above income levels in the income poverty guidelines.

Pub. L. 94-105, §6(c), substituted provision adjusting income poverty guidelines that take effect July 1 of each year according to percentage change in Consumer Price Index for 12-month period ending in April of that year, except that the first adjustment, effective July 1, 1976, shall be made according to percentage change between average Consumer Price Index for 1974, on which the 1975-1976 guidelines are based, and Consumer Price Index for April 1976 for provision basing the guidelines on average Consumer Price Index for previous calendar year.

Subsec. (b)(2). Pub. L. 94-105, §6(d), added par. (2).

Subsec. (c). Pub. L. 94-105, §6(e), substituted "schools (as defined in section 1760(d)(6) of this title which are private and nonprofit as defined in the last sentence of section 1760(d)(6) of this title)" for "nonprofit private schools".

1974—Subsec. (b). Pub. L. 93-326 substituted "beginning with the fiscal year ending June 30, 1974" for "for the fiscal year ending June 30, 1974" in provision authorizing State educational agencies to establish income guidelines for reduced price lunches at not more than 75 per centum above applicable family size income levels in income poverty guidelines as prescribed by Secretary.

1973—Subsec. (b). Pub. L. 93-150 inserted proviso relating to income guidelines for reduced price lunches.

1972—Subsec. (a). Pub. L. 92-433, §5(a), designated first sentence as subsec. (a).

Subsec. (b). Pub. L. 92-433, §5(b), designated second through seventh sentences of existing provisions as subsec. (b), separated provisions relating to free and reduced price lunches, substituted May 15 of each year for July 1 of each year as the date by which the Secretary is required to prescribe an income poverty guideline, prescribed free lunch for children of households below the guideline instead of prior provision requiring free lunch or lunch at reduced price, authorized State educational agencies to set up family-size income levels for free and reduced price lunches to be within certain percentage limitations of the guideline prescribed by the Secretary, and provided for continuation until July 1, 1973 of higher guidelines established prior to July 1, 1972.

Subsec. (c). Pub. L. 92-433, §5(c), designated eighth through thirteenth sentences as subsec. (c) and in last sentence inserted provision that requirements of this section are not applicable to nonprofit private schools which participate in the school lunch program under this chapter until the State educational agency certifies about the funds.

1971—Pub. L. 92-153 inserted provisions for consideration of income poverty guidelines during fiscal year 1972 as a national minimum standard of eligibility and for reimbursement of State agencies during such fiscal year pursuant to eligibility standards established by State agencies prior to Oct. 1, 1971.

1970—Pub. L. 91-248 placed a ceiling of 20 cents on any reduced price meal offered under the school lunch program, provided for determination of ability to pay the full cost of lunch based on a publicly announced policy the minimum criteria of which includes family income and the number of school children in the family unit as well as the size of the family unit in general, but, under which, by Jan. 1, 1971, such determination shall be based on the income poverty guidelines with first priority given to providing free meals to the neediest children, provided that there be no overt identification of those children who receive free and reduced price meals, authorized the Secretary to prescribe such terms and conditions for food service in the non-national School Lunch Act schools as well as schools under this Act which are receiving Federal assistance in the form of commodities, and excepted from requirements of this section with respect to amount for reduced cost meals and eligibility for meals without cost nonprofit private schools which participate in the school lunch program under the provisions of section 1759 of this title until the Secretary certifies that sufficient funds are available to enable such schools to meet the requirements of this section.

1968—Pub. L. 90-302 provided that minimum nutritional requirements prescribed by the Secretary on basis of tested nutritional research which lunches served by participating schools must meet could not be construed to prohibit substitution of foods to accommodate medical or other special dietary needs of individual students.

#### CHANGE OF NAME

Committee on Education and Labor of House of Representatives changed to Committee on Education and the Workforce of House of Representatives by House Resolution No. 5, One Hundred Twelfth Congress, Jan. 5, 2011.

#### EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111-296 effective Oct. 1, 2010, except as otherwise specifically provided, see section 445 of Pub. L. 111-296, set out as a note under section 1751 of this title.

#### EFFECTIVE DATE OF 2008 AMENDMENT

Amendment of this section and repeal of Pub. L. 110-234 by Pub. L. 110-246 effective May 22, 2008, the date of enactment of Pub. L. 110-234, except as otherwise provided, see section 4 of Pub. L. 110-246, set out as an Effective Date note under section 8701 of Title 7, Agriculture.

Amendment by sections 4002(b)(1)(A), (B), (E), (2)(Z), and 4302 of Pub. L. 110-246 effective Oct. 1, 2008, see section 4407 of Pub. L. 110-246, set out as a note under section 1161 of Title 2, The Congress.

#### EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by sections 102, 104(a)(2), (b)(1), (d)(1), (2), 105(a), and 111 of Pub. L. 108-265 effective July 1, 2005, see section 502(b)(4) of Pub. L. 108-265, as amended, set out as an Effective Date note under section 1754 of this title.

Amendment by sections 103, 104(a)(1), 108(a), 109, 110, and 112 of Pub. L. 108-265 effective June 30, 2004, except as otherwise provided, see section 502(a) of Pub. L.

108-265, as amended, set out as an Effective Date note under section 1754 of this title.

Pub. L. 108-265, title I, §104(d)(1), June 30, 2004, 118 Stat. 737, provided that the amendment made by section 104(d)(1) is effective July 1, 2008.

Amendment by sections 106 and 107 of Pub. L. 108-265 effective July 1, 2004, see section 502(b)(1) of Pub. L. 108-265, as amended, set out as an Effective Date note under section 1754 of this title.

#### EFFECTIVE DATE OF 2002 AMENDMENT

Pub. L. 107-171, title IV, §4302(b), May 13, 2002, 116 Stat. 331, provided that: "The amendment made by this section [amending this section] takes effect on the date of enactment of this Act [May 13, 2002]."

Amendment by section 4303 of Pub. L. 107-171 effective Oct. 1, 2002, except as otherwise provided, see section 4405 of Pub. L. 107-171, set out as an Effective Date note under section 1161 of Title 2, The Congress.

#### EFFECTIVE DATE OF 2000 AMENDMENT

Pub. L. 106-224, title II, §242(c), June 20, 2000, 114 Stat. 413, provided that: "The amendments made by this section [amending this section and sections 1760 and 1786 of this title] take effect on October 1, 2000."

#### EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105-336 effective Oct. 1, 1998, see section 401 of Pub. L. 105-336, set out as a note under section 1755 of this title.

#### EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by section 109(g) of Pub. L. 104-193 effective July 1, 1997, with transition rules relating to State options to accelerate such date, rules relating to claims, actions, and proceedings commenced before such date, rules relating to closing out of accounts for terminated or substantially modified programs and continuance in office of Assistant Secretary for Family Support, and provisions relating to termination of entitlement under AFDC program, see section 116 of Pub. L. 104-193, as amended, set out as an Effective Date note under section 601 of this title.

#### EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by sections 105(a) and 106 to 108 of Pub. L. 103-448 effective Oct. 1, 1994, see section 401 of Pub. L. 103-448, set out as a note under section 1755 of this title.

Pub. L. 103-448, title I, §109(c), Nov. 2, 1994, 108 Stat. 4705, provided that: "The amendments made by this section [amending this section and section 1766 of this title] shall become effective on September 25, 1995."

#### EFFECTIVE DATE OF 1989 AMENDMENT

Pub. L. 101-147, title II, §202(a)(2)(B), Nov. 10, 1989, 103 Stat. 908, provided that: "The amendments made by subparagraph (A) [amending this section] shall take effect as if such amendments had been effective on June 28, 1988."

#### EFFECTIVE DATE OF 1986 AMENDMENT

Pub. L. 99-500, title III, §§322-324, Oct. 18, 1986, 100 Stat. 1783-361, Pub. L. 99-591, title III, §§322-324, Oct. 30, 1986, 100 Stat. 3341-364, and Pub. L. 99-661, div. D, title II, §§4202-4204, Nov. 14, 1986, 100 Stat. 4072, provided that the amendments made by those sections are effective July 1, 1986.

#### EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by sections 803(a), (b) and 811 of Pub. L. 97-35 effective Aug. 13, 1981, and Sept. 1, 1981, respectively, see section 820(a)(1)(E), (7)(A) of Pub. L. 97-35, set out as a note under section 1753 of this title.

#### EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-627 effective July 1, 1979, except as specifically provided, see section 14 of Pub. L. 95-627, set out as a note under section 1755 of this title.



EFFECTIVE DATE OF 1975 AMENDMENT

Pub. L. 94-105, §6(c), Oct. 7, 1975, 89 Stat. 512, provided that the amendment made by that section is effective Jan. 1, 1976.

REGULATIONS

Pub. L. 108-265, title V, §501, June 30, 2004, 118 Stat. 789, provided that:

“(a) GUIDANCE.—As soon as practicable after the date of enactment of this Act [June 30, 2004], the Secretary of Agriculture shall issue guidance to implement the amendments made by sections 102, 103, 104, 105, 106, 107, 111, 116, 119(c), 119(g), 120, 126(b), 126(c), 201, 203(a)(3), 203(b), 203(c)(5), 203(e)(3), 203(e)(4), 203(e)(5), 203(e)(6), 203(e)(7), 203(e)(10), and 203(h)(1) [amending this section, sections 1396a, 1759a, 1761, 1766, 1769, 1769c, 1773, 1776, and 1786 of this title, and section 2020 of Title 7, Agriculture].

“(b) INTERIM FINAL REGULATIONS.—The Secretary may promulgate interim final regulations to implement the amendments described in subsection (a).

“(c) REGULATIONS.—Not later than 2 years after the date of enactment of this Act [June 30, 2004], the Secretary shall promulgate final regulations to implement the amendments described in subsection (a).”

Pub. L. 101-147, title II, §202(c), Nov. 10, 1989, 103 Stat. 909, provided that: “Not later than July 1, 1990, the Secretary of Agriculture shall issue final regulations to implement the amendments made by subsection (b) [amending this section].”

REVIEW OF LOCAL POLICIES ON MEAL CHARGES AND PROVISION OF ALTERNATE MEALS

Pub. L. 111-296, title I, §143, Dec. 13, 2010, 124 Stat. 3213, provided that:

“(a) IN GENERAL.—

“(1) REVIEW.—The Secretary [of Agriculture], in conjunction with States and participating local educational agencies, shall examine the current policies and practices of States and local educational agencies regarding extending credit to children to pay the cost to the children of reimbursable school lunches and breakfasts.

“(2) SCOPE.—The examination under paragraph (1) shall include the policies and practices in effect as of the date of enactment of this Act [Dec. 13, 2010] relating to providing to children who are without funds a meal other than the reimbursable meals.

“(3) FEASIBILITY.—In carrying out the examination under paragraph (1), the Secretary shall—

“(A) prepare a report on the feasibility of establishing national standards for meal charges and the provision of alternate meals; and

“(B) provide recommendations for implementing those standards.

“(b) FOLLOWUP ACTIONS.—

“(1) IN GENERAL.—Based on the findings and recommendations under subsection (a), the Secretary may—

“(A) implement standards described in paragraph (3) of that subsection through regulation;

“(B) test recommendations through demonstration projects; or

“(C) study further the feasibility of recommendations.

“(2) FACTORS FOR CONSIDERATION.—In determining how best to implement recommendations described in subsection (a)(3), the Secretary shall consider such factors as—

“(A) the impact of overt identification on children;

“(B) the manner in which the affected households will be provided with assistance in establishing eligibility for free or reduced price school meals; and

“(C) the potential financial impact on local educational agencies.”

INCOME ELIGIBILITY GUIDELINES

Pub. L. 96-499, title II, §203(a)-(c), Dec. 5, 1980, 94 Stat. 2600, as amended by Pub. L. 97-35, title VIII, §820(b)(3), Aug. 13, 1981, 95 Stat. 535, provided that:

“(a), (b) [Repealed].

“(c) For the school year ending June 30, 1981, the Secretary may prescribe procedures for implementing the revisions in the income poverty guidelines for free and reduced price lunches contained in this section that may allow school food authorities to (1) use applications distributed at the beginning of the school year when making eligibility determinations based on the revised income poverty guidelines or (2) distribute new applications containing the revised income poverty guidelines and make eligibility determinations using the new applications.”

VERIFICATION OF ELIGIBILITY DATA SUBMITTED ON A SAMPLE OF APPLICATIONS FOR FREE AND REDUCED-PRICE MEALS

Pub. L. 97-35, title VIII, §803(c), Aug. 13, 1981, 95 Stat. 525, provided that: “Notwithstanding any other provision of law, the Secretary of Agriculture shall conduct a pilot study to verify the data submitted on a sample of applications for free and reduced-price meals. In conducting the pilot study, the Secretary may require households included in the study to furnish social security numbers of all household members and such other information as the Secretary may require, including, but not limited to, pay stubs, documentation of the current status of household members who are recipients of public assistance, unemployment insurance documents, and written statements from employers, as a condition for receipt of free or reduced-price meals.”

PROCEDURES FOR IMPLEMENTING NEW INCOME ELIGIBILITY GUIDELINES FOR FREE AND REDUCED-PRICE LUNCHES

Pub. L. 97-35, title VIII, §803(d), Aug. 13, 1981, 95 Stat. 526, provided that for school year ending June 30, 1982, Secretary could prescribe procedures for implementing the revisions made by section 803 of Pub. L. 97-35, amending this section, to the income eligibility guidelines for free and reduced-price lunches under this section, and that such procedures could allow school food authorities to use applications distributed at beginning of school year when making eligibility determinations or to distribute new applications.

LOWERING MINIMUM STANDARD OF ELIGIBILITY AND REDUCTION IN NUMBER OF CHILDREN SERVED, FISCAL YEAR 1972

Pub. L. 92-153, §6, Nov. 5, 1971, 85 Stat. 420, provided that: “The Secretary shall not lower minimum standards of eligibility for free and reduced price meals nor require a reduction in the number of children served in any school district during a fiscal year to be effective for that fiscal year. This section shall apply to fiscal year 1972.”

**§ 1758a. State performance on enrolling children receiving program benefits for free school meals**

**(a) In general**

Not later than December 31, 2008 and June 30 of each year thereafter, the Secretary shall submit to the Committees on Agriculture and Education and Labor of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate a report that assesses the effectiveness of each State in enrolling school-aged children in households receiving program benefits under the Food and Nutrition Act of 2008 (7 U.S.C. 2011 et seq.) (referred to in this section as “program benefits”) for free school meals using direct certification.

**(b) Specific measures**

The assessment of the Secretary of the performance of each State shall include—

(1) an estimate of the number of school-aged children, by State, who were members of a household receiving program benefits at any time in July, August, or September of the prior year;

(2) an estimate of the number of school-aged children, by State, who were directly certified as eligible for free lunches under the Richard B. Russell National School Lunch Act (42 U.S.C. 1751 et seq.), based on receipt of program benefits, as of October 1 of the prior year; and

(3) an estimate of the number of school-aged children, by State, who were members of a household receiving program benefits at any time in July, August, or September of the prior year who were not candidates for direct certification because on October 1 of the prior year the children attended a school operating under the special assistance provisions of section 11(a)(1) of the Richard B. Russell National School Lunch Act (42 U.S.C. 1759a(a)(1)) that is not operating in a base year.

**(c) Performance innovations**

The report of the Secretary shall describe best practices from States with the best performance or the most improved performance from the previous year.

(Pub. L. 110-234, title IV, § 4301, May 22, 2008, 122 Stat. 1125; Pub. L. 110-246, § 4(a), title IV, § 4301, June 18, 2008, 122 Stat. 1664, 1886.)

REFERENCES IN TEXT

The Food and Nutrition Act of 2008, referred to in subsec. (a), is Pub. L. 88-525, Aug. 31, 1964, 78 Stat. 703, which is classified generally to chapter 51 (§ 2011 et seq.) of Title 7, Agriculture. For complete classification of this Act to the Code, see Short Title note set out under section 2011 of Title 7 and Tables.

The Richard B. Russell National School Lunch Act, referred to in subsec. (b)(2), is act June 4, 1946, ch. 281, 60 Stat. 230, which is classified generally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 1751 of this title and Tables.

CODIFICATION

Pub. L. 110-234 and Pub. L. 110-246 enacted identical sections. Pub. L. 110-234 was repealed by section 4(a) of Pub. L. 110-246.

Section was enacted as part of the Food, Conservation, and Energy Act of 2008, and not as part of the Richard B. Russell National School Lunch Act which comprises this chapter.

CHANGE OF NAME

Committee on Education and Labor of House of Representatives changed to Committee on Education and the Workforce of House of Representatives by House Resolution No. 5, One Hundred Twelfth Congress, Jan. 5, 2011.

EFFECTIVE DATE

Enactment of this section and repeal of Pub. L. 110-234 by Pub. L. 110-246 effective May 22, 2008, the date of enactment of Pub. L. 110-234, except as otherwise provided, see section 4 of Pub. L. 110-246, set out as a note under section 8701 of Title 7, Agriculture.

Section effective Oct. 1, 2008, see section 4407 of Pub. L. 110-246, set out as an Effective Date of 2008 Amendment note under section 1161 of Title 2, The Congress.

DEFINITION OF "SECRETARY"

"Secretary" as meaning the Secretary of Agriculture, see section 8701 of Title 7, Agriculture.

**§ 1758b. Local school wellness policy**

**(a) In general**

Each local educational agency participating in a program authorized by this chapter or the Child Nutrition Act of 1966 (42 U.S.C. 1771 et seq.) shall establish a local school wellness policy for all schools under the jurisdiction of the local educational agency.

**(b) Guidelines**

The Secretary shall promulgate regulations that provide the framework and guidelines for local educational agencies to establish local school wellness policies, including, at a minimum,—

(1) goals for nutrition promotion and education, physical activity, and other school-based activities that promote student wellness;

(2) for all foods available on each school campus under the jurisdiction of the local educational agency during the school day, nutrition guidelines that—

(A) are consistent with sections 1758 and 1766 of this title, and sections 4 and 10 of the Child Nutrition Act of 1966 (42 U.S.C. 1773, 1779); and

(B) promote student health and reduce childhood obesity;

(3) a requirement that the local educational agency permit parents, students, representatives of the school food authority, teachers of physical education, school health professionals, the school board, school administrators, and the general public to participate in the development, implementation, and periodic review and update of the local school wellness policy;

(4) a requirement that the local educational agency inform and update the public (including parents, students, and others in the community) about the content and implementation of the local school wellness policy; and

(5) a requirement that the local educational agency—

(A) periodically measure and make available to the public an assessment on the implementation of the local school wellness policy, including—

(i) the extent to which schools under the jurisdiction of the local educational agency are in compliance with the local school wellness policy;

(ii) the extent to which the local school wellness policy of the local educational agency compares to model local school wellness policies; and

(iii) a description of the progress made in attaining the goals of the local school wellness policy; and

(B) designate 1 or more local educational agency officials or school officials, as appropriate, to ensure that each school complies with the local school wellness policy.

**(c) Local discretion**

The local educational agency shall use the guidelines promulgated by the Secretary under subsection (b) to determine specific policies appropriate for the schools under the jurisdiction of the local educational agency.

**(d) Technical assistance and best practices****(1) In general**

The Secretary, in consultation with the Secretary of Education and the Secretary of Health and Human Services, acting through the Centers for Disease Control and Prevention, shall provide information and technical assistance to local educational agencies, school food authorities, and State educational agencies for use in establishing healthy school environments that are intended to promote student health and wellness.

**(2) Content**

The Secretary shall provide technical assistance that—

(A) includes resources and training on designing, implementing, promoting, disseminating, and evaluating local school wellness policies and overcoming barriers to the adoption of local school wellness policies;

(B) includes model local school wellness policies and best practices recommended by Federal agencies, State agencies, and non-governmental organizations;

(C) includes such other technical assistance as is required to promote sound nutrition and establish healthy school nutrition environments; and

(D) is consistent with the specific needs and requirements of local educational agencies.

**(3) Study and report****(A) In general**

Subject to the availability of appropriations, the Secretary, in conjunction with the Director of the Centers for Disease Control and Prevention, shall prepare a report on the implementation, strength, and effectiveness of the local school wellness policies carried out in accordance with this section.

**(B) Study of local school wellness policies**

The study described in subparagraph (A) shall include—

(i) an analysis of the strength and weaknesses of local school wellness policies and how the policies compare with model local wellness policies recommended under paragraph (2)(B); and

(ii) an assessment of the impact of the local school wellness policies in addressing the requirements of subsection (b).

**(C) Report**

Not later than January 1, 2014, the Secretary shall submit to the Committee on Education and Labor of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate a report that describes the findings of the study.

**(D) Authorization of appropriations**

There are authorized to be appropriated to carry out this paragraph \$3,000,000 for fiscal year 2011, to remain available until expended.

(June 4, 1946, ch. 281, §9A, as added Pub. L. 111-296, title II, §204(a), Dec. 13, 2010, 124 Stat. 3216.)

## REFERENCES IN TEXT

The Child Nutrition Act of 1966, referred to in subsec. (a), is Pub. L. 89-642, Oct. 11, 1966, 80 Stat. 885, which is classified generally to chapter 13A (§1771 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1771 of this title and Tables.

## EFFECTIVE DATE

Section effective Oct. 1, 2010, except as otherwise specifically provided, see section 445 of Pub. L. 111-296, set out as an Effective Date of 2010 Amendment note under section 1751 of this title.

**§ 1759. Direct disbursement to schools by Secretary**

(a) The Secretary shall withhold funds payable to a State under this chapter and disburse the funds directly to schools, institutions, or service institutions within the State for the purposes authorized by this chapter to the extent that the Secretary has so withheld and disbursed such funds continuously since October 1, 1980, but only to such extent (except as otherwise required by subsection (b) of this section). Any funds so withheld and disbursed by the Secretary shall be used for the same purposes, and shall be subject to the same conditions, as applicable to a State disbursing funds made available under this chapter. If the Secretary is administering (in whole or in part) any program authorized under this chapter, the State in which the Secretary is administering the program may, upon request to the Secretary, assume administration of that program.

(b) If a State educational agency is not permitted by law to disburse the funds paid to it under this chapter to any of the nonpublic schools in the State, the Secretary shall disburse the funds directly to such schools within the State for the same purposes and subject to the same conditions as are authorized or required with respect to the disbursements to public schools within the State by the State educational agency.

(June 4, 1946, ch. 281, §10, 60 Stat. 233; Pub. L. 87-823, §4, Oct. 15, 1962, 76 Stat. 945; Pub. L. 91-248, §1(b), May 14, 1970, 84 Stat. 208; Pub. L. 93-433, §4(d), Sept. 26, 1972, 86 Stat. 726; Pub. L. 93-150, §3(b), Nov. 7, 1973, 87 Stat. 562; Pub. L. 94-105, §7, Oct. 7, 1975, 89 Stat. 514; Pub. L. 97-35, title VIII, §817(a), Aug. 13, 1981, 95 Stat. 531.)

## AMENDMENTS

1981—Pub. L. 97-35 designated existing provisions as subsec. (a), substituted provisions relating to disbursement of funds directly to schools, institutions, or service institutions for the purposes authorized by this chapter, for provisions relating to disbursement of funds directly to schools for the purposes and subject to conditions authorized or required for disbursements to schools within the State by the State educational agency, and added subsec. (b).

1975—Pub. L. 94-105 altered provisions of section to accommodate authorization of direct payments to private nonprofit schools and institutions in conformity with revised allocation method for school lunch funds and expanded definition of “school” to include any public or licensed nonprofit residential child care institution, including but not limited to, orphanages and homes for the mentally retarded.

1973—Pub. L. 93-150 inserted in proviso reference to section 1759a of this title.

1972—Pub. L. 92-433 inserted proviso that beginning with the fiscal year ending June 30, 1974, the Secretary shall make payments directly to the nonprofit private schools for the purpose of section 1753 of this title under the same conditions as are prescribed for State educational agencies.

1970—Pub. L. 91-248 provided that data upon which State apportionments are calculated is the program year completed two years immediately prior to the fiscal year for which the appropriation is requested.

1962—Pub. L. 87-823 substituted "an amount which bears the same ratio to such funds as the number of lunches, consisting of a combination of foods and meeting the minimum requirements prescribed by the Secretary pursuant to section 1758 of this title, served in the preceding fiscal year by all nonprofit private schools participating in the program under this chapter within the State, as determined by the Secretary, bears to the participation rate for the State" for "the same proportion of the funds as the number of children between the ages of 5 and 17, inclusive, attending nonprofit private schools within the State, is of the total number of persons of those ages within the State attending school".

#### EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97-35 effective Oct. 1, 1981, see section 820(a)(4) of Pub. L. 97-35, set out as a note under section 1753 of this title.

### § 1759a. Special assistance funds

#### (a) Formula for computation of payments; computation for lunches to eligible children in schools funding service to ineligible children from non-Federal sources; special assistance factors; annual adjustments

(1)(A) Except as provided in section 1759 of this title, in each fiscal year each State educational agency shall receive special assistance payments in an amount equal to the sum of the product obtained by multiplying the number of lunches (consisting of a combination of foods which meet the minimum nutritional requirements prescribed by the Secretary pursuant to section 1758(a) of this title) served free to children eligible for such lunches in schools within that State during such fiscal year by the special assistance factor for free lunches prescribed by the Secretary for such fiscal year and the product obtained by multiplying the number of lunches served at a reduced price to children eligible for such reduced price lunches in schools within that State during such fiscal year by the special assistance factor for reduced price lunches prescribed by the Secretary for such fiscal year.

(B) Except as provided in subparagraph (C), (D), (E), or (F), in the case of any school which determines that at least 80 percent of the children in attendance during a school year (hereinafter in this sentence referred to as the "first school year") are eligible for free lunches or reduced price lunches, special assistance payments shall be paid to the State educational agency with respect to that school, if that school so requests for the school year following the first school year, on the basis of the number of free lunches or reduced price lunches, as the case may be, that are served by that school during the school year for which the request is made, to those children who were determined to be so eligible in the first school year and the number of free lunches and reduced price lunches served during that year to other children determined for that year to be eligible for such lunches.

(C)(i) Except as provided in subparagraph (D), in the case of any school or school district that—

(I) elects to serve all children in the school or school district free lunches under the school lunch program during any period of 4 successive school years, or in the case of a school or school district that serves both lunches and breakfasts, elects to serve all children in the school or school district free lunches and free breakfasts under the school lunch program and the school breakfast program established under section 4 of the Child Nutrition Act of 1966 (42 U.S.C. 1773) during any period of 4 successive school years; and

(II) pays, from sources other than Federal funds, for the costs of serving the lunches or breakfasts that are in excess of the value of assistance received under this chapter and the Child Nutrition Act of 1966 (42 U.S.C. 1771 et seq.) with respect to the number of lunches or breakfasts served during the period;

special assistance payments shall be paid to the State educational agency with respect to the school or school district during the period on the basis of the number of lunches or breakfasts determined under clause (ii) or (iii).

(ii) For purposes of making special assistance payments under clause (i), except as provided in clause (iii), the number of lunches or breakfasts served by a school or school district to children who are eligible for free lunches or breakfasts or reduced price lunches or breakfasts during each school year of the 4-school-year period shall be considered to be equal to the number of lunches or breakfasts served by the school or school district to children eligible for free lunches or breakfasts or reduced price lunches or breakfasts during the first school year of the period.

(iii) For purposes of computing the amount of the payments, a school or school district may elect to determine on a more frequent basis the number of children who are eligible for free or reduced price lunches or breakfasts who are served lunches or breakfasts during the 4-school-year period.

(D)(i) In the case of any school or school district that is receiving special assistance payments under this paragraph for a 4-school-year period described in subparagraph (C), the State may grant, at the end of the 4-school-year period, an extension of the period for an additional 4 school years, if the State determines, through available socioeconomic data approved by the Secretary, that the income level of the population of the school or school district has remained stable.

(ii) A school or school district described in clause (i) may reapply to the State at the end of the 4-school-year period, and at the end of each 4-school-year period thereafter for which the school or school district receives special assistance payments under this paragraph, for the purpose of continuing to receive the payments for a subsequent 4-school-year period.

(iii) If the Secretary determines after considering the best available socioeconomic data that the income level of families of children enrolled in a school or school district has not remained stable, the Secretary may require the submission of applications for free and reduced price

lunches, or for free and reduced price lunches and breakfasts, in the first school year of any 4-school-year period for which the school or school district receives special assistance payments under this paragraph, for the purpose of calculating the special assistance payments.

(iv) For the purpose of updating information and reimbursement levels, a school or school district described in clause (i) that carries out a school lunch or school breakfast program may at any time require submission of applications for free and reduced price lunches or for free and reduced price lunches and breakfasts.

(E)(i) In the case of any school or school district that—

(I) elects to serve all children in the school or school district free lunches under the school lunch program during any period of 4 successive school years, or in the case of a school or school district that serves both lunches and breakfasts, elects to serve all children in the school or school district free lunches and free breakfasts under the school lunch program and the school breakfast program during any period of 4 successive school years; and

(II) pays, from sources other than Federal funds, for the costs of serving the lunches or breakfasts that are in excess of the value of assistance received under this chapter and the Child Nutrition Act of 1966 (42 U.S.C. 1771 et seq.) with respect to the number of lunches or breakfasts served during the period;

total Federal cash reimbursements and total commodity assistance shall be provided to the State educational agency with respect to the school or school district at a level that is equal to the total Federal cash reimbursements and total commodity assistance received by the school or school district in the last school year for which the school or school district accepted applications under the school lunch or school breakfast program, adjusted annually for inflation in accordance with paragraph (3)(B) and for changes in enrollment, to carry out the school lunch or school breakfast program.

(ii) A school or school district described in clause (i) may reapply to the State at the end of the 4-school-year period described in clause (i), and at the end of each 4-school-year period thereafter for which the school or school district receives reimbursements and assistance under this subparagraph, for the purpose of continuing to receive the reimbursements and assistance for a subsequent 4-school-year period. The State may approve an application under this clause if the State determines, through available socio-economic data approved by the Secretary, that the income level of the population of the school or school district has remained consistent with the income level of the population of the school or school district in the last school year for which the school or school district accepted the applications described in clause (i).

(F) UNIVERSAL MEAL SERVICE IN HIGH POVERTY AREAS.—

(i) DEFINITION OF IDENTIFIED STUDENTS.—The term “identified students” means students certified based on documentation of benefit receipt or categorical eligibility as described in section 245.6a(c)(2) of title 7, Code of Federal Regulations (or successor regulations).

(ii) ELECTION OF SPECIAL ASSISTANCE PAYMENTS.—

(I) IN GENERAL.—A local educational agency may, for all schools in the district or on behalf of certain schools in the district, elect to receive special assistance payments under this subparagraph in lieu of special assistance payments otherwise made available under this paragraph based on applications for free and reduced price lunches if—

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

(bb) the local educational agency 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 chapter and the Child Nutrition Act of 1966 (42 U.S.C. 1771 et seq.);

(cc) the local educational agency is not a residential child care institution (as that term is used in section 210.2 of title 7, Code of Federal Regulations (or successor regulations)); and

(dd) during the school year prior to the first year of the period for which the local educational agency elects to receive special assistance payments under this subparagraph, the local educational agency or school had a percentage of enrolled students who were identified students that meets or exceeds the threshold described in clause (viii).

(II) ELECTION TO STOP RECEIVING PAYMENTS.—A local educational agency may, for all schools in the district or on behalf of certain schools in the district, elect to stop receiving special assistance payments under this subparagraph for the following school year by notifying the State agency not later than June 30 of the current school year of the intention to stop receiving special assistance payments under this subparagraph.

(iii) FIRST YEAR OF OPTION.—

(I) SPECIAL ASSISTANCE PAYMENT.—For each month of the first school year of the 4-year period during which a school or local educational agency elects to receive payments under this subparagraph, special assistance payments at the rate for free meals shall be made under this subparagraph for a percentage of all reimbursable meals served in an amount equal to the product obtained by multiplying—

(aa) the multiplier described in clause (vii); by

(bb) the percentage of identified students at the school or local educational agency as of April 1 of the prior school year, up to a maximum of 100 percent.

(II) PAYMENT FOR OTHER MEALS.—The percentage of meals served that is not described in subclause (I) shall be reimbursed at the rate provided under section 1753 of this title.

(iv) SECOND, THIRD, OR FOURTH YEAR OF OPTION.—

(I) SPECIAL ASSISTANCE PAYMENT.—For each month of the second, third, or fourth school year of the 4-year period during which a school or local educational agency elects to receive payments under this subparagraph, special assistance payments at the rate for free meals shall be made under this subparagraph for a percentage of all reimbursable meals served in an amount equal to the product obtained by multiplying—

(aa) the multiplier described in clause (vi); by

(bb) the higher of the percentage of identified students at the school or local educational agency as of April 1 of the prior school year or the percentage of identified students at the school or local educational agency as of April 1 of the school year prior to the first year that the school or local educational agency elected to receive special assistance payments under this subparagraph, up to a maximum of 100 percent.

(II) PAYMENT FOR OTHER MEALS.—The percentage of meals served that is not described in subclause (I) shall be reimbursed at the rate provided under section 1753 of this title.

(v) GRACE YEAR.—

(I) IN GENERAL.—If, not later than April 1 of the fourth year of a 4-year period described in clause (ii)(I), a school or local educational agency has a percentage of enrolled students who are identified students that meets or exceeds a percentage that is 10 percentage points lower than the threshold described in clause (viii), the school or local educational agency may elect to receive special assistance payments under subclause (II) for an additional grace year.

(II) SPECIAL ASSISTANCE PAYMENT.—For each month of a grace year, special assistance payments at the rate for free meals shall be made under this subparagraph for a percentage of all reimbursable meals served in an amount equal to the product obtained by multiplying—

(aa) the multiplier described in clause (vi); by

(bb) the percentage of identified students at the school or local educational agency as of April 1 of the prior school year, up to a maximum of 100 percent.

(III) PAYMENT FOR OTHER MEALS.—The percentage of meals served that is not described in subclause (II) shall be reimbursed at the rate provided under section 1753 of this title.

(vi) APPLICATIONS.—A school or local educational agency that receives special assistance payments under this subparagraph may not be required to collect applications for free and reduced price lunches.

(vii) MULTIPLIER.—

(I) PHASE-IN.—For each school year beginning on or before July 1, 2013, the multiplier shall be 1.6.

(II) FULL IMPLEMENTATION.—For each school year beginning on or after July 1,

2014, the Secretary may use, as determined by the Secretary—

(aa) a multiplier between 1.3 and 1.6; and

(bb) subject to item (aa), a different multiplier for different schools or local educational agencies.

(viii) THRESHOLD.—

(I) PHASE-IN.—For each school year beginning on or before July 1, 2013, the threshold shall be 40 percent.

(II) FULL IMPLEMENTATION.—For each school year beginning on or after July 1, 2014, the Secretary may use a threshold that is less than 40 percent.

(ix) PHASE-IN.—

(I) IN GENERAL.—In selecting States for participation during the phase-in period, the Secretary shall select States with an adequate number and variety of schools and local educational agencies that could benefit from the option under this subparagraph, as determined by the Secretary.

(II) LIMITATION.—The Secretary may not approve additional schools and local educational agencies to receive special assistance payments under this subparagraph after the Secretary has approved schools and local educational agencies in—

(aa) for the school year beginning on July 1, 2011, 3 States; and

(bb) for each of the school years beginning July 1, 2012 and July 1, 2013, an additional 4 States per school year.

(x) ELECTION OF OPTION.—

(I) IN GENERAL.—For each school year beginning on or after July 1, 2014, any local educational agency eligible to make the election described in clause (ii) for all schools in the district or on behalf of certain schools in the district may elect to receive special assistance payments under clause (iii) for the next school year if, not later than June 30 of the current school year, the local educational agency submits to the State agency the percentage of identified students at the school or local educational agency.

(II) STATE AGENCY NOTIFICATION.—Not later than May 1 of each school year beginning on or after July 1, 2011, each State agency with schools or local educational agencies that may be eligible to elect to receive special assistance payments under this subparagraph shall notify—

(aa) each local educational agency that meets or exceeds the threshold described in clause (viii) that the local educational agency is eligible to elect to receive special assistance payments under clause (iii) for the next 4 school years, of the blended reimbursement rate the local educational agency would receive under clause (iii), and of the procedures for the local educational agency to make the election;

(bb) each local educational agency that receives special assistance payments under clause (iii) of the blended reimbursement rate the local educational agency would receive under clause (iv);

(cc) each local educational agency in the fourth year of electing to receive special

assistance payments under this subparagraph that meets or exceeds a percentage that is 10 percentage points lower than the threshold described in clause (viii) and that receives special assistance payments under clause (iv), that the local educational agency may continue to receive such payments for the next school year, of the blended reimbursement rate the local educational agency would receive under clause (v), and of the procedures for the local educational agency to make the election; and

(dd) each local educational agency that meets or exceeds a percentage that is 10 percentage points lower than the threshold described in clause (viii) that the local educational agency may be eligible to elect to receive special assistance payments under clause (iii) if the threshold described in clause (viii) is met by April 1 of the school year or if the threshold is met for a subsequent school year.

(III) PUBLIC NOTIFICATION OF LOCAL EDUCATIONAL AGENCIES.—Not later than May 1 of each school year beginning on or after July 1, 2011, each State agency with 1 or more schools or local educational agencies eligible to elect to receive special assistance payments under clause (iii) shall submit to the Secretary, and the Secretary shall publish, lists of the local educational agencies receiving notices under subclause (II).

(IV) PUBLIC NOTIFICATION OF SCHOOLS.—Not later than May 1 of each school year beginning on or after July 1, 2011, each local educational agency in a State with 1 or more schools eligible to elect to receive special assistance payments under clause (iii) shall submit to the State agency, and the State agency shall publish—

(aa) a list of the schools that meet or exceed the threshold described in clause (viii);

(bb) a list of the schools that meet or exceed a percentage that is 10 percentage points lower than the threshold described in clause (viii) and that are in the fourth year of receiving special assistance payments under clause (iv); and

(cc) a list of the schools that meet or exceed a percentage that is 10 percentage points lower than the threshold described in clause (viii).

(xi) IMPLEMENTATION.—

(I) GUIDANCE.—Not later than 90 days after December 13, 2010, the Secretary shall issue guidance to implement this subparagraph.

(II) REGULATIONS.—Not later than December 31, 2013, the Secretary shall promulgate regulations that establish procedures for State agencies, local educational agencies, and schools to meet the requirements of this subparagraph, including exercising the option described in this subparagraph.

(III) PUBLICATION.—If the Secretary uses the authority provided in clause (vii)(II)(bb) to use a different multiplier for different schools or local educational agencies, for each school year beginning on or after July

1, 2014, not later than April 1, 2014, the Secretary shall publish on the website of the Secretary a table that indicates—

(aa) each local educational agency that may elect to receive special assistance payments under clause (ii);

(bb) the blended reimbursement rate that each local educational agency would receive; and

(cc) an explanation of the methodology used to calculate the multiplier or threshold for each school or local educational agency.

(xii) REPORT.—Not later than December 31, 2013, the Secretary shall publish a report that describes—

(I) an estimate of the number of schools and local educational agencies eligible to elect to receive special assistance payments under this subparagraph that do not elect to receive the payments;

(II) for schools and local educational agencies described in subclause (I)—

(aa) barriers to participation in the special assistance option under this subparagraph, as described by the nonparticipating schools and local educational agencies; and

(bb) changes to the special assistance option under this subparagraph that would make eligible schools and local educational agencies more likely to elect to receive special assistance payments;

(III) for schools and local educational agencies that elect to receive special assistance payments under this subparagraph—

(aa) the number of schools and local educational agencies;

(bb) an estimate of the percentage of identified students and the percentage of enrolled students who were certified to receive free or reduced price meals in the school year prior to the election to receive special assistance payments under this subparagraph, and a description of how the ratio between those percentages compares to 1.6;

(cc) an estimate of the number and share of schools and local educational agencies in which more than 80 percent of students are certified for free or reduced price meals that elect to receive special assistance payments under that clause; and

(dd) whether any of the schools or local educational agencies stopped electing to receive special assistance payments under this subparagraph;

(IV) the impact of electing to receive special assistance payments under this subparagraph on—

(aa) program integrity;

(bb) whether a breakfast program is offered;

(cc) the type of breakfast program offered;

(dd) the nutritional quality of school meals; and

(ee) program participation; and

(V) the multiplier and threshold, as described in clauses (vii) and (viii) respec-

tively, that the Secretary will use for each school year beginning on or after July 1, 2014 and the rationale for any change in the multiplier or threshold.

(xiii) 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 clause (xii) \$5,000,000, to remain available until September 30, 2014.

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

(2) The special assistance factor prescribed by the Secretary for free lunches shall be 98.75 cents and the special assistance factor for reduced price lunches shall be 40 cents less than the special assistance factor for free lunches.

(3)(A) The Secretary shall prescribe on July 1, 1982, and on each subsequent July 1, an annual adjustment in the following:

(i) The national average payment rates for lunches (as established under section 1753 of this title).

(ii) The special assistance factor for lunches (as established under paragraph (2) of this subsection).

(iii) The national average payment rates for breakfasts (as established under section 4(b) of the Child Nutrition Act of 1966 [42 U.S.C. 1773 (b)]).

(iv) The national average payment rates for supplements (as established under section 1766(c) of this title).

(B) COMPUTATION OF ADJUSTMENT.—

(i) IN GENERAL.—The annual adjustment under this paragraph shall reflect changes in the cost of operating meal programs under this chapter and the Child Nutrition Act of 1966 [42 U.S.C. 1771 et seq.], as indicated by the change in the series for food away from home of the Consumer Price Index for all Urban Consumers, published by the Bureau of Labor Statistics of the Department of Labor.

(ii) BASIS.—Each annual adjustment shall reflect the changes in the series for food away from home for the most recent 12-month period for which such data are available.

(iii) ROUNDING.—On July 1, 1999, and on each subsequent July 1, the national average payment rates for meals and supplements shall be adjusted to the nearest lower cent increment and shall be based on the unrounded amounts for the preceding 12-month period.

**(b) Financing cost of free and reduced price lunches on basis of need of school for special assistance; maximum per lunch amount**

Except as provided in section 10 of the Child Nutrition Act of 1966 [42 U.S.C. 1779], the special assistance payments made to each State agency during each fiscal year under the provisions of this section shall be used by such State agency to assist schools of that State in providing free and reduced price lunches served to children pursuant to section 1758(b) of this title. The amount of such special assistance funds that a

school shall from time to time receive, within a maximum per lunch amount established by the Secretary for all States, shall be based on the need of the school for such special assistance. Such maximum per lunch amount established by the Secretary shall not be less than 60 cents.

**(c) Payments to States**

Special assistance payments to any State under this section shall be made as provided in the last sentence of section 1756 of this title.

**(d) Report of school to State educational agency, contents; report of State educational agency to Secretary, contents**

(1) The Secretary, when appropriate, may request each school participating in the school lunch program under this chapter to report monthly to the State educational agency the average number of children in the school who received free lunches and the average number of children who received reduced price lunches during the immediately preceding month.

(2) On request of the Secretary, the State educational agency of each State shall report to the Secretary the average number of children in the State who received free lunches and the average number of children in the State who received reduced price lunches during the immediately preceding month.

**(e) Eligibility of commodity only schools for special assistance payments; free and reduced price meals; discrimination and identification prohibited**

Commodity only schools shall also be eligible for special assistance payments under this section. Such schools shall serve meals free to children who meet the eligibility requirements for free meals under section 1758(b) of this title, and shall serve meals at a reduced price, not exceeding the price specified in section 1758(b)(9) of this title, to children meeting the eligibility requirements for reduced price meals under such section. No physical segregation of, or other discrimination against, any child eligible for a free or reduced-priced<sup>1</sup> lunch shall be made by the school, nor shall there be any overt identification of any such child by any means.

**(f) Repealed. Pub. L. 111-296, title IV, § 441(a)(3), Dec. 13, 2010, 124 Stat. 3261**

**(g) Universal meal service through Census data**

**(1) In general**

To the maximum extent practicable, the Secretary shall identify alternatives to—

(A) the daily counting by category of meals provided by school lunch programs under this chapter and the school breakfast program established by section 4 of the Child Nutrition Act of 1966 (42 U.S.C. 1773); and

(B) the use of annual applications as the basis for eligibility to receive free meals or reduced price meals under this chapter.

**(2) Recommendations**

**(A) Considerations**

**(i) In general**

In identifying alternatives under paragraph (1), the Secretary shall consider the

<sup>1</sup> So in original. Probably should be “reduced price”.



recommendations of the Committee on National Statistics of the National Academy of Sciences relating to use of the American Community Survey of the Bureau of the Census and other data sources.

**(ii) Socioeconomic survey**

The Secretary shall consider use of a periodic socioeconomic survey of households of children attending school in the school food authority in not more than 3 school food authorities participating in the school lunch program under this chapter.

**(iii) Survey parameters**

The Secretary shall establish requirements for the use of a socioeconomic survey under clause (ii), which shall—

(I) include criteria for survey design, sample frame validity, minimum level of statistical precision, minimum survey response rates, frequency of data collection, and other criteria as determined by the Secretary;

(II) be consistent with the Standards and Guidelines for Statistical Surveys, as published by the Office of Management and Budget;

(III) be consistent with standards and requirements that ensure proper use of Federal funds; and

(IV) specify that the socioeconomic survey be conducted at least once every 4 years.

**(B) Use of alternatives**

Alternatives described in subparagraph (A) that provide accurate and effective means of providing meal reimbursement consistent with the eligibility status of students may be—

(i) implemented for use in schools or by school food authorities that agree—

(I) to serve all breakfasts and lunches to students at no cost in accordance with regulations issued by the Secretary; and

(II) to pay, from sources other than Federal funds, the costs of serving any lunches and breakfasts that are in excess of the value of assistance received under this chapter or the Child Nutrition Act of 1966 (42 U.S.C. 1771 et seq.) with respect to the number of lunches and breakfasts served during the applicable period; or

(ii) further tested through demonstration projects carried out by the Secretary in accordance with subparagraph (C).

**(C) Demonstration projects**

**(i) In general**

For the purpose of carrying out demonstration projects described in subparagraph (B), the Secretary may waive any requirement of this chapter relating to—

(I) counting of meals provided by school lunch or breakfast programs;

(II) applications for eligibility for free or reduced priced meals; or

(III) required direct certification under section 1758(b)(4) of this title.

**(ii) Number of projects**

The Secretary shall carry out demonstration projects under this paragraph in not more than 5 local educational agencies for each alternative model that is being tested.

**(iii) Limitation**

A demonstration project carried out under this paragraph shall have a duration of not more than 3 years.

**(iv) Evaluation**

The Secretary shall evaluate each demonstration project carried out under this paragraph in accordance with procedures established by the Secretary.

**(v) Requirement**

In carrying out evaluations under clause (iv), the Secretary shall evaluate, using comparisons with local educational agencies with similar demographic characteristics—

(I) the accuracy of the 1 or more methodologies adopted as compared to the daily counting by category of meals provided by school meal programs under this chapter or the Child Nutrition Act of 1966 (42 U.S.C. 1771 et seq.) and the use of annual applications as the basis for eligibility to receive free or reduced price meals under those Acts;

(II) the effect of the 1 or more methodologies adopted on participation in programs under those Acts;

(III) the effect of the 1 or more methodologies adopted on administration of programs under those Acts; and

(IV) such other matters as the Secretary determines to be appropriate.

(June 4, 1946, ch. 281, § 11, as added Pub. L. 87-823, § 6, Oct. 15, 1962, 76 Stat. 946; amended Pub. L. 91-248, § 7, May 14, 1970, 84 Stat. 211; Pub. L. 92-153, § 4, Nov. 5, 1971, 85 Stat. 420; Pub. L. 93-150, § 3(a), Nov. 7, 1973, 87 Stat. 561; Pub. L. 94-105, § 8, Oct. 7, 1975, 89 Stat. 514; Pub. L. 95-166, § 9, Nov. 10, 1977, 91 Stat. 1336; Pub. L. 95-627, §§ 4, 5(c), Nov. 10, 1978, 92 Stat. 3619, 3620; Pub. L. 96-499, title II, § 204(a), Dec. 5, 1980, 94 Stat. 2601; Pub. L. 97-35, title VIII, §§ 801(b), 812, 813(b), 819(a), Aug. 13, 1981, 95 Stat. 522, 530, 533; Pub. L. 101-147, title II, § 203, title III, § 312(2), (3), Nov. 10, 1989, 103 Stat. 909, 916; Pub. L. 103-448, title I, § 111, Nov. 2, 1994, 108 Stat. 4706; Pub. L. 104-193, title VII, § 704(a), (b)(1), (c), Aug. 22, 1996, 110 Stat. 2289, 2290; Pub. L. 105-336, title I, § 103(a), (b)(1), (c)(1), Oct. 31, 1998, 112 Stat. 3145, 3146; Pub. L. 107-76, title VII, § 766, Nov. 28, 2001, 115 Stat. 744; Pub. L. 108-265, title I, §§ 104(d)(3), 113, June 30, 2004, 118 Stat. 738, 747; Pub. L. 111-296, title I, § 104, title IV, § 441(a)(2), (3), Dec. 13, 2010, 124 Stat. 3193, 3261.)

REFERENCES IN TEXT

The Child Nutrition Act of 1966, referred to in subsecs. (a)(1)(C)(i)(II), (E)(i)(II), (F)(ii)(I)(bb), (3)(B)(i), and (g)(2)(B)(i)(II), (C)(v)(I), is Pub. L. 89-642, Oct. 11, 1966, 80 Stat. 885, which is classified generally to chapter 13A (§ 1771 et seq.) of this title. For complete classification of that Act to the Code, see Short Title note set out under section 1771 of this title and Tables.

Those Acts, referred to in subsec. (g)(2)(C)(v)(I) to (III), mean the Richard B. Russell National School Lunch Act, which was in the original “this Act” and was translated to read “this chapter”, and the Child Nutrition Act of 1966. See above.

## AMENDMENTS

2010—Subsec. (a)(1)(B). Pub. L. 111-296, §104(a)(2), substituted “(E), or (F)” for “or (E)”.

Subsec. (a)(1)(F). Pub. L. 111-296, §104(a)(1), added subpar. (F).

Subsec. (a)(3)(B)(iii). Pub. L. 111-296, §441(a)(2), struck out designations and headings of subcls. (I) and (II) and text of subcl. (I). Text of former subcl. (I) read as follows: “For the period ending June 30, 1999, the adjustments made under this paragraph shall be computed to the nearest one-fourth cent, except that adjustments to payment rates for meals and supplements served to individuals not determined to be eligible for free or reduced price meals and supplements shall be computed to the nearest lower cent increment and based on the unrounded amount for the preceding 12-month period.”

Subsec. (f). Pub. L. 111-296, §441(a)(3), struck out subsec. (f) which related to information and assistance concerning reimbursement options.

Subsec. (g). Pub. L. 111-296, §104(b), added subsec. (g).  
2004—Subsec. (a)(1)(C) to (E). Pub. L. 108-265, §113, inserted “or school district” after “school” wherever appearing other than as part of “school year”, “school years”, “school lunch”, “school breakfast”, and “4-school-year period”.

Subsec. (e). Pub. L. 108-265, §104(d)(3), substituted “section 1758(b)(9)” for “section 1758(b)(3)”.

2001—Subsec. (f)(1)(E). Pub. L. 107-76, §766(1), substituted “2003” for “2001”.

Subsec. (f)(2)(A). Pub. L. 107-76, §766(2)(A), added subpar. (A) and struck out heading and text of former subpar. (A). Text read as follows: “Not later than January 1, 2002, the Secretary shall submit to the Committee on Education and the Workforce of the House of Representatives and the Committee on Agriculture, Nutrition and Forestry of the Senate a report on the activities of the State agencies receiving grants under this subsection.”

Subsec. (f)(2)(B). Pub. L. 107-76, §766(2)(B), substituted “reports” for “report” in introductory provisions.

1998—Subsec. (a)(1)(C)(i)(I). Pub. L. 105-336, §103(a)(1)(A), substituted “4” for “3” before “successive school years” in two places.

Subsec. (a)(1)(C)(ii), (iii). Pub. L. 105-336, §103(a)(1)(B), substituted “4” for “3” before “school-year period”.

Subsec. (a)(1)(D)(i). Pub. L. 105-336, §103(a)(2)(A), substituted “4” for “3” before “school-year period” in two places and “4” for “2” before “school years”.

Subsec. (a)(1)(D)(ii). Pub. L. 105-336, §103(a)(2)(B), struck out first sentence which read “A school described in clause (i) may reapply to the State at the end of the 2-school-year period described in clause (i) for the purpose of continuing to receive special assistance payments, as determined in accordance with this paragraph, for a subsequent 5-school-year period.”, substituted “A school described in clause (i)” for “The school”, and substituted “4-” for “5-” before “school-year period” wherever appearing.

Subsec. (a)(1)(D)(iii). Pub. L. 105-336, §103(a)(2)(C), substituted “4-” for “5-” before “school-year period”.

Subsec. (a)(1)(E)(iii). Pub. L. 105-336, §103(a)(3), struck out cl. (iii) which read as follows: “Not later than 1 year after November 2, 1994, the Secretary shall evaluate the effects of this subparagraph and notify the Committee on Education and Labor of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate of the results of the evaluation.”

Subsec. (a)(3)(B). Pub. L. 105-336, §103(b)(1), inserted subpar. heading, designated first two sentences as cls. (i) and (ii), respectively, and inserted headings, and designated last sentence as subcl. (I) of cl. (iii), inserted headings, substituted “For the period ending June 30, 1999, the adjustments” for “The adjustments”, and added subcl. (II).

Subsec. (f). Pub. L. 105-336, §103(c)(1), added subsec. (f).

1996—Subsec. (a)(1)(D)(i). Pub. L. 104-193, §704(a), struck out “, on November 2, 1994,” after “any school that”.

Subsec. (a)(3)(B). Pub. L. 104-193, §704(b)(1), inserted before period at end “, except that adjustments to payment rates for meals and supplements served to individuals not determined to be eligible for free or reduced price meals and supplements shall be computed to the nearest lower cent increment and based on the unrounded amount for the preceding 12-month period”.

Subsec. (d). Pub. L. 104-193, §704(c)(1), (3) redesignated subsec. (e) as (d) and struck out former subsec. (d) which read as follows: “In carrying out this section, the terms and conditions governing the operation of the school lunch program set forth in other sections of this chapter, including those applicable to funds apportioned or paid pursuant to section 1753 of this title but excluding the provisions of section 1756 of this title relating to matching, shall be applicable to the extent they are not inconsistent with the express requirements of this section.”

Subsec. (e). Pub. L. 104-193, §704(c)(3), redesignated subsec. (f) as (e). Former subsec. (e) redesignated (d).

Subsec. (e)(2). Pub. L. 104-193, §704(c)(2), substituted “On request of the Secretary, the State educational agency” for “The State educational agency” and struck out “each month” after “report to the Secretary”.

Subsec. (f). Pub. L. 104-193, §704(c)(3), redesignated subsec. (f) as (e).

1994—Subsec. (a)(1). Pub. L. 103-448 designated first sentence as subpar. (A) and second sentence as subpar. (B), substituted “Except as provided in subparagraph (C), (D), or (E), in the case of” for “In the case of” in subpar. (B), added subpars. (C) to (E), and struck out at end “In the case of any school that (A) elects to serve all children in that school free lunches under the school lunch program during any period of three successive school years and (B) pays, from sources other than Federal funds, for the costs of serving such lunches which are in excess of the value of assistance received under this chapter with respect to the number of lunches served during that period, special assistance payments shall be paid to the State educational agency with respect to that school during that period on the basis of the number of lunches determined under the succeeding sentence. For purposes of making special assistance payments in accordance with the preceding sentence, the number of lunches served by a school to children eligible for free lunches and reduced price lunches during each school year of the three-school-year period shall be deemed to be the number of lunches served by that school to children eligible for free lunches and reduced price lunches during the first school year of such period, unless that school elects, for purposes of computing the amount of such payments, to determine on a more frequent basis the number of children eligible for free and reduced price lunches who are served lunches during such period.”

1989—Subsecs. (a), (b). Pub. L. 101-147, §312(2), (3), substituted “reduced price” for “reduced-price” and “special assistance” for “special-assistance” wherever appearing in pars. (1) and (2) of subsec. (a) and first sentence of subsec. (b).

Subsec. (e)(1). Pub. L. 101-147, §203, substituted “The Secretary, when appropriate, may request each school participating in the school lunch program under this chapter to report monthly to the State educational agency” for “Each school participating in the school lunch program under this chapter shall report each month to its State educational agency”.

Subsec. (f). Pub. L. 101-147, §312(2), (3), substituted “reduced price” for “reduced-price” and “special assistance” for “special-assistance”.

1981—Subsec. (a). Pub. L. 97-35, §801(b), redesignated existing provisions as par. (1), substituted “(A)” for “(1)” and “(B)” for “(2)”, and struck out provisions relating to special assistance factors, adjustments, etc.,

for funds for the fiscal year beginning July 1, 1973, and after, and added pars. (2) and (3).

Subsec. (b). Pub. L. 97-35, §819(a)(1), struck out “financing the cost of” before “providing free”.

Subsec. (d). Pub. L. 97-35, §819(a)(2), struck out reference to section 1754 of this title.

Subsec. (e). Pub. L. 97-35, §812, struck out par. (1) which related to submission of State plan for child nutrition operations. Former pars. (2) and (3) were redesignated as (1) and (2), respectively, and in such pars. as so redesignated, struck out requirement respecting estimation of eligible children by participating State.

Subsec. (f). Pub. L. 97-35, §813(b), added subsec. (f).

1980—Subsec. (a). Pub. L. 96-499 struck out provision that if in any State all schools charged students a uniform price for reduced-price lunches, and such price was less than twenty cents, the special assistance factor prescribed for reduced-price lunches in such State was to be equal to the special assistance factor for free lunches reduced by either ten cents or the price charged for reduced-price lunches in such State, whichever was greater.

1978—Subsec. (a). Pub. L. 95-627 substituted “20 cents” for “10 cents” after “which shall be”, inserted “for All Urban Consumers” after “Consumer Price Index”, and inserted provision relating to the special assistance factor prescribed for reduced-price lunches in any State in which all schools charge students a uniform price for lunches.

1977—Subsec. (a). Pub. L. 95-166 provided for special-assistance payments to the State educational agency where 80 percent of children in attendance during the school year are eligible for free lunches or reduced-price lunches and for determination of number of lunches served to children eligible for free lunches and reduced-price lunches where the school serves all students, eligible and noneligible, and funds for non-eligible students are from other than Federal funds.

1975—Subsec. (e)(1). Pub. L. 94-105 substituted “Each year by not later than a date specified by the Secretary” for “Not later than January 1 of each year”, and “following school year” for “following fiscal year”.

1973—Subsec. (a). Pub. L. 93-150 added subsec. (a) and struck out former subsec. (a) provisions relating to appropriations authorization for fiscal year ending June 30, 1971, and succeeding fiscal years of such sums as may be necessary to provide special assistance to assure access to the school lunch program under this chapter by children of low-income families.

Subsec. (b). Pub. L. 93-150 added subsec. (b) and struck out former subsec. (b) provisions relating to formula for apportionment of funds and need for additional funds.

Subsec. (c). Pub. L. 93-150 redesignated subsec. (d) as (c), substituted “Special assistance payments to any State” for “Payment of the funds apportioned to any State”, and struck out former subsec. (c) provisions relating to basis for apportionment among States and need for additional funds.

Subsec. (d). Pub. L. 93-150 redesignated subsec. (g) as (d). Former subsec. (d) redesignated (c).

Subsec. (e). Pub. L. 93-150 redesignated subsec. (h) as (e) struck out former subsec. (e) provisions relating to State disbursement to schools for financing operating costs of the school lunch program and basis for determination of amount of funds. Subject matter was covered by subsecs. (a) and (b) of this section.

Subsec. (f). Pub. L. 93-150 struck out subsec. (f) provisions relating to withholding of funds from State educational agencies not permitted to disburse funds to nonprofit private schools and direct disbursement to nonprofit private schools, and conditions thereof.

Subsecs. (g), (h). Pub. L. 93-150 redesignated subsecs. (g) and (h) as (d) and (e), respectively.

1971—Subsec. (e). Pub. L. 92-153 established a reimbursement rate as amount of funds to be disbursed to schools in a State, provided for receipt of a greater amount or reimbursement per meal if the school established financial inability to support service of meals, and prescribed maximum per meal amount and higher

maximum per meal amount for especially needy schools.

1970—Subsec. (a). Pub. L. 91-248 authorized for fiscal year ending June 30, 1971, and for each succeeding fiscal year such sums as may be necessary to provide assistance to assure access to school lunch program by children of low-income families.

Subsec. (b). Pub. L. 91-248 substituted formula for apportionment of funds among Puerto Rico, the Virgin Islands, Guam, and American Samoa based on the ratio of the number of children aged three to seventeen, inclusive, in such State as compared to the total number of such children in all such States, for a ratio based on the number of free or reduced price lunches served in the preceding fiscal year in such State as compared to the number of such lunches served in all such States in the preceding fiscal year.

Subsec. (c). Pub. L. 91-248 struck out provision requiring that not less than 50 percent of the remaining sums appropriated be apportioned among the States other than Puerto Rico, the Virgin Islands, Guam, and American Samoa, substituted formula for apportionment of special assistance funds among the States based on the total number of children aged three to seventeen, inclusive, in households with incomes of less than \$4,000 per annum, for a formula based on the number of free or reduced price lunches served in the preceding fiscal year and the assistance need rate, and provided that further apportionment be made on the same basis as the initial apportionment to any State which justifies the need for additional funds.

Subsec. (e). Pub. L. 91-248 substituted provision requiring that funds disbursed by the State be used to assist schools in financing all or part of the operating costs of the school lunch program, for requirement that disbursed funds be used to assist schools in the purchase of agricultural commodities and other foods, struck out provision relating to the selection of schools to receive funds, and substituted as a basis for determination of the amount of funds to go to each school the need of that school for assistance in meeting the requirements of section 1758 of this title, for such factors as economic condition of area from which school draws attendance, the percentages of free and reduced price lunches being served in such schools, the price of lunches in such schools compared with the average prevailing price of lunches served in the State under this chapter and the need of such schools for assistance as reflected by the financial position of the school’s lunch programs.

Subsec. (f). Pub. L. 91-248 substituted “in the fiscal year beginning two years immediately prior to the fiscal year for which the funds are appropriated” for “in the preceding fiscal year”.

Subsec. (h). Pub. L. 91-248 added subsec. (h).

#### EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111-296 effective Oct. 1, 2010, except as otherwise specifically provided, see section 445 of Pub. L. 111-296, set out as a note under section 1751 of this title.

#### EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by section 104(d)(3) of Pub. L. 108-265 effective July 1, 2005, and amendment by section 113 of Pub. L. 108-265 effective June 30, 2004, see section 502(a), (b)(4) of Pub. L. 108-265, as amended, set out as an Effective Date note under section 1754 of this title.

#### EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105-336 effective Oct. 1, 1998, see section 401 of Pub. L. 105-336, set out as a note under section 1755 of this title.

#### EFFECTIVE DATE OF 1996 AMENDMENT

Pub. L. 104-193, title VII, §704(b)(2), Aug. 22, 1996, 110 Stat. 2290, provided that: “The amendment made by paragraph (1) [amending this section] shall become effective on July 1, 1997.”

## EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103-448 effective Oct. 1, 1994, see section 401 of Pub. L. 103-448, set out as a note under section 1755 of this title.

## EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by section 801 of Pub. L. 97-35 effective Sept. 1, 1981, amendment by sections 812 and 819 of Pub. L. 97-35 effective Oct. 1, 1981, and amendment by section 813 of Pub. L. 97-35 effective 90 days after Aug. 13, 1981, see section 820(a)(1)(A), (4), (5) of Pub. L. 97-35, set out as a note under section 1753 of this title.

## EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by sections 4 and 5(c) of Pub. L. 95-627 effective Jan. 1, 1979, and July 1, 1979, respectively, see section 14 of Pub. L. 95-627, set out as a note under section 1755 of this title.

## SEMIANNUAL ADJUSTMENTS REFLECTING THE CONSUMER PRICE INDEX FOR ALL URBAN CONSUMERS DURING FISCAL YEAR ENDING SEPTEMBER 30, 1981

Pub. L. 96-499, title II, §204(b), Dec. 5, 1980, 94 Stat. 2601, related to annual and semiannual adjustments required under the former sixth sentence of subsec. (a) of this section during the fiscal year ending Sept. 30, 1981.

## ADDITIONAL FUNDS FOR FOOD SERVICE PROGRAMS FOR CHILDREN; APPORTIONMENT TO STATES SPECIAL ASSISTANCE; CONSULTATION WITH CHILD NUTRITION COUNCIL; REIMBURSEMENT FROM SUPPLEMENTAL APPROPRIATION

Additional funds for food service programs for children from appropriations under section 612(c) of Title 7, Agriculture, apportionment to States, special assistance programs, consultation with National Advisory Council on Child Nutrition, and reimbursement from supplemental appropriation, see section 1 of Pub. L. 92-153, set out as a note under section 1753 of this title.

**§ 1760. Miscellaneous provisions****(a) Accounts and records**

States, State educational agencies, and schools participating in the school lunch program under this chapter shall keep such accounts and records as may be necessary to enable the Secretary to determine whether the provisions of this chapter are being complied with. Such accounts and records shall be available at any reasonable time for inspection and audit by representatives of the Secretary and shall be preserved for such period of time, not in excess of five years, as the Secretary determines is necessary.

**(b) Agreements****(1) In general**

The Secretary shall incorporate, in the agreement of the Secretary with the State agencies administering programs authorized under this chapter or the Child Nutrition Act of 1966 (42 U.S.C. 1771 et seq.), the express requirements with respect to the operation of the programs to the extent applicable and such other provisions as in the opinion of the Secretary are reasonably necessary or appropriate to effectuate the purposes of this chapter and the Child Nutrition Act of 1966 (42 U.S.C. 1771 et seq.).

**(2) Expectations for use of funds**

Agreements described in paragraph (1) shall include a provision that—

(A) supports full use of Federal funds provided to State agencies for the administra-

tion of programs authorized under this chapter or the Child Nutrition Act of 1966 (42 U.S.C. 1771 et seq.); and

(B) excludes the Federal funds from State budget restrictions or limitations including, at a minimum—

- (i) hiring freezes;
- (ii) work furloughs; and
- (iii) travel restrictions.

**(c) Requirements with respect to teaching personnel, curriculum, instruction, etc.**

In carrying out the provisions of this chapter, the Secretary shall not impose any requirement with respect to teaching personnel, curriculum, instruction, methods of instruction, and materials of instruction in any school.

**(d) Definitions**

For the purposes of this chapter—

**(1) CHILD.—**

(A) IN GENERAL.—The term “child” includes an individual, regardless of age, who—

(i) is determined by a State educational agency, in accordance with regulations prescribed by the Secretary, to have one or more disabilities; and

(ii) is attending any institution, as defined in section 1766(a) of this title, or any nonresidential public or nonprofit private school of high school grade or under, for the purpose of participating in a school program established for individuals with disabilities.

(B) RELATIONSHIP TO CHILD AND ADULT CARE FOOD PROGRAM.—No institution that is not otherwise eligible to participate in the program under section 1766 of this title shall be considered eligible because of this paragraph.

(2) “Commodity only schools” means schools that do not participate in the school lunch program under this chapter, but which receive commodities made available by the Secretary for use by such schools in nonprofit lunch programs.

(3) DISABILITY.—The term “disability” has the meaning given the term in the Rehabilitation Act of 1973 for purposes of title II of that Act (29 U.S.C. 760 et seq.).

**(4) LOCAL EDUCATIONAL AGENCY.—**

(A) IN GENERAL.—The term “local educational agency” has the meaning given the term in section 7801 of title 20.

(B) INCLUSION.—The term “local educational agency” includes, in the case of a private nonprofit school, an appropriate entity determined by the Secretary.

(5) “School” means (A) any public or nonprofit private school of high school grade or under, and (B) any public or licensed nonprofit private residential child care institution (including, but not limited to, orphanages and homes for the mentally retarded, but excluding Job Corps Centers funded by the Department of Labor). For purposes of this paragraph, the term “nonprofit”, when applied to any such private school or institution, means any such school or institution which is exempt from tax under section 501(c)(3) of title 26.

(6) “School year” means the annual period from July 1 through June 30.

(7) “Secretary” means the Secretary of Agriculture.

(8) “State” means any of the fifty States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, or the Commonwealth of the Northern Mariana Islands.

(9) “State educational agency” means, as the State legislature may determine, (A) the chief State school officer (such as the State superintendent of public instruction, commissioner of education, or similar officer), or (B) a board of education controlling the State department of education.

**(e) Value of assistance as income or resources under Federal or State laws**

The value of assistance to children under this chapter shall not be considered to be income or resources for any purposes under any Federal or State laws, including laws relating to taxation and welfare and public assistance programs.

**(f) Adjustment of national average payment rate for Alaska, Hawaii, territories and possessions, etc.**

In providing assistance for breakfasts, lunches, suppers, and supplements served in Alaska, Hawaii, Guam, American Samoa, Puerto Rico, the Virgin Islands of the United States, and the Commonwealth of the Northern Mariana Islands, the Secretary may establish appropriate adjustments for each such State to the national average payment rates prescribed under sections 1753, 1759a, 1761, and 1766 of this title and section 4 of the Child Nutrition Act of 1966 [42 U.S.C. 1773], to reflect the differences between the costs of providing meals and supplements in those States and the costs of providing meals and supplements in all other States.

**(g) Criminal penalties**

Whoever embezzles, willfully misapplies, steals, or obtains by fraud any funds, assets, or property that are the subject of a grant or other form of assistance under this chapter or the Child Nutrition Act of 1966 [42 U.S.C. 1771 et seq.], whether received directly or indirectly from the United States Department of Agriculture, or whoever receives, conceals, or retains such funds, assets, or property to personal use or gain, knowing such funds, assets, or property have been embezzled, willfully misapplied, stolen, or obtained by fraud shall, if such funds, assets, or property are of the value of \$100 or more, be fined not more than \$25,000 or imprisoned not more than five years, or both, or, if such funds, assets, or property are of a value of less than \$100, shall be fined not more than \$1,000 or imprisoned for not more than one year, or both.

**(h) Combined allocation for breakfast and lunch**

No provision of this chapter or of the Child Nutrition Act of 1966 [42 U.S.C. 1771 et seq.] shall require any school receiving funds under this chapter and the Child Nutrition Act of 1966 to account separately for the cost incurred in the school lunch and school breakfast programs.

**(i) Use of school lunch facilities for elderly programs**

Facilities, equipment, and personnel provided to a school food authority for a program authorized under this chapter or the Child Nutrition Act of 1966 [42 U.S.C. 1771 et seq.] may be used, as determined by a local educational agency, to support a nonprofit nutrition program for the elderly, including a program funded under the Older Americans Act of 1965 [42 U.S.C. 3001 et seq.].

**(j) Reimbursement for final claims**

(1) Except as provided in paragraph (2), the Secretary may provide reimbursements for final claims for service of meals, supplements, and milk submitted to State agencies by eligible schools, summer camps, family day care homes, institutions, and service institutions only if—

(A) the claims have been submitted to the State agencies not later than 60 days after the last day of the month for which the reimbursement is claimed; and

(B) the final program operations report for the month is submitted to the Secretary not later than 90 days after the last day of the month.

(2) The Secretary may waive the requirements of paragraph (1) at the discretion of the Secretary.

**(k) Repealed. Pub. L. 111-296, title IV, § 441(a)(4), Dec. 13, 2010, 124 Stat. 3261**

**(l) Waiver of statutory and regulatory requirements**

(1)(A) Except as provided in paragraph (4), the Secretary may waive any requirement under this chapter or the Child Nutrition Act of 1966 (42 U.S.C. 1771 et seq.), or any regulation issued under either this chapter or such Act, for a State or eligible service provider that requests a waiver if—

(i) the Secretary determines that the waiver of the requirement would facilitate the ability of the State or eligible service provider to carry out the purpose of the program;

(ii) the State or eligible service provider has provided notice and information to the public regarding the proposed waiver; and

(iii) the State or eligible service provider demonstrates to the satisfaction of the Secretary that the waiver will not increase the overall cost of the program to the Federal Government, and, if the waiver does increase the overall cost to the Federal Government, the cost will be paid from non-Federal funds.

(B) The notice and information referred to in subparagraph (A)(ii) shall be provided in the same manner in which the State or eligible service provider customarily provides similar notices and information to the public.

(2)(A) To request a waiver under paragraph (1), a State or eligible service provider (through the appropriate administering State agency) shall submit an application to the Secretary that—

(i) identifies the statutory or regulatory requirements that are requested to be waived;

(ii) in the case of a State requesting a waiver, describes actions, if any, that the State has undertaken to remove State statutory or regulatory barriers;

(iii) describes the goal of the waiver to improve services under the program and the expected outcomes if the waiver is granted; and  
 (iv) includes a description of the impediments to the efficient operation and administration of the program.

(B) An application described in subparagraph (A) shall be developed by the State or eligible service provider and shall be submitted to the Secretary by the State.

(3) The Secretary shall act promptly on a waiver request contained in an application submitted under paragraph (2) and shall either grant or deny the request. The Secretary shall state in writing the reasons for granting or denying the request.

(4) The Secretary may not grant a waiver under this subsection that increases Federal costs or that relates to—

(A) the nutritional content of meals served;  
 (B) Federal reimbursement rates;  
 (C) the provision of free and reduced price meals;

(D) limits on the price charged for a reduced price meal;

(E) maintenance of effort;

(F) equitable participation of children in private schools;

(G) distribution of funds to State and local school food service authorities and service institutions participating in a program under this chapter and the Child Nutrition Act of 1966 (42 U.S.C. 1771 et seq.);

(H) the disclosure of information relating to students receiving free or reduced price meals and other recipients of benefits;

(I) prohibiting the operation of a profit producing program;

(J) the sale of competitive foods;

(K) the commodity distribution program under section 1762a of this title;

(L) the special supplemental nutrition program authorized under section 17 of the Child Nutrition Act of 1966 (42 U.S.C. 1786); or

(M) enforcement of any constitutional or statutory right of an individual, including any right under—

(i) title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d et seq.);

(ii) section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794);

(iii) title IX of the Education Amendments of 1972 (20 U.S.C. 1681 et seq.);

(iv) the Age Discrimination Act of 1975 (42 U.S.C. 6101 et seq.);

(v) the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et seq.); and

(vi) the Individuals with Disabilities Education Act (20 U.S.C. 1400 et seq.).

(5) The Secretary shall periodically review the performance of any State or eligible service provider for which the Secretary has granted a waiver under this subsection and shall terminate the waiver if the performance of the State or service provider has been inadequate to justify a continuation of the waiver. The Secretary shall terminate the waiver if, after periodic review, the Secretary determines that the waiver has resulted in an increase in the overall cost of the program to the Federal Government and the

increase has not been paid for in accordance with paragraph (1)(A)(iii).

(6) The Secretary shall annually submit to the Committee on Education and Labor of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate, a report—

(A) summarizing the use of waivers by the State and eligible service providers;

(B) describing whether the waivers resulted in improved services to children;

(C) describing the impact of the waivers on providing nutritional meals to participants; and

(D) describing how the waivers reduced the quantity of paperwork necessary to administer the program.

(7) As used in this subsection, the term “eligible service provider” means—

(A) a local school food service authority;

(B) a service institution or private nonprofit organization described in section 1761 of this title; or

(C) a family or group day care home sponsoring organization described in section 1766 of this title.

#### **(m) Procurement training**

##### **(1) In general**

Subject to the availability of funds made available under paragraph (4), the Secretary shall provide technical assistance and training to States, State agencies, schools, and school food authorities in the procurement of goods and services for programs under this chapter or the Child Nutrition Act of 1966 (42 U.S.C. 1771 et seq.) (other than section 17 of that Act (42 U.S.C. 1786)).

##### **(2) Buy American training**

Activities carried out under paragraph (1) shall include technical assistance and training to ensure compliance with subsection (n) of this section.

##### **(3) Procuring safe foods**

Activities carried out under paragraph (1) shall include technical assistance and training on procuring safe foods, including the use of model specifications for procuring safe foods.

##### **(4) Authorization of appropriations**

There is authorized to be appropriated to carry out this subsection \$1,000,000 for each of fiscal years 2010 through 2015, to remain available until expended.

#### **(n) Buy American**

##### **(1) Definition of domestic commodity or product**

In this subsection, the term “domestic commodity or product” means—

(A) an agricultural commodity that is produced in the United States; and

(B) a food product that is processed in the United States substantially using agricultural commodities that are produced in the United States.

##### **(2) Requirement**

###### **(A) In general**

Subject to subparagraph (B), the Secretary shall require that a school food authority

purchase, to the maximum extent practicable, domestic commodities or products.

**(B) Limitations**

Subparagraph (A) shall apply only to—

(i) a school food authority located in the contiguous United States; and

(ii) a purchase of a domestic commodity or product for the school lunch program under this chapter or the school breakfast program under section 4 of the Child Nutrition Act of 1966 (42 U.S.C. 1773).

**(3) Applicability to Hawaii**

Paragraph (2)(A) shall apply to a school food authority in Hawaii with respect to domestic commodities or products that are produced in Hawaii in sufficient quantities to meet the needs of meals provided under the school lunch program under this chapter or the school breakfast program under section 4 of the Child Nutrition Act of 1966 (42 U.S.C. 1773).

**(4) Applicability to Puerto Rico**

Paragraph (2)(A) shall apply to a school food authority in the Commonwealth of Puerto Rico with respect to domestic commodities or products that are produced in the Commonwealth of Puerto Rico in sufficient quantities to meet the needs of meals provided under the school lunch program under this chapter or the school breakfast program under section 4 of the Child Nutrition Act of 1966 (42 U.S.C. 1773).

**(o) Procurement contracts**

In acquiring a good or service for programs under this chapter or the Child Nutrition Act of 1966 (42 U.S.C. 1771 et seq.) (other than section 17 of that Act (42 U.S.C. 1786)), a State, State agency, school, or school food authority may enter into a contract with a person that has provided specification information to the State, State agency, school, or school food authority for use in developing contract specifications for acquiring such good or service.

**(p) Price for a paid lunch**

**(1) Definition of paid lunch**

In this subsection, the term “paid lunch” means a reimbursable lunch served to students who are not certified to receive free or reduced price meals.

**(2) Requirement**

**(A) In general**

For each school year beginning July 1, 2011, each school food authority shall establish a price for paid lunches in accordance with this subsection.

**(B) Lower price**

**(i) In general**

In the case of a school food authority that established a price for a paid lunch in the previous school year that was less than the difference between the total Federal reimbursement for a free lunch and the total Federal reimbursement for a paid lunch, the school food authority shall establish an average price for a paid lunch that is not less than the price charged in

the previous school year, as adjusted by a percentage equal to the sum obtained by adding—

(I) 2 percent; and

(II) the percentage change in the Consumer Price Index for All Urban Consumers (food away from home index) used to increase the Federal reimbursement rate under section 1759a of this title for the most recent school year for which data are available, as published in the Federal Register.

**(ii) Rounding**

A school food authority may round the adjusted price for a paid lunch under clause (i) down to the nearest 5 cents.

**(iii) Maximum required price increase**

**(I) In general**

The maximum annual average price increase required to meet the requirements of this subparagraph shall not exceed 10 cents for any school food authority.

**(II) Discretionary increase**

A school food authority may increase the average price for a paid lunch for a school year by more than 10 cents.

**(C) Equal or greater price**

**(i) In general**

In the case of a school food authority that established an average price for a paid lunch in the previous school year that was equal to or greater than the difference between the total Federal reimbursement for a free lunch and the total Federal reimbursement for a paid lunch, the school food authority shall establish an average price for a paid lunch that is not less than the difference between the total Federal reimbursement for a free lunch and the total Federal reimbursement for a paid lunch.

**(ii) Rounding**

A school food authority may round the adjusted price for a paid lunch under clause (i) down to the nearest 5 cents.

**(3) Exceptions**

**(A) Reduction in price**

A school food authority may reduce the average price of a paid lunch established under this subsection if the State agency ensures that funding from non-Federal sources (other than in-kind contributions) is added to the nonprofit school food service account of the school food authority in an amount estimated to be equal to at least the difference between—

(i) the average price required of the school food authority for the paid lunches under paragraph (2); and

(ii) the average price charged by the school food authority for the paid lunches.

**(B) Non-Federal sources**

For the purposes of subparagraph (A), non-Federal sources does not include revenue

from the sale of foods sold in competition with meals served under the school lunch program authorized under this chapter or the school breakfast program established by section 4 of the Child Nutrition Act of 1966 (42 U.S.C. 1773).

**(C) Other programs**

This subsection shall not apply to lunches provided under section 1766 of this title.

**(4) Regulations**

The Secretary shall establish procedures to carry out this subsection, including collecting and publishing the prices that school food authorities charge for paid meals on an annual basis and procedures that allow school food authorities to average the pricing of paid lunches at schools throughout the jurisdiction of the school food authority.

**(q) Nonprogram food sales**

**(1) Definition of nonprogram food**

In this subsection:

**(A) In general**

The term “nonprogram food” means food that is—

(i) sold in a participating school other than a reimbursable meal provided under this chapter or the Child Nutrition Act of 1966 (42 U.S.C. 1771 et seq.); and

(ii) purchased using funds from the nonprofit school food service account of the school food authority of the school.

**(B) Inclusion**

The term “nonprogram food” includes food that is sold in competition with a program established under this chapter or the Child Nutrition Act of 1966 (42 U.S.C. 1771 et seq.).

**(2) Revenues**

**(A) In general**

The proportion of total school food service revenue provided by the sale of nonprogram foods to the total revenue of the school food service account shall be equal to or greater than the proportion of total food costs associated with obtaining nonprogram foods to the total costs associated with obtaining program and nonprogram foods from the account.

**(B) Accrual**

All revenue from the sale of nonprogram foods shall accrue to the nonprofit school food service account of a participating school food authority.

**(C) Effective date**

This subsection shall be effective beginning on July 1, 2011.

**(r) Disqualified schools, institutions, and individuals**

Any school, institution, service institution, facility, or individual that has been terminated from any program authorized under this chapter or the Child Nutrition Act of 1966 (42 U.S.C. 1771 et seq.) and is on a list of disqualified institutions and individuals under section 1761 of this title or section 1766(d)(5)(E) of this title may not

be approved to participate in or administer any program authorized under this chapter or the Child Nutrition Act of 1966 (42 U.S.C. 1771 et seq.).

(June 4, 1946, ch. 281, §12, formerly §11, 60 Stat. 233; July 12, 1952, ch. 699, §1(c), 66 Stat. 591; Pub. L. 87-688, §3(a), Sept. 25, 1962, 76 Stat. 587; renumbered §12 and amended Pub. L. 87-823, §5, Oct. 15, 1962, 76 Stat. 945; Pub. L. 91-248, §1(b), May 14, 1970, 84 Stat. 208; Pub. L. 94-105, §9, Oct. 7, 1975, 89 Stat. 514; Pub. L. 95-166, §§3, 19(c), Nov. 10, 1977, 91 Stat. 1332, 1345; Pub. L. 95-627, §§6(a), 10(a), (b), Nov. 10, 1978, 92 Stat. 3620, 3623; Pub. L. 96-499, title II, §205, Dec. 5, 1980, 94 Stat. 2601; Pub. L. 97-35, title VIII, §§808(a), 813(d), 819(c), Aug. 13, 1981, 95 Stat. 527, 530, 533; Pub. L. 99-500, title III, §§325(a), 326, 373(a), Oct. 18, 1986, 100 Stat. 1783-361, 1783-369, and Pub. L. 99-591, title III, §§325(a), 326, 373(a), Oct. 30, 1986, 100 Stat. 3341-364, 3341-365, 3341-372; Pub. L. 99-661, div. D, title II, §§4205(a), 4206, title V, §4503(a), Nov. 14, 1986, 100 Stat. 4072, 4073, 4081; Pub. L. 100-71, title I, §101(a), July 11, 1987, 101 Stat. 429; Pub. L. 101-147, title III, §§306, 312(1), Nov. 10, 1989, 103 Stat. 914, 916; Pub. L. 103-448, title I, §§112(a)(1), (b)-(d), 113, Nov. 2, 1994, 108 Stat. 4708-4712; Pub. L. 104-193, title VII, §§701(b), 705, Aug. 22, 1996, 110 Stat. 2288, 2290; Pub. L. 105-336, title I, §§104, 107(j)(3)(A), Oct. 31, 1998, 112 Stat. 3147, 3153; Pub. L. 106-224, title II, §242(b)(3), June 20, 2000, 114 Stat. 412; Pub. L. 107-171, title IV, §4304, May 13, 2002, 116 Stat. 331; Pub. L. 108-265, title I, §§108(b), 114, 115, title II, §203(i)(2), June 30, 2004, 118 Stat. 746, 748, 780; Pub. L. 111-296, title II, §§205, 206, title III, §§361, 362, title IV, §§403, 441(a)(4), Dec. 13, 2010, 124 Stat. 3218, 3220, 3258, 3259, 3261.)

REFERENCES IN TEXT

The Child Nutrition Act of 1966, referred to in text, is Pub. L. 89-642, Oct. 11, 1966, 80 Stat. 885, which is classified generally to chapter 13A (§1771 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1771 of this title and Tables.

The Rehabilitation Act of 1973, referred to in subsec. (d)(3), is Pub. L. 93-112, Sept. 26, 1973, 87 Stat. 355, as amended, which is classified generally to chapter 16 (§701 et seq.) of Title 29, Labor. Title II of the Act is classified generally to subchapter II (§760 et seq.) of chapter 16 of Title 29. For complete classification of this Act to the Code, see Short Title note set out under section 701 of Title 29 and Tables.

The Older Americans Act of 1965, referred to in subsec. (i), is Pub. L. 89-73, July 14, 1965, 79 Stat. 218, as amended, which is classified generally to chapter 35 (§3001 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 3001 of this title and Tables.

The Civil Rights Act of 1964, referred to in subsec. (l)(4)(M)(i), is Pub. L. 88-352, July 2, 1964, 78 Stat. 241, as amended. Title VI of the Act is classified generally to subchapter V (§2000d et seq.) of chapter 21 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 2000a of this title and Tables.

The Education Amendments of 1972, referred to in subsec. (l)(4)(M)(iii), is Pub. L. 92-318, June 23, 1972, 86 Stat. 235, as amended. Title IX of the Act, known as the Patsy Takemoto Mink Equal Opportunity in Education Act, is classified principally to chapter 38 (§1681 et seq.) of Title 20, Education. For complete classification of this Act to the Code, see Short Title note set out under section 1681 of Title 20 and Tables.



The Age Discrimination Act of 1975, referred to in subsec. (l)(4)(M)(iv), is title III of Pub. L. 94-135, Nov. 28, 1975, 89 Stat. 728, as amended, which is classified generally to chapter 76 (§6101 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 6101 of this title and Tables.

The Americans with Disabilities Act of 1990, referred to in subsec. (l)(4)(M)(v), is Pub. L. 101-336, July 26, 1990, 104 Stat. 327, which is classified principally to chapter 126 (§12101 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 12101 of this title and Tables.

The Individuals with Disabilities Education Act, referred to in subsec. (l)(4)(M)(vi), is title VI of Pub. L. 91-230, Apr. 13, 1970, 84 Stat. 175, as amended, which is classified generally to chapter 33 (§1400 et seq.) of Title 20, Education. For complete classification of this Act to the Code, see section 1400 of Title 20 and Tables.

#### CODIFICATION

Pub. L. 99-591 is a corrected version of Pub. L. 99-500.

#### AMENDMENTS

2010—Subsec. (b). Pub. L. 111-296, §361, added subsec. (b) and struck out former subsec. (b). Prior to amendment, text read as follows: “The Secretary shall incorporate, in the Secretary’s agreements with the State educational agencies, the express requirements under this chapter with respect to the operation of the school lunch program under this chapter insofar as they may be applicable and such other provisions as in the Secretary’s opinion are reasonably necessary or appropriate to effectuate the purposes of this chapter.”

Subsec. (k). Pub. L. 111-296, §441(a)(4), struck out subsec. (k) which related to expedited rulemaking.

Subsec. (m)(4). Pub. L. 111-296, §403, substituted “2010 through 2015” for “2005 through 2009”.

Subsec. (p). Pub. L. 111-296, §205, added subsec. (p).

Subsec. (q). Pub. L. 111-296, §206, added subsec. (q).

Subsec. (r). Pub. L. 111-296, §362, added subsec. (r).

2004—Subsec. (d)(3) to (9). Pub. L. 108-265, §108(b), redesignated par. (8) as (3), added par. (4), and redesignated former pars. (3) to (7) as (5) to (9), respectively.

Subsec. (m). Pub. L. 108-265, §115, added subsec. (m).

Pub. L. 108-265, §114, struck out subsec. (m), which related to grants for food and nutrition projects for each of fiscal years 1995 through 2003.

Subsec. (p). Pub. L. 108-265, §203(i)(2), struck out subsec. (p), which authorized grants for carrying out the demonstration project under section 1786(r) of this title and directed the Secretary to conduct an evaluation of such project and grant program.

2002—Subsec. (n)(4). Pub. L. 107-171 added par. (4).

2000—Subsec. (p). Pub. L. 106-224 added subsec. (p).

1998—Subsec. (d)(1)(A)(i), (ii). Pub. L. 105-336, §107(j)(3)(A)(i), struck out “mental or physical” before “disabilities”.

Subsec. (d)(8). Pub. L. 105-336, §107(j)(3)(A)(ii), added par. (8).

Subsec. (f). Pub. L. 105-336, §104(a), substituted “breakfasts, lunches, suppers, and supplements” for “school breakfasts and lunches”, substituted “sections 1753, 1759a, 1761, and 1766” for “sections 1753 and 1759a”, and substituted “meals and supplements” for “lunches and breakfasts” in two places.

Subsec. (g). Pub. L. 105-336, §104(b), substituted “\$25,000” for “\$10,000”.

Subsec. (m)(3), (5). Pub. L. 105-336, §104(c), substituted “2003” for “1998”.

Subsec. (n). Pub. L. 105-336, §104(d), added subsec. (n).

Subsec. (o). Pub. L. 105-336, §104(e), added subsec. (o).

1996—Subsec. (a). Pub. L. 104-193, §705(a), substituted “be available at any reasonable time” for “at all times be available”.

Subsec. (c). Pub. L. 104-193, §705(b), substituted “the Secretary shall not” for “neither the Secretary nor the State shall”.

Subsec. (d)(1). Pub. L. 104-193, §705(c)(3), redesignated par. (9) as (1). Former par. (1) redesignated (6).

Pub. L. 104-193, §705(c)(1), substituted “the Commonwealth of the Northern Mariana Islands” for “the Trust Territory of the Pacific Islands”.

Subsec. (d)(2). Pub. L. 104-193, §705(c)(3), redesignated par. (7) as (2). Former par. (2) redesignated (7).

Subsec. (d)(3). Pub. L. 104-193, §705(c)(2), (3), redesignated par. (5) as (3) and struck out former par. (3) which read as follows: “‘Participation rate’ for a State means a number equal to the number of lunches, consisting of a combination of foods and meeting the minimum requirements prescribed by the Secretary pursuant to section 1753 of this title, served in the fiscal year beginning two years immediately prior to the fiscal year for which the Federal funds are appropriated by schools participating in the program under this chapter in the State, as determined by the Secretary.”

Subsec. (d)(4). Pub. L. 104-193, §705(c)(2), (3), redesignated par. (6) as (4) and struck out former par. (4) which read as follows: “‘Assistance need rate’ (A) in the case of any State having an average annual per capita income equal to or greater than the average annual per capita income for all the States, shall be 5; and (B) in the case of any State having an average annual per capita income less than the average annual per capita income for all the States, shall be the product of 5 and the quotient obtained by dividing the average annual per capita income for all the States by the average annual per capita income for such State, except that such product may not exceed 9 for any such State. For the purposes of this paragraph (i) the average annual per capita income for any State and for all the States shall be determined by the Secretary on the basis of the average annual per capita income for each State and for all the States for the three most recent years for which such data are available and certified to the Secretary by the Department of Commerce; and (ii) the average annual per capita income for American Samoa shall be disregarded in determining the average annual per capita income for all the States for periods ending before July 1, 1967.”

Subsec. (d)(5). Pub. L. 104-193, §705(c)(3), redesignated par. (8) as (5). Former par. (5) redesignated (3).

Subsec. (d)(6), (7). Pub. L. 104-193, §705(c)(3), redesignated pars. (1) and (2) as (6) and (7), respectively. Former pars. (6) and (7) redesignated (4) and (2), respectively.

Subsec. (d)(8). Pub. L. 104-193, §705(c)(3), redesignated par. (8) as (5).

Subsec. (d)(9). Pub. L. 104-193, §705(c)(3), redesignated par. (9) as (1).

Pub. L. 104-193, §701(b), added par. (9).

Subsec. (f). Pub. L. 104-193, §705(d), struck out “the Trust Territory of the Pacific Islands,” after “the Virgin Islands of the United States,”.

Subsec. (k)(1). Pub. L. 104-193, §705(e)(3), substituted “with the guidelines contained in the most recent ‘Dietary Guidelines for Americans’ that is published under section 5341 of title 7” for “with the Guidelines” in introductory provisions.

Pub. L. 104-193, §705(e)(1), (2), redesignated par. (3) as (1) and struck out former par. (1) which read as follows: “Prior to the publication of final regulations that implement changes that are intended to bring the meal pattern requirements of the school lunch and breakfast programs into conformance with the guidelines contained in the most recent ‘Dietary Guidelines for Americans’ that is published under section 5341 of title 7 (referred to in this subsection as the ‘Guidelines’), the Secretary shall issue proposed regulations permitting the use of food-based menu systems.”

Subsec. (k)(2). Pub. L. 104-193, §705(e)(1), (2), redesignated par. (4) as (2) and struck out former par. (2) which read as follows: “Notwithstanding chapter 5 of title 5, not later than 45 days after the publication of the proposed regulations permitting the use of food-based menu systems, the Secretary shall publish notice in the Federal Register of, and hold, a public meeting with—

“(A) representatives of affected parties, such as Federal, State, and local administrators, school food service administrators, other school food service personnel, parents, and teachers; and

“(B) organizations representing affected parties, such as public interest antihunger organizations, doctors specializing in pediatric nutrition, health and consumer groups, commodity groups, food manufacturers and vendors, and nutritionists involved with the implementation and operation of programs under this chapter and the Child Nutrition Act of 1966 (42 U.S.C. 1771 et seq.);

to discuss and obtain public comments on the proposed rule.”

Subsec. (k)(3), (4). Pub. L. 104-193, § 705(e)(2), redesignated pars. (3) and (4) as (1) and (2), respectively.

Subsec. (k)(5). Pub. L. 104-193, § 705(e)(1), struck out par. (5) which read as follows: “The final regulations shall reflect comments made at each phase of the proposed rulemaking process, including the public meeting required under paragraph (2).”

Subsec. (l)(2)(A)(iii) to (vii). Pub. L. 104-193, § 705(f)(1), struck out “and” at end of cl. (iii), substituted period for semicolon at end of cl. (iv), and struck out cls. (v) to (vii) which read as follows:

“(v) describes the management goals to be achieved, such as fewer hours devoted to, or fewer number of personnel involved in, the administration of the program;

“(vi) provides a timetable for implementing the waiver; and

“(vii) describes the process the State or eligible service provider will use to monitor the progress in implementing the waiver, including the process for monitoring the cost implications of the waiver to the Federal Government.”

Subsec. (l)(3). Pub. L. 104-193, § 705(f)(2), designated subpar. (A) as par. (3) and struck out subpars. (B) to (D) which read as follows:

“(B) If the Secretary grants a waiver request, the Secretary shall state in writing the expected outcome of granting the waiver.

“(C) The result of the decision of the Secretary shall be disseminated by the State or eligible service provider through normal means of communication.

“(D)(i) Except as provided in clause (ii), a waiver granted by the Secretary under this subsection shall be for a period not to exceed 3 years.

“(ii) The Secretary may extend the period if the Secretary determines that the waiver has been effective in enabling the State or eligible service provider to carry out the purposes of the program.”

Subsec. (l)(4). Pub. L. 104-193, § 705(f)(3)(A), substituted “that increases Federal costs or that relates to” for “of any requirement relating to” in introductory provisions.

Subsec. (l)(4)(D) to (K). Pub. L. 104-193, § 705(f)(3)(B), (C), redesignated subpars. (E) to (L) as (D) to (K), respectively, and struck out former subpar. (D) which read as follows: “offer versus serve provisions;”

Subsec. (l)(4)(L). Pub. L. 104-193, § 705(f)(3)(D), substituted “or” for “and” at end.

Pub. L. 104-193, § 705(f)(3)(C), redesignated subpar. (M) as (L). Former subpar. (L) redesignated (K).

Subsec. (l)(4)(M), (N). Pub. L. 104-193, § 705(f)(3)(C), redesignated subpar. (N) as (M). Former subpar. (M) redesignated (L).

Subsec. (l)(6). Pub. L. 104-193, § 705(f)(4), struck out subpar. (A) and designation of subpar. (B) and redesignated cls. (i) to (iv) of former subpar. (B) as subpars. (A) to (D). Prior to amendment, subpar. (A) read as follows:

“(A)(i) An eligible service provider that receives a waiver under this subsection shall annually submit to the State a report that—

“(I) describes the use of the waiver by the eligible service provider; and

“(II) evaluates how the waiver contributed to improved services to children served by the program for which the waiver was requested.

“(ii) The State shall annually submit to the Secretary a report that summarizes all reports received by the State from eligible service providers.”

1994—Subsec. (d)(5). Pub. L. 103-448, § 112(a)(1), in first sentence struck out cl. (C) which read as follows: “with respect to the Commonwealth of Puerto Rico, nonprofit

child care centers certified as such by the Governor of Puerto Rico” and in second sentence struck out “of clauses (A) and (B)” after “For purposes”.

Subsecs. (j) to (m). Pub. L. 103-448, §§ 112(b)-(d), 113, added subsecs. (j) to (m).

1989—Subsec. (a). Pub. L. 101-147, § 312(1), substituted “school lunch” for “school-lunch”.

Subsec. (b). Pub. L. 101-147, §§ 306(b)(1), 312(1), substituted “the Secretary’s” for “his” in two places and “school lunch” for “school-lunch”.

Subsec. (d)(5). Pub. L. 101-147, § 306(b)(2), substituted “Internal Revenue Code of 1986” for “Internal Revenue Code of 1954”, which for purposes of codification was translated as “title 26” thus requiring no change in text.

Subsec. (d)(8). Pub. L. 101-147, § 306(a)(1), amended par. (8), as amended identically by Pub. L. 99-500 and 99-591, § 373(a), and Pub. L. 99-661, § 4503(a), to read as if only the amendment by Pub. L. 99-661 was enacted, resulting in no change in text, see 1986 Amendment note below.

Subsec. (g). Pub. L. 101-147, § 306(b)(3), substituted “personal” for “his” before “use”.

Subsec. (i). Pub. L. 101-147, § 306(b)(4), struck out “(42 U.S.C. 1771 et seq.)” after “Child Nutrition Act of 1966” and “(42 U.S.C. 3001 et seq.)” after “Older Americans Act of 1965”.

Pub. L. 101-147, § 306(a)(2), amended subsec. (i), as amended identically by Pub. L. 99-500 and 99-591, § 326, and Pub. L. 99-661, § 4206, to read as if only the amendment by Pub. L. 99-661 was enacted, resulting in no change in text, see 1986 Amendment note below.

1987—Subsec. (d)(5). Pub. L. 100-71 amended par. (5) generally. Prior to amendment, par. (5) read as follows: “‘School’ means (A) any public or nonprofit private school of high school grade or under, (B) any public or licensed nonprofit private residential child care institution (including, but not limited to, orphanages and homes for the mentally retarded, but excluding Job Corps Centers funded by the Department of Labor), and (C) with respect to the Commonwealth of Puerto Rico, nonprofit child care centers certified as such by the Governor of Puerto Rico. For purposes of clauses (A) and (B) of this paragraph, the term ‘nonprofit’, when applied to any such private school or institution, means any such school or institution which is exempt from tax under section 501(c)(3) of title 26. On July 1, 1988, and each July 1 thereafter, the Secretary shall adjust the tuition limitation amount prescribed in clause (A) of the first sentence of this paragraph to reflect changes in the Consumer Price Index for All Urban Consumers during the most recent 12-month period for which the data is available.”

1986—Subsec. (d)(5). Pub. L. 99-661, § 4205(a)(2), inserted “On July 1, 1988, and each July 1 thereafter, the Secretary shall adjust the tuition limitation amount prescribed in clause (A) of the first sentence of this paragraph to reflect changes in the Consumer Price Index for All Urban Consumers during the most recent 12-month period for which the data is available.”

Subsec. (d)(5)(A). Pub. L. 99-500 and Pub. L. 99-591, § 325(a), which directed the amendment of subpar. (A) by striking out “except private schools whose average yearly tuition exceeds \$1,500 per child,” after “grade or under,” was executed by striking out “except private schools whose average yearly tuition exceeds \$2,000 per child,” after “grade or under,” to reflect the probable intent of Congress and the intervening amendment of subpar. (A) by Pub. L. 99-661, § 4205(a)(1). See below.

Pub. L. 99-661, § 4205(a)(1), substituted “\$2,000” for “\$1,500”.

Subsec. (d)(8). Pub. L. 99-500 and Pub. L. 99-591, § 373(a), and Pub. L. 99-661, § 4503(a), amended subsec. (d) identically, adding par. (8).

Subsec. (i). Pub. L. 99-500 and Pub. L. 99-591, § 326, and Pub. L. 99-661, § 4206, amended section identically, adding subsec. (i).

1981—Subsec. (d). Pub. L. 97-35, § 819(c)(1), struck out par. (3) which defined “food service equipment assistance”, and redesignated pars. (4) to (8) as (3) to (7), respectively.

Pub. L. 97-35, §808(a), inserted reference to private schools in par. (6).

Pub. L. 97-35, §813(d), added par. (8).

Subsec. (h). Pub. L. 97-35, §819(c)(2), struck out provisions relating to net cost of operating limitation.

1980—Subsec. (d)(6). Pub. L. 96-499 inserted “, but excluding Job Corps Centers funded by the Department of Labor”.

1978—Subsec. (d)(7). Pub. L. 95-627, §10(b), substituted “from July 1 through June 30” for “determined in accordance with regulations issued by the Secretary”.

Subsecs. (f), (g). Pub. L. 95-627, §10(a), added subsecs. (f) and (g).

Subsec. (h). Pub. L. 95-627, §6(a), added subsec. (h).

1977—Subsec. (d)(3). Pub. L. 95-166, §3, substituted “food service equipment assistance” for “nonfood assistance”.

Subsec. (d)(7). Pub. L. 95-166, §19(c), added par. (7).

1975—Subsec. (d)(1). Pub. L. 94-105, §9(b), inserted reference to Trust Territory of the Pacific Islands.

Subsec. (d)(3) to (7). Pub. L. 94-105, §9(a), (c), struck out par. (3) defining “Nonprofit private schools”, redesignated pars. (4) to (7) as (3) to (6), respectively, and in par. (6), as so redesignated, expanded definition of “school” to include any public or licensed nonprofit private residential child care institution, including, but not limited to, orphanages and homes for the mentally retarded, and inserted provision defining “nonprofit” as any school or institution exempt under section 501(c)(3) of title 26.

Subsec. (e). Pub. L. 94-105, §9(d), added subsec. (e).

1970—Subsec. (d)(5). Pub. L. 91-248 provided that data upon which State apportionments are calculated is program year completed two years immediately prior to fiscal year for which appropriation is requested.

1962—Subsec. (c). Pub. L. 87-823 struck out requirement of just and equitable distribution of funds in States maintaining separate schools for minority and majority races.

Subsec. (d). Pub. L. 87-823 redefined “State” in par. (1) to recognize Hawaiian and Alaskan statehood and to include American Samoa; “State educational agency” in par. (2) to exclude an exception applicable to the District of Columbia and language which was effective by its terms only through June 30, 1948; “nonprofit private school” in par. (3), substituting “section 501(c)(3) of title 26” for “section 101(6) of title 26”; and “nonfood assistance” in par. (4), substituting “used by schools” for “used on school premises”; and added pars. (5) to (7).

Pub. L. 87-688 inserted “American Samoa,” after “Guam”.

1952—Subsec. (d)(1). Act July 12, 1952, included Guam within definition of State.

#### CHANGE OF NAME

Committee on Education and Labor of House of Representatives changed to Committee on Education and the Workforce of House of Representatives by House Resolution No. 5, One Hundred Twelfth Congress, Jan. 5, 2011.

#### EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111-296 effective Oct. 1, 2010, except as otherwise specifically provided, see section 445 of Pub. L. 111-296, set out as a note under section 1751 of this title.

#### EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107-171 effective Oct. 1, 2002, except as otherwise provided, see section 4405 of Pub. L. 107-171, set out as an Effective Date note under section 1161 of Title 2, The Congress.

#### EFFECTIVE DATE OF 2000 AMENDMENT

Amendment by Pub. L. 106-224 effective Oct. 1, 2000, see section 242(c) of Pub. L. 106-224, set out as a note under section 1758 of this title.

#### EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105-336 effective Oct. 1, 1998, see section 401 of Pub. L. 105-336, set out as a note under section 1755 of this title.

#### EFFECTIVE DATE OF 1994 AMENDMENT

Pub. L. 103-448, title I, §112(a)(2), Nov. 2, 1994, 108 Stat. 4708, provided that: “The amendments made by paragraph (1) [amending this section] shall become effective on October 1, 1995.”

Amendment by sections 112(b)-(d) and 113 of Pub. L. 103-448 effective Oct. 1, 1994, see section 401 of Pub. L. 103-448, set out as a note under section 1755 of this title.

#### EFFECTIVE DATE OF 1987 AMENDMENT

Pub. L. 100-71, title I, §101(c), July 11, 1987, 101 Stat. 430, provided that: “The amendments made by subsections (a) and (b) [amending sections 1760 and 1784 of this title] shall take effect on July 1, 1987.”

#### EFFECTIVE DATE OF 1986 AMENDMENTS

Pub. L. 99-661, div. D, title II, §4205(c), Nov. 14, 1986, 100 Stat. 4073, provided that:

“(1) The amendments made by subsections (a)(1) and (b)(1) [amending sections 1760 and 1784 of this title] shall apply for the fiscal year beginning on October 1, 1986, and each school year thereafter.

“(2) The amendments made by subsections (a)(2) and (b)(2) [amending sections 1760 and 1784 of this title] shall apply for the school year beginning on July 1, 1988, and each school year thereafter.”

Pub. L. 99-500, title III, §325(c), Oct. 18, 1986, 100 Stat. 1783-361, and Pub. L. 99-591, title III, §325(c), Oct. 30, 1986, 100 Stat. 3341-365, provided that: “The amendments made by this section [amending sections 1760 and 1784 of this title] shall take effect July 1, 1987.”

#### EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by sections 808 and 819 of Pub. L. 97-35 effective Oct. 1, 1981, and amendment by section 813 of Pub. L. 97-35 effective 90 days after Aug. 13, 1981, see section 820(a)(3)-(5) of Pub. L. 97-35, set out as a note under section 1753 of this title.

#### EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-627 effective Oct. 1, 1978, see section 14 of Pub. L. 95-627, set out as a note under section 1755 of this title.

#### EFFECTIVE DATE OF 1977 AMENDMENT

Pub. L. 95-166, §19, Nov. 10, 1977, 91 Stat. 1345, provided that the amendment made by that section is effective July 1, 1977.

#### EFFECTIVE DATE OF 1962 AMENDMENT

Amendment by Pub. L. 87-688 applicable only with respect to funds appropriated after Sept. 25, 1962, see section 3(b) of Pub. L. 87-688, set out as a note under section 1753 of this title.

#### EFFECTIVE DATE OF 1952 AMENDMENT

Amendment by act July 12, 1952, effective only with respect to funds appropriated after July 12, 1952, see section 1(d) of act July 12, 1952, set out as a note under section 1753 of this title.

#### STUDY OF COST ACCOUNTING REQUIREMENTS

Pub. L. 94-105, §21, Oct. 7, 1975, 89 Stat. 527, prohibited Secretary from delaying or withholding or causing any State to delay or withhold payments for reimbursement of per-meal costs on basis of noncompliance with cost accounting procedures until requirements of subsec. (b) of this section have been met, and called for a study by Secretary of additional personnel and training needs of States, school districts, and schools resulting from requirement of full cost accounting procedures, such report with recommendations to be submitted to

appropriate committees of Congress within one year after Oct. 7, 1975.

**§ 1761. Summer food service program for children**

**(a) In general**

**(1) Definitions**

In this section:

**(A) Area in which poor economic conditions exist**

**(i) In general**

Subject to clause (ii), the term “area in which poor economic conditions exist”, as the term relates to an area in which a program food service site is located, means—

(I) the attendance area of a school in which at least 50 percent of the enrolled children have been determined eligible for free or reduced price school meals under this chapter and the Child Nutrition Act of 1966 (42 U.S.C. 1771 et seq.);

(II) a geographic area, as defined by the Secretary based on the most recent census data available, in which at least 50 percent of the children residing in that area are eligible for free or reduced price school meals under this chapter and the Child Nutrition Act of 1966 (42 U.S.C. 1771 et seq.);

(III) an area—

(aa) for which the program food service site documents the eligibility of enrolled children through the collection of income eligibility statements from the families of enrolled children or other means; and

(bb) at least 50 percent of the children enrolled at the program food service site meet the income standards for free or reduced price school meals under this chapter and the Child Nutrition Act of 1966 (42 U.S.C. 1771 et seq.);

(IV) a geographic area, as defined by the Secretary based on information provided from a department of welfare or zoning commission, in which at least 50 percent of the children residing in that area are eligible for free or reduced price school meals under this chapter and the Child Nutrition Act of 1966 (42 U.S.C. 1771 et seq.); or

(V) an area for which the program food service site demonstrates through other means approved by the Secretary that at least 50 percent of the children enrolled at the program food service site are eligible for free or reduced price school meals under this chapter and the Child Nutrition Act of 1966 (42 U.S.C. 1771 et seq.).

**(ii) Duration of determination**

A determination that an area is an “area in which poor economic conditions exist” under clause (i) shall be in effect for—

(I) in the case of an area described in clause (i)(I), 5 years;

(II) in the case of an area described in clause (i)(II), until more recent census data are available;

(III) in the case of an area described in clause (i)(III), 1 year; and

(IV) in the case of an area described in subclause (IV) or (V) of clause (i), a period of time to be determined by the Secretary, but not less than 1 year.

**(B) Children**

The term “children” means—

(i) individuals who are 18 years of age and under; and

(ii) individuals who are older than 18 years of age who are—

(I) determined by a State educational agency or a local public educational agency of a State, in accordance with regulations promulgated by the Secretary, to have a disability, and

(II) participating in a public or nonprofit private school program established for individuals who have a disability.

**(C) Program**

The term “program” means the summer food service program for children authorized by this section.

**(D) Service institution**

The term “service institution” means a public or private nonprofit school food authority, local, municipal, or county government, public or private nonprofit higher education institution participating in the National Youth Sports Program, or residential public or private nonprofit summer camp, that develops special summer or school vacation programs providing food service similar to food service made available to children during the school year under the school lunch program under this chapter or the school breakfast program under the Child Nutrition Act of 1966 (42 U.S.C. 1771 et seq.).

**(E) State**

The term “State” means—

(i) each of the several States of the United States;

(ii) the District of Columbia;

(iii) the Commonwealth of Puerto Rico;

(iv) Guam;

(v) American Samoa;

(vi) the Commonwealth of the Northern Mariana Islands; and

(vii) the United States Virgin Islands.

**(2) Program authorization**

**(A) In general**

The Secretary may carry out a program to assist States, through grants-in-aid and other means, to initiate and maintain nonprofit summer food service programs for children in service institutions.

**(B) Preparation of food**

**(i) In general**

To the maximum extent feasible, consistent with the purposes of this section, any food service under the program shall use meals prepared at the facilities of the service institution or at the food service facilities of public and nonprofit private schools.

**(ii) Information and technical assistance**

The Secretary shall assist States in the development of information and technical assistance to encourage increased service of meals prepared at the facilities of service institutions and at public and nonprofit private schools.

**(3) Eligible service institutions**

Eligible service institutions entitled to participate in the program shall be limited to those that—

(A) demonstrate adequate administrative and financial responsibility to manage an effective food service;

(B) have not been seriously deficient in operating under the program;

(C)(i) conduct a regularly scheduled food service for children from areas in which poor economic conditions exist; or

(ii) qualify as camps; and

(D) provide an ongoing year-round service to the community to be served under the program (except that an otherwise eligible service institution shall not be disqualified for failure to meet this requirement for ongoing year-round service if the State determines that its disqualification would result in an area in which poor economic conditions exist not being served or in a significant number of needy children not having reasonable access to a summer food service program).

**(4) Priority****(A) In general**

The following order of priority shall be used by the State in determining participation where more than one eligible service institution proposes to serve the same area:

(i) Local schools.

(ii) All other service institutions and private nonprofit organizations eligible under paragraph (7) that have demonstrated successful program performance in a prior year.

(iii) New public institutions.

(iv) New private nonprofit organizations eligible under paragraph (7).

**(B) Rural areas**

The Secretary and the States, in carrying out their respective functions under this section, shall actively seek eligible service institutions located in rural areas, for the purpose of assisting such service institutions in applying to participate in the program.

**(5) Camps**

Camps that satisfy all other eligibility requirements of this section shall receive reimbursement only for meals served to children who meet the eligibility requirements for free or reduced price meals, as determined under this chapter and the Child Nutrition Act of 1966 [42 U.S.C. 1771 et seq.].

**(6) Government institutions**

Service institutions that are local, municipal, or county governments shall be eligible for reimbursement for meals served in programs under this section only if such pro-

grams are operated directly by such governments.

**(7) Private nonprofit organizations****(A) Definition of private nonprofit organization**

In this paragraph, the term “private nonprofit organization” means an organization that—

(i) exercises full control and authority over the operation of the program at all sites under the sponsorship of the organization;

(ii) provides ongoing year-round activities for children or families;

(iii) demonstrates that the organization has adequate management and the fiscal capacity to operate a program under this section;

(iv) is an organization described in section 501(c) of title 26 and exempt from taxation under 501(a)<sup>1</sup> of that title; and

(v) meets applicable State and local health, safety, and sanitation standards.

**(B) Eligibility**

Private nonprofit organizations (other than organizations eligible under paragraph (1)) shall be eligible for the program under the same terms and conditions as other service institutions.

**(8) Seamless summer option**

Except as otherwise determined by the Secretary, a service institution that is a public or private nonprofit school food authority may provide summer or school vacation food service in accordance with applicable provisions of law governing the school lunch program established under this chapter or the school breakfast program established under the Child Nutrition Act of 1966 (42 U.S.C. 1771 et seq.).

**(9) Exemption****(A) In general**

For each of calendar years 2005 and 2006 in rural areas of the State of Pennsylvania (as determined by the Secretary), the threshold for determining “areas in which poor economic conditions exist” under paragraph (1)(C) shall be 40 percent.

**(B) Evaluation****(i) In general**

The Secretary, acting through the Administrator of the Food and Nutrition Service, shall evaluate the impact of the eligibility criteria described in subparagraph (A) as compared to the eligibility criteria described in paragraph (1)(C).

**(ii) Impact**

The evaluation shall assess the impact of the threshold in subparagraph (A) on—

(I) the number of sponsors offering meals through the summer food service program;

(II) the number of sites offering meals through the summer food service program;

<sup>1</sup> So in original. Probably should be preceded by “section”.

(III) the geographic location of the sites;

(IV) services provided to eligible children; and

(V) other factors determined by the Secretary.

**(iii) Report**

Not later than January 1, 2008, the Secretary shall submit to the Committee on Education and the Workforce of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate a report describing the results of the evaluation under this subparagraph.

**(iv) Funding**

**(I) In general**

On January 1, 2005, out of any funds in the Treasury not otherwise appropriated, the Secretary of the Treasury shall transfer to the Secretary of Agriculture to carry out this subparagraph \$400,000, 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.

**(10) Summer food service rural transportation**

**(A) In general**

The Secretary shall provide grants, through not more than 5 eligible State agencies selected by the Secretary, to not more than 60 eligible service institutions selected by the Secretary to increase participation at congregate feeding sites in the summer food service program for children authorized by this section through innovative approaches to limited transportation in rural areas.

**(B) Eligibility**

To be eligible to receive a grant under this paragraph—

(i) a State agency shall submit an application to the Secretary, in such manner as the Secretary shall establish, and meet criteria established by the Secretary; and

(ii) a service institution shall agree to the terms and conditions of the grant, as established by the Secretary.

**(C) Duration**

A service institution that receives a grant under this paragraph may use the grant funds during the 3-fiscal year period beginning in fiscal year 2006.

**(D) Reports**

The Secretary shall submit to the Committee on Education and the Workforce of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate—

(i) not later than January 1, 2008, an interim report that describes—

(I) the use of funds made available under this paragraph; and

(II) any progress made by using funds from each grant provided under this paragraph; and

(ii) not later than January 1, 2009, a final report that describes—

(I) the use of funds made available under this paragraph;

(II) any progress made by using funds from each grant provided under this paragraph;

(III) the impact of this paragraph on participation in the summer food service program for children authorized by this section; and

(IV) any recommendations by the Secretary concerning the activities of the service institutions receiving grants under this paragraph.

**(E) Funding**

**(i) In general**

Out of any funds in the Treasury not otherwise appropriated, the Secretary of the Treasury shall transfer to the Secretary of Agriculture to carry out this paragraph—

(I) on October 1, 2005, \$2,000,000; and

(II) on October 1, 2006, and October 1, 2007, \$1,000,000.

**(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.

**(iii) Availability of funds**

Funds transferred under clause (i) shall remain available until expended.

**(iv) Reallocation**

The Secretary may reallocate any amounts made available to carry out this paragraph that are not obligated or expended, as determined by the Secretary.

**(11) Outreach to eligible families**

**(A) In general**

The Secretary shall require each State agency that administers the national school lunch program under this chapter to ensure that, to the maximum extent practicable, school food authorities participating in the school lunch program under this chapter cooperate with participating service institutions to distribute materials to inform families of—

(i) the availability and location of summer food service program meals; and

(ii) the availability of reimbursable breakfasts served under the school breakfast program established by section 4 of the Child Nutrition Act of 1966 (42 U.S.C. 1773).

**(B) Inclusions**

Informational activities carried out under subparagraph (A) may include—

(i) the development or dissemination of printed materials, to be distributed to all school children or the families of school children prior to the end of the school year, that inform families of the availability and location of summer food service program meals;

(ii) the development or dissemination of materials, to be distributed using electronic means to all school children or the families of school children prior to the end of the school year, that inform families of the availability and location of summer food service program meals; and

(iii) such other activities as are approved by the applicable State agency to promote the availability and location of summer food service program meals to school children and the families of school children.

**(C) Multiple State agencies**

If the State agency administering the program under this section is not the same State agency that administers the school lunch program under this chapter, the 2 State agencies shall work cooperatively to implement this paragraph.

**(12) Summer food service support grants**

**(A) In general**

The Secretary shall use funds made available to carry out this paragraph to award grants on a competitive basis to State agencies to provide to eligible service institutions—

- (i) technical assistance;
- (ii) assistance with site improvement costs; or
- (iii) other innovative activities that improve and encourage sponsor retention.

**(B) Eligibility**

To be eligible to receive a grant under this paragraph, a State agency shall submit an application to the Secretary in such manner, at such time, and containing such information as the Secretary may require.

**(C) Priority**

In making grants under this paragraph, the Secretary shall give priority to—

- (i) applications from States with significant low-income child populations; and
- (ii) State plans that demonstrate innovative approaches to retain and support summer food service programs after the expiration of the start-up funding grants.

**(D) Use of funds**

A State and eligible service institution may use funds made available under this paragraph to pay for such costs as the Secretary determines are necessary to establish and maintain summer food service programs.

**(E) Reallocation**

The Secretary may reallocate any amounts made available to carry out this paragraph that are not obligated or expended, as determined by the Secretary.

**(F) Authorization of appropriations**

There is authorized to be appropriated to carry out this paragraph \$20,000,000 for fiscal years 2011 through 2015.

**(b) Service institutions**

**(1) PAYMENTS.—**

**(A) IN GENERAL.—**Subject to subparagraph (B) and in addition to amounts made available

under paragraph (3), payments to service institutions shall be—

- (i) \$1.97 for each lunch and supper served;
- (ii) \$1.13 for each breakfast served; and
- (iii) 46 cents for each meal supplement served.

**(B) ADJUSTMENTS.—**Amounts specified in subparagraph (A) shall be adjusted on January 1, 1997, and each January 1 thereafter, to the nearest lower cent increment to reflect changes for the 12-month period ending the preceding November 30 in the series for food away from home of the Consumer Price Index for All Urban Consumers published by the Bureau of Labor Statistics of the Department of Labor. Each adjustment shall be based on the unrounded adjustment for the prior 12-month period.

**(C) SEAMLESS SUMMER REIMBURSEMENTS.—**A service institution described in subsection (a)(8) of this section shall be reimbursed for meals and meal supplements in accordance with the applicable provisions under this chapter (other than subparagraphs (A) and (B) of this paragraph and paragraph (4)) and the Child Nutrition Act of 1966 (42 U.S.C. 1771 et seq.), as determined by the Secretary.

(2) Any service institution may only serve lunch and either breakfast or a meal supplement during each day of operation, except that any service institution that is a camp or that serves meals primarily to migrant children may serve up to 3 meals, or 2 meals and 1 supplement, during each day of operation, if (A) the service institution has the administrative capability and the food preparation and food holding capabilities (where applicable) to serve more than one meal per day, and (B) the service period of different meals does not coincide or overlap.

**(3) PERMANENT OPERATING AGREEMENTS AND BUDGET FOR ADMINISTRATIVE COSTS.—**

**(A) PERMANENT OPERATING AGREEMENTS.—**

**(i) IN GENERAL.—**Subject to clauses (ii) and (iii), to participate in the program, a service institution that meets the conditions of eligibility described in this section and in regulations promulgated by the Secretary, shall be required to enter into a permanent agreement with the applicable State agency.

**(ii) AMENDMENTS.—**A permanent agreement described in clause (i) may be amended as necessary to ensure that the service institution is in compliance with all requirements established in this section or by the Secretary.

**(iii) TERMINATION.—**A permanent agreement described in clause (i)—

(I) may be terminated for convenience by the service institution and State agency that is a party to the permanent agreement; and

(II) shall be terminated—

(aa) for cause by the applicable State agency in accordance with subsection (q) and with regulations promulgated by the Secretary; or

(bb) on termination of participation of the service institution in the program.

**(B) BUDGET FOR ADMINISTRATIVE COSTS.—**

**(i) IN GENERAL.—**When applying for participation in the program, and not less fre-

quently than annually thereafter, each service institution shall submit a complete budget for administrative costs related to the program, which shall be subject to approval by the State.

(ii) AMOUNT.—Payment to service institutions for administrative costs shall equal the levels determined by the Secretary pursuant to the study required in paragraph (4).

(4)(A) The Secretary shall conduct a study of the food service operations carried out under the program. Such study shall include, but shall not be limited to—

(i) an evaluation of meal quality as related to costs; and

(ii) a determination whether adjustments in the maximum reimbursement levels for food service operation costs prescribed in paragraph (1) of this subsection should be made, including whether different reimbursement levels should be established for self-prepared meals and vendored meals and which site-related costs, if any, should be considered as part of administrative costs.

(B) The Secretary shall also study the administrative costs of service institutions participating in the program and shall thereafter prescribe maximum allowable levels for administrative payments that reflect the costs of such service institutions, taking into account the number of sites and children served, and such other factors as the Secretary determines appropriate to further the goals of efficient and effective administration of the program.

(C) The Secretary shall report the results of such studies to Congress not later than December 1, 1977.

**(c) Payments for meals served during May through September; exceptions for continuous school calendars or non-school sites; National Youth Sports Program**

(1) Payments shall be made to service institutions only for meals served during the months of May through September, except in the case of service institutions that operate food service programs for children on school vacation at any time under a continuous school calendar or that provide meal service at non-school sites to children who are not in school for a period during the months of October through April due to a natural disaster, building repair, court order, or similar cause.

(2) Children participating in National Youth Sports Programs operated by higher education institutions shall be eligible to participate in the program under this paragraph on showing residence in areas in which poor economic conditions exist or on the basis of income eligibility statements for children enrolled in the program.

**(d) Advance program payments to States for monthly meal service; letters of credit, forwarding to States; determination of amount; valid claims, receipt**

Not later than April 15, May 15, and July 1 of each year, the Secretary shall forward to each State a letter of credit (advance program payment) that shall be available to each State for the payment of meals to be served in the month for which the letter of credit is issued. The

amount of the advance program payment shall be an amount which the State demonstrates, to the satisfaction of the Secretary, to be necessary for advance program payments to service institutions in accordance with subsection (e) of this section. The Secretary shall also forward such advance program payments, by the first day of the month prior to the month in which the program will be conducted, to States that operate the program in months other than May through September. The Secretary shall forward any remaining payments due pursuant to subsection (b) of this section not later than sixty days following receipt of valid claims therefor.

**(e) Advance program payments to service institutions for monthly meal service; certification of personnel training sessions; minimum days per month operations requirement; payments: computation, limitation; valid claims, receipt; withholding; demand for repayment; subtraction of disputed payments**

(1) Not later than June 1, July 15, and August 15 of each year, or, in the case of service institutions that operate under a continuous school calendar, the first day of each month of operation, the State shall forward advance program payments to each service institution. The State shall not release the second month's advance program payment to any service institution (excluding a school) that has not certified that it has held training sessions for its own personnel and the site personnel with regard to program duties and responsibilities. No advance program payment may be made for any month in which the service institution will operate under the program for less than ten days.

(2) The amount of the advance program payment for any month in the case of any service institution shall be an amount equal to (A) the total program payment for meals served by such service institution in the same calendar month of the preceding calendar year, (B) 50 percent of the amount established by the State to be needed by such service institution for meals if such service institution contracts with a food service management company, or (C) 65 percent of the amount established by the State to be needed by such service institution for meals if such service institution prepares its own meals, whichever amount is greatest: *Provided*, That the advance program payment may not exceed the total amount estimated by the State to be needed by such service institution for meals to be served in the month for which such advance program payment is made or \$40,000, whichever is less, except that a State may make a larger advance program payment to such service institution where the State determines that such larger payment is necessary for the operation of the program by such service institution and sufficient administrative and management capability to justify a larger payment is demonstrated. The State shall forward any remaining payment due a service institution not later than seventy-five days following receipt of valid claims. If the State has reason to believe that a service institution will not be able to submit a valid claim for reimbursement covering the period for which an advance program payment has been made, the subsequent month's advance program payment



shall be withheld until such time as the State has received a valid claim. Program payments advanced to service institutions that are not subsequently deducted from a valid claim for reimbursement shall be repaid upon demand by the State. Any prior payment that is under dispute may be subtracted from an advance program payment.

**(f) Nutritional standards**

(1) Service institutions receiving funds under this section shall serve meals consisting of a combination of foods and meeting minimum nutritional standards prescribed by the Secretary on the basis of tested nutritional research.

(2) The Secretary shall provide technical assistance to service institutions and private nonprofit organizations participating in the program to assist the institutions and organizations in complying with the nutritional requirements prescribed by the Secretary pursuant to this subsection.

(3) Meals described in paragraph (1) shall be served without cost to children attending service institutions approved for operation under this section, except that, in the case of camps, charges may be made for meals served to children other than those who meet the eligibility requirements for free or reduced price meals in accordance with subsection (a)(5) of this section.

(4) To assure meal quality, States shall, with the assistance of the Secretary, prescribe model meal specifications and model food quality standards, and ensure that all service institutions contracting for the preparation of meals with food service management companies include in their contracts menu cycles, local food safety standards, and food quality standards approved by the State.

(5) Such contracts shall require (A) periodic inspections, by an independent agency or the local health department for the locality in which the meals are served, of meals prepared in accordance with the contract in order to determine bacteria levels present in such meals, and (B) conformance with standards set by local health authorities.

(6) Such inspections and any testing resulting therefrom shall be in accordance with the practices employed by such local health authority.

(7) OFFER VERSUS SERVE.—A school food authority participating as a service institution may permit a child to refuse one or more items of a meal that the child does not intend to consume, under rules that the school uses for school meals programs. A refusal of an offered food item shall not affect the amount of payments made under this section to a school for the meal.

**(g) Regulations, guidelines, applications, and handbooks; publication; startup costs**

The Secretary shall publish proposed regulations relating to the implementation of the program by November 1 of each fiscal year, final regulations by January 1 of each fiscal year, and guidelines, applications, and handbooks by February 1 of each fiscal year. In order to improve program planning, the Secretary may provide that service institutions be paid as startup costs not to exceed 20 percent of the administrative funds provided for in the administrative budget

approved by the State under subsection (b)(3) of this section. Any payments made for startup costs shall be subtracted from amounts otherwise payable for administrative costs subsequently made to service institutions under subsection (b)(3) of this section.

**(h) Direct disbursement to service institutions by Secretary**

Each service institution shall, insofar as practicable, use in its food service under the program foods designated from time to time by the Secretary as being in abundance. The Secretary is authorized to donate to States, for distribution to service institutions, food available under section 1431 of title 7, or purchased under section 612c of title 7 or section 1446a-1 of title 7. Donated foods may be distributed only to service institutions that can use commodities efficiently and effectively, as determined by the Secretary.

**(i) Repealed. Pub. L. 97-35, title VIII, §817(b), Aug. 13, 1981, 95 Stat. 532**

**(j) Administrative expenses of Secretary; authorization of appropriations**

Expenditures of funds from State and local sources for the maintenance of food programs for children shall not be diminished as a result of funds received under this section.

**(k) Administrative costs of State; payment; adjustment; standards and effective dates, establishment; funds: withholding, inspection**

(1) The Secretary shall pay to each State for its administrative costs incurred under this section in any fiscal year an amount equal to (A) 20 percent of the first \$50,000 in funds distributed to that State for the program in the preceding fiscal year; (B) 10 percent of the next \$100,000 distributed to that State for the program in the preceding fiscal year; (C) 5 percent of the next \$250,000 in funds distributed to that State for the program in the preceding fiscal year; and (D) 2½ percent of any remaining funds distributed to that State for the program in the preceding fiscal year: *Provided*, That such amounts may be adjusted by the Secretary to reflect changes in the size of that State's program since the preceding fiscal year.

(2) The Secretary shall establish standards and effective dates for the proper, efficient, and effective administration of the program by the State. If the Secretary finds that the State has failed without good cause to meet any of the Secretary's standards or has failed without good cause to carry out the approved State management and administration plan under subsection (n) of this section, the Secretary may withhold from the State such funds authorized under this subsection as the Secretary determines to be appropriate.

(3) To provide for adequate nutritional and food quality monitoring, and to further the implementation of the program, an additional amount, not to exceed the lesser of actual costs or 1 percent of program funds, shall be made available by the Secretary to States to pay for State or local health department inspections, and to reinspect facilities and deliveries to test meal quality.

**(l) Food service management companies; sub-contracts; assignments, conditions and limitations; meal capacity information in bids subject to review; registration; record, availability to States; small and minority-owned businesses for supplies and services; contracts: standard form, bid and contract procedures, bonding requirements and exemption, review by States, collusive bidding safeguards**

(1) Service institutions may contract on a competitive basis with food service management companies for the furnishing of meals or management of the entire food service under the program, except that a food service management company entering into a contract with a service institution under this section may not subcontract with a single company for the total meal, with or without milk, or for the assembly of the meal. The Secretary shall prescribe additional conditions and limitations governing assignment of all or any part of a contract entered into by a food service management company under this section. Any food service management company shall, in its bid, provide the service institution information as to its meal capacity.

(2) Each State may provide for the registration of food service management companies.

(3) In accordance with regulations issued by the Secretary, positive efforts shall be made by service institutions to use small businesses and minority-owned businesses as sources of supplies and services. Such efforts shall afford those sources the maximum feasible opportunity to compete for contracts using program funds.

(4) Each State, with the assistance of the Secretary, shall establish a standard form of contract for use by service institutions and food service management companies. The Secretary shall prescribe requirements governing bid and contract procedures for acquisition of the services of food service management companies, including, but not limited to, bonding requirements (which may provide exemptions applicable to contracts of \$100,000 or less), procedures for review of contracts by States, and safeguards to prevent collusive bidding activities between service institutions and food service management companies.

**(m) Accounts and records**

States and service institutions participating in programs under this section shall keep such accounts and records as may be necessary to enable the Secretary to determine whether there has been compliance with this section and the regulations issued hereunder. Such accounts and records shall be available at any reasonable time for inspection and audit by representatives of the Secretary and shall be preserved for such period of time, not in excess of five years, as the Secretary determines necessary.

**(n) Management and administration plan; notification and submittal to Secretary; specific provisions**

Each State desiring to participate in the program shall notify the Secretary by January 1 of each year of its intent to administer the program and shall submit for approval by February

15 a management and administration plan for the program for the fiscal year, which shall include, but not be limited to, (1) the State's administrative budget for the fiscal year, and the State's plans to comply with any standards prescribed by the Secretary under subsection (k) of this section; (2) the State's plans for use of program funds and funds from within the State to the maximum extent practicable to reach needy children; (3) the State's plans for providing technical assistance and training eligible service institutions; (4) the State's plans for monitoring and inspecting service institutions, feeding sites, and food service management companies and for ensuring that such companies do not enter into contracts for more meals than they can provide effectively and efficiently; (5) the State's plan for timely and effective action against program violators; and (6) the State's plan for ensuring fiscal integrity by auditing service institutions not subject to auditing requirements prescribed by the Secretary.

**(o) Violations and penalties**

(1) Whoever, in connection with any application, procurement, recordkeeping entry, claim for reimbursement, or other document or statement made in connection with the program, knowingly and willfully falsifies, conceals, or covers up by any trick, scheme, or device a material fact, or makes any false, fictitious, or fraudulent statements or representations, or makes or uses any false writing or document knowing the same to contain any false, fictitious, or fraudulent statement or entry, or whoever, in connection with the program, knowingly makes an opportunity for any person to defraud the United States, or does or omits to do any act with intent to enable any person to defraud the United States, shall be fined not more than \$10,000 or imprisoned not more than five years, or both.

(2) Whoever being a partner, officer, director, or managing agent connected in any capacity with any partnership, association, corporation, business, or organization, either public or private, that receives benefits under the program, knowingly or willfully embezzles, misapplies, steals, or obtains by fraud, false statement, or forgery, any benefits provided by this section or any money, funds, assets, or property derived from benefits provided by this section, shall be fined not more than \$10,000 or imprisoned for not more than five years, or both (but, if the benefits, money, funds, assets, or property involved is not over \$200, then the penalty shall be a fine of not more than \$1,000 or imprisonment for not more than one year, or both).

(3) If two or more persons conspire or collude to accomplish any act made unlawful under this subsection, and one or more of such persons do any act to effect the object of the conspiracy or collusion, each shall be fined not more than \$10,000 or imprisoned for not more than five years, or both.

**(p) Monitoring of participating private nonprofit organizations**

(1) In addition to the normal monitoring of organizations receiving assistance under this section, the Secretary shall establish a system under which the Secretary and the States shall

monitor the compliance of private nonprofit organizations with the requirements of this section and with regulations issued to implement this section.

(2) In the fiscal year 1990 and each succeeding fiscal year, the Secretary may reserve for purposes of carrying out paragraph (1) not more than ½ of 1 percent of amounts appropriated for purposes of carrying out this section.

**(q) Termination and disqualification of participating organizations**

**(1) In general**

Each State agency shall follow the procedures established by the Secretary for the termination of participation of institutions under the program.

**(2) Fair hearing**

The procedures described in paragraph (1) shall include provision for a fair hearing and prompt determination for any service institution aggrieved by any action of the State agency that affects—

(A) the participation of the service institution in the program; or

(B) the claim of the service institution for reimbursement under this section.

**(3) List of disqualified institutions and individuals**

**(A) In general**

The Secretary shall maintain a list of service institutions and individuals that have been terminated or otherwise disqualified from participation in the program under the procedures established pursuant to paragraph (1).

**(B) Availability**

The Secretary shall make the list available to States for use in approving or renewing applications by service institutions for participation in the program.

**(r) Authorization of appropriations**

For the period beginning October 1, 1977, and ending September 30, 2015, there are hereby authorized to be appropriated such sums as are necessary to carry out the purposes of this section.

(June 4, 1946, ch. 281, § 13, as added Pub. L. 90-302, § 3, May 8, 1968, 82 Stat. 117; amended Pub. L. 91-248, § 6(c), (d), May 14, 1970, 84 Stat. 210; Pub. L. 92-32, § 7, June 30, 1971, 85 Stat. 86; Pub. L. 92-433, §§ 1, 2, Sept. 26, 1972, 86 Stat. 724; Pub. L. 94-20, May 2, 1975, 89 Stat. 82; Pub. L. 94-105, § 13, Oct. 7, 1975, 89 Stat. 515; Pub. L. 95-166, § 2, Nov. 10, 1977, 91 Stat. 1325; Pub. L. 95-627, §§ 5(d), 7(b), 10(d)(2), Nov. 10, 1978, 92 Stat. 3620, 3622, 3624; Pub. L. 96-499, title II, § 206, Dec. 5, 1980, 94 Stat. 2601; Pub. L. 97-35, title VIII, §§ 809, 817(b), Aug. 13, 1981, 95 Stat. 527, 532; Pub. L. 99-500, title III, § 311, Oct. 18, 1986, 100 Stat. 1783-360, and Pub. L. 99-591, title III, § 311, Oct. 30, 1986, 100 Stat. 3341-363; Pub. L. 99-661, div. D, title I, § 4101, Nov. 14, 1986, 100 Stat. 4071; Pub. L. 100-435, title II, § 213, Sept. 19, 1988, 102 Stat. 1658; Pub. L. 101-147, title I, § 102(a), title III, § 307, Nov. 10, 1989, 103 Stat. 879, 915; Pub. L. 103-448, title I, §§ 105(b), 114(a)-(g), Nov. 2, 1994, 108 Stat. 4702, 4712, 4713; Pub. L. 104-193, title VII, § 706(a)-(l), Aug. 22,

1996, 110 Stat. 2291-2293; Pub. L. 105-336, title I, §§ 105(a)-(e)(1), 107(j)(2)(A), (3)(B), Oct. 31, 1998, 112 Stat. 3148, 3149, 3152, 3153; Pub. L. 108-134, § 5(1), Nov. 22, 2003, 117 Stat. 1389; Pub. L. 108-211, § 5(a), Mar. 31, 2004, 118 Stat. 566; Pub. L. 108-265, title I, § 116(a)-(e), June 30, 2004, 118 Stat. 748-750; Pub. L. 108-447, div. A, title VII, § 788(b), Dec. 8, 2004, 118 Stat. 2851; Pub. L. 110-161, div. A, title VII, § 738(a), Dec. 26, 2007, 121 Stat. 1880; Pub. L. 111-296, title I, §§ 111-113, title III, §§ 321, 322, title IV, §§ 404, 441(a)(5), Dec. 13, 2010, 124 Stat. 3203, 3204, 3247, 3259, 3261.)

REFERENCES IN TEXT

The Child Nutrition Act of 1966, referred to in subsecs. (a)(1), (5), (8) and (b)(1)(D), is Pub. L. 89-642, Oct. 11, 1966, 80 Stat. 885, which is classified generally to chapter 13A (§1771 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1771 of this title and Tables.

CODIFICATION

Pub. L. 99-591 is a corrected version of Pub. L. 99-500.

AMENDMENTS

2010—Pub. L. 111-296, § 441(a)(5)(A), amended section catchline generally.

Subsec. (a). Pub. L. 111-296, § 441(a)(5)(A), inserted subsec. heading, added par. (1), and struck out former par. (1) which authorized the Secretary to carry out a program to initiate and maintain nonprofit food service programs for children in service institutions and provided definitions for this section.

Subsec. (a)(2). Pub. L. 111-296, § 441(a)(5)(B)(i), inserted par. heading, designated existing provisions as subpar. (B) and inserted subpar. heading, inserted cl. (i) designation and heading before first sentence and cl. (ii) designation and heading before second sentence, and added subpar. (A).

Subsec. (a)(3). Pub. L. 111-296, § 441(a)(5)(B)(ii), inserted par. heading and realigned margins of subpars. (A) to (D).

Subsec. (a)(4). Pub. L. 111-296, § 441(a)(5)(B)(iii), inserted par. heading, designated introductory provisions of par. (4) as introductory provisions of subpar. (A) and inserted subpar. heading, redesignated former subpars. (A) to (D) as cls. (i) to (iv), respectively, of subpar. (A) and realigned margins, and designated concluding provisions as subpar. (B) and inserted heading.

Subsec. (a)(5). Pub. L. 111-296, § 441(a)(5)(B)(iv), inserted heading.

Subsec. (a)(6). Pub. L. 111-296, § 441(a)(5)(B)(v), inserted heading.

Subsec. (a)(7). Pub. L. 111-296, § 111, added par. (7) and struck out former par. (7) which defined “private nonprofit organizations” and made them eligible for the program under the same terms and conditions as other service institutions.

Subsec. (a)(11). Pub. L. 111-296, § 112, added par. (11).

Subsec. (a)(12). Pub. L. 111-296, § 113, added par. (12).

Subsec. (b)(3). Pub. L. 111-296, § 321, added par. (3) and struck out former par. (3) which read as follows: “Every service institution, when applying for participation in the program, shall submit a complete budget for administrative costs related to the program, which shall be subject to approval by the State. Payment to service institutions for administrative costs shall equal the levels determined by the Secretary pursuant to the study prescribed in paragraph (4) of this subsection.”

Subsec. (q). Pub. L. 111-296, § 322(2), added subsec. (q). Former subsec. (q) redesignated (r).

Subsec. (r). Pub. L. 111-296, § 404, substituted “September 30, 2015” for “September 30, 2009”.

Pub. L. 111-296, § 322(1), redesignated subsec. (q) as (r). 2007—Subsec. (b)(1). Pub. L. 110-161, § 738(a)(1)(A), (B), redesignated subpars. (B) to (D) as (A) and (C), respectively, and struck out former subpar. (A) which read as follows:

“(A) IN GENERAL.—Except as otherwise provided in this paragraph, payments to service institutions shall equal the full cost of food service operations (which cost shall include the costs of obtaining, preparing, and serving food, but shall not include administrative costs).”

Subsec. (b)(1)(A). Pub. L. 110-161, § 738(a)(1)(C), which directed the amendment of subpar.(A), as redesignated by Pub. L. 110-161, § 738(a)(1)(B), by striking “(B)” and all that followed through “shall not exceed” and inserting “(A) IN GENERAL.—Subject to subparagraph (B) and in addition to amounts made available under paragraph (3), payments to service institutions shall be” was executed by substituting the language to be inserted for “(A) MAXIMUM AMOUNTS.—Subject to subparagraph (C), payments to any institution under subparagraph (A) shall not exceed” to reflect the probable intent of Congress and the redesignation of subpar. (B) as (A). See note above.

Subsec. (b)(1)(B). Pub. L. 110-161, § 738(a)(1)(D), substituted “subparagraph (A)” for “subparagraph (B)”.

Subsec. (b)(1)(C). Pub. L. 110-161, § 738(a)(1)(E), substituted “(A) and (B)” for “(A), (B), and (C)”.

Subsec. (b)(3). Pub. L. 110-161, § 738(a)(2), struck out “full amount of State approved administrative costs incurred, except that such payment to service institutions may not exceed the maximum allowable” after “administrative costs shall equal the”.

2004—Subsec. (a)(8), (9). Pub. L. 108-265, § 116(a), (c), added pars. (8) and (9).

Subsec. (a)(10). Pub. L. 108-265, § 116(d), added par. (10).

Subsec. (a)(10)(C). Pub. L. 108-447, § 788(b)(1), substituted “2006” for “2005”.

Subsec. (a)(10)(D)(i). Pub. L. 108-447, § 788(b)(2)(A), substituted “2008” for “2007”.

Subsec. (a)(10)(D)(ii). Pub. L. 108-447, § 788(b)(2)(B), substituted “2009” for “2008”.

Subsec. (b)(1)(D). Pub. L. 108-265, § 116(b), added subpar. (D).

Subsec. (q). Pub. L. 108-265, § 116(e), substituted “September 30, 2009” for “June 30, 2004”.

Pub. L. 108-211 substituted “June 30, 2004” for “March 31, 2004”.

2003—Subsec. (q). Pub. L. 108-134 substituted “the period beginning October 1, 1977, and ending March 31, 2004” for “the fiscal year beginning October 1, 1977, and each succeeding fiscal year ending before October 1, 2003”.

1998—Subsec. (a)(1)(D)(i). Pub. L. 105-336, § 107(j)(3)(B)(i), substituted “to have a disability” for “to be mentally or physically handicapped”.

Subsec. (a)(1)(D)(ii). Pub. L. 105-336, § 107(j)(3)(B)(ii), substituted “individuals who have a disability” for “the mentally or physically handicapped”.

Subsec. (a)(3)(C). Pub. L. 105-336, § 107(j)(2)(A), inserted “or” at end of cl. (i), redesignated cl. (iii) as (ii), and struck out former cl. (ii) which read as follows: “conduct a regularly scheduled food service primarily for homeless children; or”.

Subsec. (a)(7)(B)(i). Pub. L. 105-336, § 105(a), added cl. (i) and struck out former cl. (i) which read as follows: “(i) serve a total of not more than 2,500 children per day at not more than 5 sites in any urban area, with not more than 300 children being served at any 1 site (or, with a waiver granted by the State under standards developed by the Secretary, not more than 500 children being served at any 1 site); or

“(II) serve a total of not more than 2,500 children per day at not more than 20 sites in any rural area, with not more than 300 children being served at any 1 site (or, with a waiver granted by the State under standards developed by the Secretary, not more than 500 children being served at any 1 site);”.

Subsec. (a)(7)(B)(ii) to (vii). Pub. L. 105-336, § 105(b)(1), redesignated cls. (iv) to (vii) as (ii) to (v), respectively, and struck out former cls. (ii) and (iii) which read as follows:

“(ii) use self-preparation facilities to prepare meals, or obtain meals from a public facility (such as a school district, public hospital, or State university) or a

school participating in the school lunch program under this chapter;

“(iii) operate in areas where a school food authority or the local, municipal, or county government has not indicated by March 1 of any year that such authority or unit of local government will operate a program under this section in such year;”.

Subsec. (f)(7). Pub. L. 105-336, § 105(c), in first sentence, struck out “attending a site on school premises operated directly by the authority” after “permit a child”.

Subsec. (l)(1). Pub. L. 105-336, § 105(b)(2)(A), in first sentence, struck out “(other than private nonprofit organizations eligible under subsection (a)(7) of this section)” after “Service institutions” and substituted “with food service management companies” for “only with food service management companies registered with the State in which they operate” and struck out at end “The State shall, upon award of any bid, review the company’s registration to calculate how many remaining meals the food service management company is equipped to prepare.”

Subsec. (l)(2). Pub. L. 105-336, § 105(b)(2)(B), substituted “may” for “shall” after “Each State” and struck out at end “For the purposes of this section, registration shall include, at a minimum—

“(A) certification that the company meets applicable State and local health, safety, and sanitation standards;

“(B) disclosure of past and present company owners, officers, and directors, and their relationship, if any, to any service institution or food service management company that received program funds in any prior fiscal year;

“(C) records of contract terminations or disallowances, and health, safety, and sanitary code violations, in regard to program operations in prior fiscal years; and

“(D) the addresses of the company’s food preparation and distribution sites.

No food service management company may be registered if the State determines that such company (i) lacks the administrative and financial capability to perform under the program, or (ii) has been seriously deficient in its participation in the program in prior fiscal years.”

Subsec. (l)(3) to (5). Pub. L. 105-336, § 105(b)(2)(C), (D), redesignated pars. (4) and (5) as (3) and (4), respectively, and struck out former par. (3) which read as follows: “In order to ensure that only qualified food service management companies contract for services in all States, the Secretary shall maintain a record of all registered food service management companies that have been seriously deficient in their participation in the program and may maintain a record of other registered food service management companies, for the purpose of making such information available to the States.”

Subsec. (n)(2). Pub. L. 105-336, § 105(e)(1), amended Pub. L. 104-193, § 706(j)(1). See 1996 Amendment note below.

Subsec. (q). Pub. L. 105-336, § 105(d), substituted “2003” for “1998”.

1996—Subsec. (a)(1). Pub. L. 104-193, § 706(a)(1)(A), substituted “initiate and maintain nonprofit food service programs” for “initiate, maintain, and expand nonprofit food service programs” in first sentence.

Subsec. (a)(1)(E). Pub. L. 104-193, § 706(a)(1)(B), struck out “the Trust Territory of the Pacific Islands,” before “and the Northern Mariana Islands”.

Subsec. (a)(7)(A). Pub. L. 104-193, § 706(a)(2), substituted “Private nonprofit organizations” for “Except as provided in subparagraph (C), private nonprofit organizations”.

Subsec. (b). Pub. L. 104-193, § 706(b), inserted heading.

Subsec. (b)(1). Pub. L. 104-193, § 706(b), added par. (1) and struck out former par. (1) which read as follows: “Payments to service institutions shall equal the full cost of food service operations (which cost shall include the cost of obtaining, preparing, and serving food, but shall not include administrative costs), except that

such payments to any institution shall not exceed (1) 85.75 cents for each lunch and supper served; (2) 47.75 cents for each breakfast served; or (3) 22.50 cents for each meal supplement served: *Provided*, That such amounts shall be adjusted each January 1 to the nearest one-fourth cent in accordance with the changes for the twelve-month period ending the preceding November 30 in the series for food away from home of the Consumer Price Index for All Urban Consumers published by the Bureau of Labor Statistics of the Department of Labor: *Provided further*, That the Secretary may make such adjustments in the maximum reimbursement levels as the Secretary determines appropriate after making the study prescribed in paragraph (4) of this subsection."

Subsec. (b)(2). Pub. L. 104-193, §706(c), substituted "3 meals, or 2 meals and 1 supplement," for "four meals" in first sentence and struck out at end "The meals that camps and migrant programs may serve shall include a breakfast, a lunch, a supper, and meal supplements."

Subsec. (c)(2). Pub. L. 104-193, §706(d)(3), (4), struck out ", and such higher education institutions," before "shall be eligible to participate" and substituted "on showing residence in areas in which poor economic conditions exist or on the basis of income eligibility statements for children enrolled in the program" for "without application".

Pub. L. 104-193, §706(d)(1), (2), designated subpar. (B) as par. (2) and struck out subpars. (A), relating to eligibility of institutions operating National Youth Sports Program for meal and supplement reimbursements, and (C) to (E), relating to reimbursement rates, nutritional requirements and meal patterns, and issuance of regulations, respectively.

Subsec. (e)(1). Pub. L. 104-193, §706(e), substituted "each service institution. The State" for "each service institution: *Provided*, That (A) the State", inserted "(excluding a school)" after "program payment to any service institution", and substituted "responsibilities. No advance program payment" for "responsibilities, and (B) no advance program payment".

Subsec. (f). Pub. L. 104-193, §706(f)(5), redesignated pars. (4) to (7) as (3) to (6), respectively.

Pub. L. 104-193, §706(f)(1)-(4), redesignated first to seventh sentences as pars. (1) to (7), respectively, struck out par. (3), substituted "paragraph (1)" for "the first sentence" in par. (4), and substituted "conformance with standards set by local health authorities" for "that bacteria levels conform to the standards which are applied by the local health authority for that locality with respect to the levels of bacteria that may be present in meals served by other establishments in that locality" in par. (6)(B). Prior to repeal, par. (3) read as follows: "The Secretary shall provide additional technical assistance to those service institutions and private nonprofit organizations that are having difficulty maintaining compliance with the requirements."

Subsec. (f)(7). Pub. L. 104-193, §706(g), added par. (7).

Subsec. (m). Pub. L. 104-193, §706(h), substituted "be available at any reasonable time for inspection and audit" for "at all times be available for inspection and audit" in second sentence.

Subsec. (n)(2). Pub. L. 104-193, §706(j)(1), as amended by Pub. L. 105-336, §105(e)(1), struck out ", including the State's methods for assessing need" after "needy children".

Pub. L. 104-193, §706(i), struck out ", and its plans and schedule for informing service institutions of the availability of the program" before semicolon.

Subsec. (n)(3). Pub. L. 104-193, §706(j)(2), (4), redesignated par. (4) as (3) and struck out former par. (3) which read as follows: "the State's best estimate of the number and character of service institutions and sites to be approved, and of meals to be served and children to participate for the fiscal year, and a description of the estimating methods used;"

Subsec. (n)(4). Pub. L. 104-193, §706(j)(4), redesignated par. (5) as (4). Former par. (4) redesignated (3).

Pub. L. 104-193, §706(j)(3), struck out "and schedule" after "State's plans".

Subsec. (n)(5) to (7). Pub. L. 104-193, §706(j)(4), redesignated pars. (6) and (7) as (5) and (6), respectively. Former par. (5) redesignated (4).

Subsec. (p). Pub. L. 104-193, §706(l), redesignated subsec. (q) as (p) and struck out former subsec. (p) which read as follows: "During the fiscal years 1990 and 1991, the Secretary and the States shall carry out a program to disseminate to potentially eligible private nonprofit organizations information concerning the amendments made by the Child Nutrition and WIC Reauthorization Act of 1989 regarding the eligibility under subsection (a)(7) of this section of private nonprofit organizations for the program established under this section."

Subsec. (q). Pub. L. 104-193, §706(l)(2), redesignated subsec. (r) as (q). Former subsec. (q) redesignated (p).

Subsec. (q)(2). Pub. L. 104-193, §706(k)(1), (3), redesignated par. (3) as (2) and struck out former par. (2) which read as follows: "The Secretary shall require each State to establish and implement an ongoing training and technical assistance program for private nonprofit organizations that provides information on program requirements, procedures, and accountability. The Secretary shall provide assistance to State agencies regarding the development of such training and technical assistance programs."

Subsec. (q)(3). Pub. L. 104-193, §706(k)(3), redesignated par. (3) as (2).

Pub. L. 104-193, §706(k)(2), substituted "paragraph (1)" for "paragraphs (1) and (2) of this subsection".

Subsec. (q)(4). Pub. L. 104-193, §706(k)(1), struck out par. (4) which read as follows: "For the purposes of this subsection, the term 'private nonprofit organization' has the meaning given such term in subsection (a)(7)(B) of this section."

Subsec. (r). Pub. L. 104-193, §706(l)(2), redesignated subsec. (r) as (q).

1994—Subsec. (a)(4)(A) to (F). Pub. L. 103-448, §114(a), added subpars. (A) to (D) and struck out former subpars. (A) to (F) which read as follows:

"(A) local schools or service institutions that have demonstrated successful program performance in a prior year;

"(B) service institutions that prepare meals at their own facilities or operate only one site;

"(C) service institutions that use local school food facilities for the preparation of meals;

"(D) other service institutions that have demonstrated ability for successful program operation;

"(E) service institutions that plan to integrate the program with Federal, State, or local employment programs; and

"(F) private nonprofit organizations eligible under paragraph (7)."

Subsec. (a)(7)(C). Pub. L. 103-448, §114(b), struck out subpar. (C) which read as follows:

"(C)(i) Except as provided in clause (ii), no private nonprofit organization (other than organizations eligible under paragraph (1)) may participate in the program in an area where a school food authority or a local, municipal, or county government participated in the program before such organization applied to participate until the expiration of the 1-year period beginning on the date that such school food authority or local, municipal, or county government terminated its participation in the program.

"(ii) Clause (i) shall not apply if the appropriate State agency or regional office of the Department of Agriculture (whichever administers the program in the area concerned), after consultation with the school food authority or local, municipal, or county government concerned, determines that such school food authority or local, municipal, or county government would have discontinued its participation in the program regardless of whether a private nonprofit organization was available to participate in the program in such area."

Subsec. (c)(1). Pub. L. 103-448, §114(c), inserted before period at end "or that provide meal service at non-school sites to children who are not in school for a period during the months of October through April due to

a natural disaster, building repair, court order, or similar cause”.

Subsec. (f). Pub. L. 103-448, §105(b), inserted after first sentence “The Secretary shall provide technical assistance to service institutions and private nonprofit organizations participating in the program to assist the institutions and organizations in complying with the nutritional requirements prescribed by the Secretary pursuant to this subsection. The Secretary shall provide additional technical assistance to those service institutions and private nonprofit organizations that are having difficulty maintaining compliance with the requirements.” and substituted “Meals described in the first sentence shall be served” for “Such meals shall be served”.

Subsec. (l)(3). Pub. L. 103-448, §114(d), substituted “that have been seriously deficient in their participation in the program and may maintain a record of other registered food service management companies,” for “and their program record”.

Subsec. (n)(5). Pub. L. 103-448, §114(e)(1), (2), redesignated cl. (7) as (5) and struck out former cl. (5) which read as follows: “the State’s schedule for application by service institutions;”.

Subsec. (n)(6). Pub. L. 103-448, §114(e)(1)-(3), redesignated cl. (9) as (6), inserted “and” at end, and struck out former cl. (6) which read as follows: “the actions to be taken to maximize the use of meals prepared by service institutions and the use of school food service facilities;”.

Subsec. (n)(7). Pub. L. 103-448, §114(e)(2), redesignated cl. (11) as (7). Former cl. (7) redesignated (5).

Subsec. (n)(8). Pub. L. 103-448, §114(e)(1), struck out cl. (8) which read as follows: “the State’s plan and schedule for registering food service management companies;”.

Subsec. (n)(9). Pub. L. 103-448, §114(e)(2), redesignated cl. (9) as (6).

Subsec. (n)(10). Pub. L. 103-448, §114(e)(1), struck out cl. (10) which read as follows: “the State’s plan for determining the amounts of program payments to service institutions and for disbursing such payments;”.

Subsec. (n)(11). Pub. L. 103-448, §114(e)(2), redesignated cl. (11) as (7).

Subsec. (n)(12). Pub. L. 103-448, §114(e)(4), struck out cl. (12) which read as follows: “the State’s procedure for granting a hearing and prompt determination to any service institution wishing to appeal a State ruling denying the service institution’s application for program participation or for program reimbursement.”

Subsec. (q)(2). Pub. L. 103-448, §114(f)(1), (2), redesignated par. (3) as (2) and struck out former par. (2) which read as follows: “Application forms or other printed materials provided by the Secretary or the States to persons who intend to apply to participate as private nonprofit organizations shall contain a warning in bold lettering explaining, at a minimum—

“(A) the criminal provisions and penalties established by subsection (o) of this section; and

“(B) the procedures for termination of participation in the program as established by regulations.”

Subsec. (q)(3). Pub. L. 103-448, §114(f)(2), (3), redesignated par. (4) as (3) and substituted “paragraphs (1) and (2)” for “paragraphs (1) and (3)”. Former par. (3) redesignated (2).

Subsec. (q)(4), (5). Pub. L. 103-448, §114(f)(2), redesignated pars. (4) and (5) as (3) and (4), respectively.

Subsec. (r). Pub. L. 103-448, §114(g), substituted “1998” for “1994”.

1989—Subsec. (a)(3)(C). Pub. L. 101-147, §102(a)(1)(A), amended subpar. (C) generally. Prior to amendment, subpar. (C) read as follows: “either conduct a regularly scheduled food service for children from areas in which poor economic conditions exist or qualify as camps; and”.

Subsec. (a)(4)(F). Pub. L. 101-147, §102(a)(1)(B), added subpar. (F).

Subsec. (a)(7)(A). Pub. L. 101-147, §102(a)(1)(C)(i), amended subpar. (A) generally. Prior to amendment, subpar. (A) read as follows: “Not later than May 1, 1989,

the Secretary shall institute Statewide demonstration projects in five States in which private nonprofit organizations, as defined in subparagraph (B) (other than organizations already eligible under subsection (a)(1) of this section), shall be eligible for the program under the same terms and conditions as other service institutions.”

Subsec. (a)(7)(B)(i). Pub. L. 101-147, §102(a)(1)(C)(ii)(I), amended cl. (i) generally. Prior to amendment, cl. (i) read as follows: “serve no more than 2,500 children per day and operate at not more than 5 sites;”.

Subsec. (a)(7)(B)(ii). Pub. L. 101-147, §102(a)(1)(C)(ii)(II), inserted “or a school participating in the school lunch program under this chapter” after “university”.

Subsec. (a)(7)(B)(v). Pub. L. 101-147, §102(a)(1)(C)(ii)(III), inserted “or families” after “children”.

Subsec. (a)(7)(C). Pub. L. 101-147, §102(a)(1)(C)(iii), added subpar. (C).

Subsec. (c). Pub. L. 101-147, §102(a)(2), designated existing provisions as par. (1) and added par. (2).

Subsec. (d). Pub. L. 101-147, §307(1), substituted “July 1 of each year” for “July 1, of each year”.

Subsec. (f). Pub. L. 101-147, §307(2), substituted “prescribe” for “prescribed” before “model meal specifications”.

Subsec. (g). Pub. L. 101-147, §307(3), struck out “: *Provided*, That for fiscal year 1978, those portions of the regulations relating to payment rates for both food service operations and administrative costs need not be published until December 1 and February 1, respectively” after “February 1 of each fiscal year”.

Subsec. (h). Pub. L. 101-147, §307(4), made technical amendments to references to sections 612c, 1431, and 1446a-1 of title 7 involving underlying provisions of original act and requiring no change in text.

Subsec. (l)(1). Pub. L. 101-147, §102(a)(3), inserted “(other than private nonprofit organizations eligible under subsection (a)(7) of this section)” after “Service institutions”.

Subsec. (p). Pub. L. 101-147, §102(a)(4), (5), added subsec. (p) and redesignated former subsec. (p) as (r).

Subsec. (q). Pub. L. 101-147, §102(a)(5), added subsec. (q).

Subsec. (r). Pub. L. 101-147, §102(a)(6), substituted “For the fiscal year beginning October 1, 1977, and each succeeding fiscal year ending before October 1, 1994,” for “For the fiscal years beginning October 1, 1979, and ending September 30, 1989.”

Pub. L. 101-147, §102(a)(4), redesignated former subsec. (p) as (r).

1988—Subsec. (a)(1)(B). Pub. L. 100-435, §213(a), inserted reference to public or private nonprofit higher education institutions participating in National Youth Sports Program.

Subsec. (a)(7). Pub. L. 100-435, §213(b), added par. (7).

1986—Subsec. (p). Pub. L. 99-500, Pub. L. 99-591, and Pub. L. 99-661, amended subsec. (p) identically, substituting “1989” for “1984”.

1981—Subsec. (a). Pub. L. 97-35, §809, in par. (1)(B) substituted “public or private nonprofit school food authorities, local, municipal, or county governments,” for “nonresidential public or private nonprofit institutions” and in par. (1)(C) substituted “50” for “33%”, and added par. (6).

Subsec. (i). Pub. L. 97-35, §817(b), struck out subsec. (i) which related to administration of program by Secretary in event of nonadministration by State.

1980—Subsec. (b)(2). Pub. L. 96-499, §206(1), restricted service institutions to serving only two meals per day unless such institutions were a camp or an institution serving meals primarily to migrant children.

Subsec. (p). Pub. L. 96-499, §206(2), substituted “September 30, 1984” for “September 30, 1980”.

1978—Subsec. (a)(1)(D)(ii). Pub. L. 95-627, §10(d)(2), inserted “or nonprofit private” after “in a public”.

Subsec. (b)(1). Pub. L. 95-627, §5(d), inserted “for All Urban Consumers” after “Consumer Price Index”.

Subsec. (k)(1). Pub. L. 95-627, §7(b), substituted “\$100,000” for “\$50,000” in cl. (B), “\$250,000” for

“\$100,000” in cl. (C), and “2½ percent” for “2 percent” in cl. (D).

1977—Subsec. (a). Pub. L. 95-166, in revising subsec. (a), among other changes: reenacted par. (1); inserted cl. (A) definition of “program”; reenacted as cl. (B) definition of “service institutions”; inserting development of “school vacation” programs; reenacted as cl. (C) definition of “areas in which poor economic conditions exist;” definition of “poor economic conditions” of former par. (3), substituting “as determined by information” for “as shown by information” and “served to children attending public and nonprofit private schools located in the area of program food service sites, or from other appropriate sources, including statements of eligibility based upon income for children enrolled in the program” for “served to children attending schools located in the area of summer food sites, or from other applicable sources” and striking out reference to information provided from model city target areas; inserted cl. (D) definition of “children”; reenacted as cl. (E) definition of “State” last sentence of former par. (3), extending term to include the Northern Mariana Islands; enacted par. (2), which incorporated part of former par. (1) which had read “To the maximum extent feasible, consistent with the purposes of this section, special summer programs shall utilize the existing food service facilities of public and nonprofit private schools.”; enacted par. (3), which incorporated part of former par. (2) which had read “Service institutions eligible to participate under the program authorized under this section shall be limited to those which conduct a regularly scheduled program for children from areas in which poor economic conditions exist, for any period during the months of May through September, at site locations where organized recreation activities or food services are provided for children in attendance.”; and added pars. (4) and (5).

Subsec. (b)(1). Pub. L. 95-166 incorporated existing provisions in part in text designated par. (1); substituted “Payments” for “Disbursements” increased payments for cost of lunch and supper, breakfast, and each meal supplement to 85.75 from 75.5, to 47.75 from 42, and to 22.50 from 19.75 cents respectively; substituted provision for adjustment of rates each January 1 based on the Consumer Price Index for twelve-month period ending November 30 for prior such provision for adjustment each March 1 based on the Index for year ending January 31; exclude from cost of food service operations administrative costs; and authorized adjustments, as appropriate, in the maximum reimbursement levels.

Subsec. (b)(2). Pub. L. 95-166 added par. (2) which incorporated in part existing provision which formerly stated that no institution shall be prohibited from serving breakfasts, suppers, and meal supplements as well as lunches unless the service period of different meals coincides or overlaps.

Subsec. (b)(3). Pub. L. 95-166 added par. (3) which supersedes part of existing provisions prescribing administrative costs of lunch and supper, breakfast, and meal supplement not to exceed 6, 3, and 1.5 cents respectively.

Subsec. (b)(4). Pub. L. 95-166 added par. (4).

Subsec. (c). Pub. L. 95-166 substituted “Payments” for “Disbursements” and “except in the case of service institutions that operate food service programs for children on school vacation at any time under a continuous school calendar” for “except that the foregoing provision shall not apply to institutions which develop food service programs for children on school vacation at any time under a continuous school calendar or prevent such institutions, if otherwise eligible, from participating in the program authorized by this section”.

Subsec. (d). Pub. L. 95-166, in revising text, substituted provision for advance program payment to States through letters of credit forwarded no later than April 15, May 15, and July 1, of each year for prior provision for forwarding advance payments no later than June 1, July 1, and August 1 of each year; inserted computation of payment amount provision; struck out

prior provision for an amount no less than (1) the total payment made to the State for meals served for the calendar month of the preceding calendar year or (2) 65 per centum of the amount estimated by the State, on the basis of approved applications, to be needed to reimburse service institutions for meals to be served in the month, whichever is the greater, now covered in subsec. (e)(2) of this section; substituted provision for forwarding payments to States operating a program in months other than May through September by the first day of the month prior to the month in which the program is conducted for prior provision for receipt of advance payments not later than the first day of each month involved where institutions operate programs during nonsummer vacations during a continuous school year calendar; reenacted provision for payments within sixty days of receipt of valid claims; and struck out provision declaring that any funds advanced to a State for which valid claims have not been established within 180 days shall be deducted from the next appropriate monthly advance payment unless the claimant requests a hearing with the Secretary prior to the 180th day, covered in subsec. (e)(2) of this section.

Subsec. (e). Pub. L. 95-166 added subsec. (e) which in incorporating in part provisions of former subsec. (d), substituted in par. (1) July 15 and August 15 for July 1 and August 1 and reenacted provision for payment not later than the first day of each month of operation where service institutions operate under a continuous school calendar, and in par. (2) substituted provision for computation of amount which is the greatest of the amount described in cls. (A), (B), and (C) for prior provision for such computation which is the greater of (1) the total payment made to the State for meals served for the calendar month of the preceding calendar year (covered in cl. (A)) or (2) 65 per centum of the amount estimated by the State, on the basis of approved applications, to be needed to reimburse service institutions for meals to be served in the month (covered in cl. (C)). Former subsec. (e) redesignated (f).

Subsec. (f). Pub. L. 95-166 redesignated former subsec. (e) as (f), substituted in first sentence “receiving funds” for “to which funds are disbursed”, and inserted provisions respecting: charging ineligible children for meals served in camps, model specifications and standards for quality assurance, meal preparation contract requirements, and inspection and testing. Former subsec. (f) redesignated (g).

Subsec. (g). Pub. L. 95-166 redesignated former subsec. (f) as (g), required publication of proposed regulations by November 1, instead of January 1, final regulations by January 1, instead of March 1, and guidelines, applications, and handbooks by February 1, instead of March 1, of each fiscal year, inserted proviso, substituted provision for payment of startup costs limited to 20 percent of administrative funds provided for in the administrative budget for prior limitation to 10 per centum of Federal funds provided the service institutions for meals served under this section during the preceding summer, and substituted provision for subtraction of startup costs from amounts otherwise payable for administrative costs made to the service institutions for prior provision for such reduction from payments made for meals served under subsec. (b) of this section. Former subsec. (g) redesignated (h).

Subsec. (h). Pub. L. 95-166 redesignated former subsec. (g) as (h), struck out “participating” before “service institution” and “, either nationally or in the institution area, or foods donated by the Secretary” after “abundance”, and substituted provision for donation of available or purchased food to States, for distribution to service institutions that can use commodities efficiently and effectively, as determined by the Secretary for prior provision for donation by the Secretary of available or purchased foods, irrespective of amount of appropriated funds, to service institutions in accordance with the needs as determined by authorities of these institutions for utilization in their feeding program. Former subsec. (h) redesignated (i).

Subsec. (i). Pub. L. 95-166 redesignated former subsec. (h) as (i), authorized Secretary’s administration of the

program when the State is unable for any reason to disburse the funds otherwise payable or does not operate the program as required by this section, prior provision only requiring direct disbursements when the State educational agency was not permitted by law or was otherwise unable to disburse the funds, and required State notification of the Secretary of its intention not to administer the program. Former subsec. (i) redesignated (j).

Subsec. (j). Pub. L. 95-166 redesignated former subsec. (i) as (j). Former subsec. (j) redesignated (p).

Subsec. (k). Pub. L. 95-166 added subsec. (k) and struck out former subsec. (k) which required Secretary to pay administrative costs of each State in an amount equal to 2 per centum of funds distributed to the State and prescribing minimum sum of \$10,000 each fiscal year, except where distribution of funds to the State totals less than \$50,000 for the fiscal year.

Subsec. (l). Pub. L. 95-166 added subsec. (l) and struck out former subsec. (l) which provided that nothing in this section should be construed to preclude a service institution from contracting on a competitive basis for the furnishing of meals or administration of the program, or both.

Subsec. (m). Pub. L. 95-166 struck out “, State educational agencies,” after “States”.

Subsecs. (n), (o). Pub. L. 95-166 added subsecs. (n) and (o).

Subsec. (p). Pub. L. 95-166 redesignated former subsec. (j) as (p) and made authorization applicable to fiscal years beginning Oct. 1, 1977, and ending Sept. 30, 1980.

1975—Subsec. (a). Pub. L. 94-105 substituted provisions authorizing to be appropriated sums for a summer food services program through Sept. 30, 1977, for provisions authorizing to be appropriated sums for a summer food services program through Sept. 30, 1975.

Subsec. (a)(1). Pub. L. 94-20, §1(a), inserted “and for the period July 1, 1975, through September 30, 1975,” before “to enable”.

Subsec. (b). Pub. L. 94-105 substituted provisions for payment to service institutions of the full cost of obtaining, preparing and serving food and administrative costs, with maximum rates for each kind of meal and its related administrative cost and adjustment of the rates each March 1 on the basis of changes in the series for food away from home of the Consumer Price Index for provisions apportioning among the states the appropriated sums, with a maximum basic grant of \$50,000, and reserving 2 per centum of the appropriated sums for apportionment to Guam, Puerto Rico, the Virgin Islands, American Samoa, and the Trust Territory of the Pacific Islands.

Subsec. (c). Pub. L. 94-105 substituted provisions for disbursement to service institutions only for meals served during May through Sept. except for institutions with programs for children on school vacation at any time under a continuous school calendar for provisions for the disbursement of funds by the State educational agency to service institutions on a non-discriminatory basis for the cost of obtaining agricultural commodities and other foods, purchase and rental of equipment and authorizing financial assistance not to exceed 3 per centum of the operating costs in cases of severe need.

Subsec. (d). Pub. L. 94-105 substituted provisions relating to the advance payment to States for meals served in that month and deductions in the next month for advances for which valid claims have not been established within 180 days for provisions for the disbursement of funds directly to service institutions in states where the State educational agency is forbidden by law to disburse funds to such institutions.

Subsec. (e). Pub. L. 94-105 substituted provisions for free meals consisting of a combination of foods and meeting minimum nutritional standards for provisions making available for the first three months of the next fiscal year any funds unobligated at the end of the prior fiscal year.

Subsec. (f). Pub. L. 94-105 substituted provisions directing the Secretary to publish proposed and final reg-

ulations, guidelines, and handbooks and authorizing startup costs for meals served during the preceding summer for provisions for free or reduced cost meals with minimum nutritional standards and prohibiting segregation, discrimination or overt identification practices with regard to any child because of his inability to pay.

Subsec. (g). Pub. L. 94-105 substituted provisions directing the utilization of foods donated or designated as in abundance by the Secretary and directing the donation of food available under section 1431, 612c and 1446a-1 of title 7 irrespective of the amount of funds appropriated under this section for provisions directing further apportionment among the States if any State cannot utilize all funds apportioned to it or additional funds are made available.

Subsec. (h). Pub. L. 94-105 substituted provisions authorizing the Secretary to disburse funds directly to service institutions in States where the educational agency is not permitted by law or is otherwise unable to disburse the funds for provisions requiring certification by the Secretary to the Secretary of the Treasury of amounts to be paid, directing the utilization of donated foods or foods designated as abundant, permitting donation of food available under sections 1431, 612c or 1446a-1 of title 7 irrespective of funds appropriated, mandating that value of assistance to children under this section not be considered income, that expenditures of State and local funds not be diminished as a result of federal funding, authorizing appropriations for administrative expenses and requiring States and State educational agencies and service institutions to keep and make available for inspection such accounts and records as may be necessary.

Subsec. (i). Pub. L. 94-105 substituted provision that the amount of State and local funds spent for food programs not be diminished as a result of funds received under this program for provisions authorizing the Secretary of Agriculture to utilize during May 15 to Sept. 15, 1972 not to exceed \$25,000 of funds available under section 612c of Title 7 to carry out the purposes of this chapter, such funds to be reimbursed out of any supplemental appropriation.

Subsec. (j). Pub. L. 94-105 substituted provision authorizing to be appropriated such sums as may be necessary for the Secretary's administrative expenses, for provisions adjusting the reimbursement rate for meals served during May through Sept. 1975 to the nearest quarter cent to reflect changes since the period of May through Sept. 1974 in the cost of operating special summer food programs.

Pub. L. 94-20, §1(b), added subsec. (j).

Subsec. (k). Pub. L. 94-105 substituted provisions directing the Secretary to pay each State for administrative costs an amount equal to 2 per centum of funds distributed under subsec. (b), with no State to receive less than \$10,000 unless funds distributed to such State total less than \$50,000 for provisions directing the Secretary to issue regulations no later than ten days following May 2, 1975 pertaining to operations of the program during the months of May through Sept. 1975, with proviso that such regulations shall in no way differ from current regulations except for changes necessary to implement this chapter.

Pub. L. 94-20, §1(b), added subsec. (k).

Subsecs. (l), (m). Pub. L. 94-105 added subsecs. (l) and (m).

1972—Subsec. (a)(1). Pub. L. 92-433, §2(a), substituted authorization of appropriation of such sums as are necessary for each of the fiscal years ending June 30, 1973, June 30, 1974, and June 30, 1975, for provisions authorizing appropriation of \$32,000,000 for each of the fiscal years ending June 30, 1972 and June 30, 1973.

Subsec. (a)(2). Pub. L. 92-433, §2(b), inserted provisions authorizing special summer programs to utilize existing food service facilities of public and nonprofit private schools to the maximum extent feasible.

Subsec. (i). Pub. L. 92-433, §1, added subsec. (i).

1971—Subsec. (a)(1). Pub. L. 92-32, §7(a), authorized appropriations of \$32,000,000 for fiscal years ending June



30, 1972, and 1973, as were authorized for fiscal years ending June 30, 1969, 1970, and 1971, and substituted in first sentence “program” for “pilot program”.

Subsec. (c)(2). Pub. L. 92-32, §7(b), provided that non-Federal contributions may be in cash or kind, fairly evaluated, including but not limited to equipment and services.

1970—Subsec. (f). Pub. L. 91-248 provided for determination of ability to pay the full cost of lunch based on a publicly announced policy the minimum criteria of which includes family income and the number of school children in the family unit as well as the size of the family unit in general and provided that there be no overt identification of those children who receive free and reduced price meals.

#### EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111-296 effective Oct. 1, 2010, except as otherwise specifically provided, see section 445 of Pub. L. 111-296, set out as a note under section 1751 of this title.

#### EFFECTIVE DATE OF 2007 AMENDMENT

Pub. L. 110-161, div. A, title VII, §738(c), Dec. 26, 2007, 121 Stat. 1880, provided that: “The amendments made by this section [amending this section and section 1769 of this title] take effect on January 1 of the first full calendar year following the date of enactment of this Act [Dec. 26, 2007].”

#### EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by section 116(a)–(c), (e) of Pub. L. 108-265 effective June 30, 2004, and amendment by section 116(d) of Pub. L. 108-265 effective Oct. 1, 2005, see section 502(a), (b)(5) of Pub. L. 108-265, as amended, set out as an Effective Date note under section 1754 of this title.

#### EFFECTIVE DATE OF 1998 AMENDMENT

Pub. L. 105-336, title I, §105(e)(2), Oct. 31, 1998, 112 Stat. 3149, provided that: “The amendment made by paragraph (1) [amending this section] takes effect on January 1, 1997.”

Pub. L. 105-336, title I, §107(j)(4), Oct. 31, 1998, 112 Stat. 3153, provided that: “The amendments made by paragraphs (1) and (2) [amending this section and sections 1766 and 1769f of this title and repealing section 1766b of this title] take effect on July 1, 1999.”

Amendment by sections 105(a)–(d) and 107(j)(3)(B) of Pub. L. 105-336 effective Oct. 1, 1998, see section 401 of Pub. L. 105-336, set out as a note under section 1755 of this title.

#### EFFECTIVE DATE OF 1996 AMENDMENT

Pub. L. 104-193, title VII, §706(m), Aug. 22, 1996, 110 Stat. 2293, provided that: “The amendments made by subsection (b) [amending this section] shall become effective on January 1, 1997.”

#### EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103-448 effective Oct. 1, 1994, see section 401 of Pub. L. 103-448, set out as a note under section 1755 of this title.

#### EFFECTIVE DATE OF 1989 AMENDMENT

Pub. L. 101-147, title I, §102(b)(2)(A), Nov. 10, 1989, 103 Stat. 881, provided that: “Subparagraphs (A), (B), (C), and (D)(i) of section 13(c)(2) of the [Richard B. Russell] National School Lunch Act [subpars. (A), (B), (C), (D)(i) of subsec. (c)(2) of this section] (as added by subsection (a)(2)(B) of this section) shall be effective as of October 1, 1989.”

Pub. L. 101-147, title I, §102(b)(3), Nov. 10, 1989, 103 Stat. 882, provided that: “The amendments made by subsection (a)(6) [amending this section] shall be effective as of October 1, 1989.”

#### EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100-435 to be effective and implemented on Oct. 1, 1988, see section 701(a) of Pub. L.

100-435, set out as a note under section 2012 of Title 7, Agriculture.

#### EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97-35 effective Oct. 1, 1981, see section 820(a)(4) of Pub. L. 97-35, set out as a note under section 1753 of this title.

#### EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by section 5(d) of Pub. L. 95-627 effective July 1, 1979, and amendment by sections 7(b) and 10(d)(2) of Pub. L. 95-627 effective Oct. 1, 1978, see section 14 of Pub. L. 95-627, set out as a note under section 1755 of this title.

#### EFFECTIVE DATE OF 1975 AMENDMENT

Pub. L. 94-105, §13, Oct. 7, 1975, 89 Stat. 515, provided that the amendment made by that section is effective Oct. 1, 1975.

#### REGULATIONS

Pub. L. 101-147, title I, §102(b)(1), Nov. 10, 1989, 103 Stat. 881, provided that: “Not later than February 1, 1990, the Secretary of Agriculture shall issue regulations to implement the amendments made by paragraphs (1), (3), (4), and (5) of subsection (a) [amending this section]. Notwithstanding the provisions of section 553 of title 5, United States Code, the Secretary of Agriculture may issue such regulations without providing notice or an opportunity for public comment.”

Pub. L. 101-147, title I, §102(b)(2)(B), Nov. 10, 1989, 103 Stat. 882, provided that: “Not later than February 1, 1990, the Secretary of Agriculture shall—

“(i) issue final regulations to implement subparagraph (D)(ii) of section 13(c)(2) of the [Richard B. Russell] National School Lunch Act [subpar. (D)(ii) of subsec. (c)(2) of this section] (as added by subsection (a)(2)(B) of this section); and

“(ii) issue final regulations under subparagraph (E) of such section.”

#### ALL-DAY EDUCATIONAL AND RECREATIONAL ACTIVITIES; SOURCES OF FUNDS

Pub. L. 103-448, title I, §114(h), Nov. 2, 1994, 108 Stat. 4713, directed Secretary of Agriculture, not later than 180 days after Nov. 2, 1994, in consultation with heads of other Federal agencies, to identify sources of Federal funds that might be available from other Federal agencies for service institutions under the summer food service program for children established under this section to carry out all-day educational and recreational activities for children at feeding sites under the program, and notify the service institutions of the sources.

#### § 1762. Repealed. Pub. L. 101-147, title III, § 308, Nov. 10, 1989, 103 Stat. 915

Section, act June 4, 1946, ch. 281, §13A, as added Mar. 12, 1970, Pub. L. 91-207, 84 Stat. 51, related to emergency assistance to provide nutritious meals to needy children in schools.

#### § 1762a. Commodity distribution program

##### (a) Use of funds for purchase of agricultural commodities and products for donation

Notwithstanding any other provision of law, the Secretary shall—

(1) use funds available to carry out the provisions of section 612c of title 7 which are not expended or needed to carry out such provisions, to purchase (without regard to the provisions of existing law governing the expenditure of public funds) agricultural commodities and their products of the types customarily purchased under such section (which may include domestic seafood commodities and their

products), for donation to maintain the annually programmed level of assistance for programs carried on under this chapter, the Child Nutrition Act of 1966 [42 U.S.C. 1771 et seq.], and title III of the Older Americans Act of 1965 [42 U.S.C. 3021 et seq.]; and

(2) if stocks of the Commodity Credit Corporation are not available, use the funds of such Corporation to purchase agricultural commodities and their products of the types customarily available under section 1431 of title 7, for such donation.

**(b) Nutrition quality and content information**

(1) The Secretary shall maintain and continue to improve the overall nutritional quality of entitlement commodities provided to schools to assist the schools in improving the nutritional content of meals.

(2) The Secretary shall—

(A) require that nutritional content information labels be placed on packages or shipments of entitlement commodities provided to the schools; or

(B) otherwise provide nutritional content information regarding the commodities provided to the schools.

**(c) Authorization of appropriations for purchase of products or for cash payments in lieu of donations**

The Secretary may use funds appropriated from the general fund of the Treasury to purchase agricultural commodities and their products of the types customarily purchased for donation under section 311(a)(4)<sup>1</sup> of the Older Americans Act of 1965 or for cash payments in lieu of such donations under section 311(b)(1)<sup>1</sup> of such Act. There are hereby authorized to be appropriated such sums as are necessary to carry out the purposes of this subsection.

**(d) Assistance procedures; cost and benefits, review; technical assistance; report to Congress; food quality standards contracting procedures**

In providing assistance under this chapter and the Child Nutrition Act of 1966 [42 U.S.C. 1771 et seq.] for school lunch and breakfast programs, the Secretary shall establish procedures which will—

(1) ensure that the views of local school districts and private nonprofit schools with respect to the type of commodity assistance needed in schools are fully and accurately reflected in reports to the Secretary by the State with respect to State commodity preferences and that such views are considered by the Secretary in the purchase and distribution of commodities and by the States in the allocation of such commodities among schools within the States;

(2) solicit the views of States with respect to the acceptability of commodities;

(3) ensure that the timing of commodity deliveries to States is consistent with State school year calendars and that such deliveries occur with sufficient advance notice;

(4) provide for systematic review of the costs and benefits of providing commodities of the

kind and quantity that are suitable to the needs of local school districts and private nonprofit schools; and

(5) make available technical assistance on the use of commodities available under this chapter and the Child Nutrition Act of 1966 [42 U.S.C. 1771 et seq.].

**(e) Consultation with school representatives**

Each State agency that receives food assistance payments under this section for any school year shall consult with representatives of schools in the State that participate in the school lunch program with respect to the needs of such schools relating to the manner of selection and distribution of commodity assistance for such program.

**(f) Commodity only schools**

Commodity only schools shall be eligible to receive donated commodities equal in value to the sum of the national average value of donated foods established under section 1755(c) of this title and the national average payment established under section 1753 of this title. Such schools shall be eligible to receive up to 5 cents per meal of such value in cash for processing and handling expenses related to the use of such commodities. Lunches served in such schools shall consist of a combination of foods which meet the minimum nutritional requirements prescribed by the Secretary under section 1758(a) of this title, and shall represent the four basic food groups, including a serving of fluid milk.

**(g) Extension of alternative means of assistance**

(1) As used in this subsection, the term “eligible school district” has the same meaning given such term in section 1581(a) of the Food Security Act of 1985.

(2) In accordance with the terms and conditions of section 1581 of such Act, the Secretary shall permit an eligible school district to continue to receive assistance in the form of cash or commodity letters of credit assistance, in lieu of commodities, to carry out the school lunch program operated in the district.

**(h) Notice of irradiated food products**

**(1) In general**

The Secretary shall develop a policy and establish procedures for the purchase and distribution of irradiated food products in school meals programs under this chapter and the Child Nutrition Act of 1966 (42 U.S.C. 1771 et seq.).

**(2) Minimum requirements**

The policy and procedures shall ensure, at a minimum, that—

(A) irradiated food products are made available only at the request of States and school food authorities;

(B) reimbursements to schools for irradiated food products are equal to reimbursements to schools for food products that are not irradiated;

(C) States and school food authorities are provided factual information on the science and evidence regarding irradiation technology, including—

(i) notice that irradiation is not a substitute for safe food handling techniques; and

<sup>1</sup> See References in Text note below.

(ii) any other similar information determined by the Secretary to be necessary to promote food safety in school meals programs;

(D) States and school food authorities are provided model procedures for providing to school food authorities, parents, and students—

(i) factual information on the science and evidence regarding irradiation technology; and

(ii) any other similar information determined by the Secretary to be necessary to promote food safety in school meals;

(E) irradiated food products distributed to the Federal school meals program under this chapter and the Child Nutrition Act of 1966 (42 U.S.C. 1771 et seq.) are labeled with a symbol or other printed notice that—

(i) indicates that the product was irradiated; and

(ii) is prominently displayed in a clear and understandable format on the container;

(F) irradiated food products are not commingled in containers with food products that are not irradiated; and

(G) schools that offer irradiated food products are encouraged to offer alternatives to irradiated food products as part of the meal plan used by the schools.

(June 4, 1946, ch. 281, § 14, as added Pub. L. 93-326, § 2, June 30, 1974, 88 Stat. 286; amended Pub. L. 94-105, § 10, Oct. 7, 1975, 89 Stat. 515; Pub. L. 95-166, § 6, Nov. 10, 1977, 91 Stat. 1334; Pub. L. 95-627, § 12(b), Nov. 10, 1978, 92 Stat. 3625; Pub. L. 96-499, title II, § 202(c), Dec. 5, 1980, 94 Stat. 2600; Pub. L. 97-35, title VIII, §§ 813(a), 819(j), Aug. 13, 1981, 95 Stat. 530, 533; Pub. L. 98-459, title VIII, § 801(a), Oct. 9, 1984, 98 Stat. 1792; Pub. L. 99-500, title III, §§ 312, 363, Oct. 18, 1986, 100 Stat. 1783-360, 1783-368, and Pub. L. 99-591, title III, §§ 312, 363, Oct. 30, 1986, 100 Stat. 3341-363, 3341-371; Pub. L. 99-661, div. D, title I, § 4102, title IV, § 4403, Nov. 14, 1986, 100 Stat. 4071, 4079; Pub. L. 100-356, § 2, June 28, 1988, 102 Stat. 669; Pub. L. 101-147, title I, § 103(a)-(b)(2)(A), (c), Nov. 10, 1989, 103 Stat. 882; Pub. L. 103-448, title I, § 115, Nov. 2, 1994, 108 Stat. 4713; Pub. L. 104-193, title VII, § 707, Aug. 22, 1996, 110 Stat. 2293; Pub. L. 105-336, title I, §§ 101(b), 106, Oct. 31, 1998, 112 Stat. 3144, 3149; Pub. L. 108-134, § 4, Nov. 22, 2003, 117 Stat. 1389; Pub. L. 108-211, § 4, Mar. 31, 2004, 118 Stat. 566; Pub. L. 108-265, title I, §§ 117, 118, June 30, 2004, 118 Stat. 752; Pub. L. 111-296, title IV, § 441(a)(6), Dec. 13, 2010, 124 Stat. 3264.)

#### REFERENCES IN TEXT

The Child Nutrition Act of 1966, referred to in subsecs. (a)(1), (d), and (h)(1), (2)(E), is Pub. L. 89-642, Oct. 11, 1966, 80 Stat. 885, as amended, which is classified generally to chapter 13A (§ 1771 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1771 of this title and Tables.

The Older Americans Act of 1965, referred to in subsecs. (a)(1) and (c), is Pub. L. 89-73, July 14, 1965, 79 Stat. 218, as amended. Title III of the Older Americans Act of 1965 is classified generally to subchapter III (§ 3021 et seq.) of chapter 35 of this title. Section 311 of the Act, which is classified to section 3030a of this title,

was amended by Pub. L. 106-501, title III, § 309, Nov. 13, 2000, 114 Stat. 2246, and, as so amended, new subsecs. (a) and (b) were added, former subsec. (a)(4) was redesignated (c)(4) and repealed, and former subsec. (b)(1) was redesignated (d)(1). For complete classification of this Act to the Code, see Short Title note set out under section 3001 of this title and Tables.

Section 1581 of the Food Security Act, referred to in subsec. (g), is section 1581 of Pub. L. 99-198, title XV, Dec. 23, 1985, 99 Stat. 1594, which is not classified to the Code.

#### CODIFICATION

Pub. L. 99-591 is a corrected version of Pub. L. 99-500.

#### AMENDMENTS

2010—Subsec. (d). Pub. L. 111-296 struck out concluding provisions which read as follows: “Within eighteen months after November 10, 1977, the Secretary shall report to Congress on the impact of procedures established under this subsection, including the nutritional, economic, and administrative benefits of such procedures. In purchasing commodities for programs carried out under this chapter and the Child Nutrition Act of 1966, the Secretary shall establish procedures to ensure that contracts for the purchase of such commodities shall not be entered into unless the previous history and current patterns of the contracting party with respect to compliance with applicable meat inspection laws and with other appropriate standards relating to the wholesomeness of food for human consumption are taken into account.”

2004—Subsec. (a). Pub. L. 108-265, § 117, struck out “, during the period beginning July 1, 1974, and ending June 30, 2004,” before “shall—” in introductory provisions.

Pub. L. 108-211 substituted “June 30, 2004” for “March 31, 2004” in introductory provisions.

Subsec. (h). Pub. L. 108-265, § 118, added subsec. (h).

2003—Subsec. (a). Pub. L. 108-134 substituted “March 31, 2004” for “September 30, 2003” in introductory provisions.

1998—Subsec. (a). Pub. L. 105-336, § 106, substituted “2003” for “1998” in introductory provisions.

Subsec. (f). Pub. L. 105-336, § 101(b), substituted “1755(c)” for “1755(e)”.

1996—Subsec. (b). Pub. L. 104-193, § 707(a), redesignated pars. (2) and (3) as (1) and (2), respectively, and struck out former par. (1) which read as follows: “Among the products to be included in the food donations to the school lunch program shall be cereal and shortening and oil products.”

Subsec. (e). Pub. L. 104-193, § 707(b), amended subsec. (e) generally. Prior to amendment, subsec. (e) read as follows: “Each State educational agency that receives food assistance payments under this section for any school year shall establish for such year an advisory council, which shall be composed of representatives of schools in the State that participate in the school lunch program. The council shall advise such State agency with respect to the needs of such schools relating to the manner of selection and distribution of commodity assistance for such program.”

Subsec. (g)(3). Pub. L. 104-193, § 707(c), struck out par. (3) relating to cash compensation for losses due to changed methodology of study during 1982-1983 school year.

1994—Subsec. (a). Pub. L. 103-448, § 115(1), substituted “1998” for “1994” in introductory provisions.

Subsec. (b). Pub. L. 103-448, § 115(2), designated existing provisions as par. (1) and added pars. (2) and (3).

1989—Subsec. (a). Pub. L. 101-147, § 103(a), substituted “1994” for “1989”.

Subsec. (g). Pub. L. 101-147, § 103(b)(1), (2)(A), amended subsec. (g), as amended identically by Pub. L. 99-500 and 99-591, § 363, and Pub. L. 99-661, § 4403, and as further amended by Pub. L. 100-356, § 2, to read as if only the amendment by Pub. L. 99-661 was enacted, and further amended subsec. (g) identically to the amendments

that were made by section 2(a) and (b) of Pub. L. 100-356, resulting in changing text by striking out only the language that was inserted by section 2(c) of Pub. L. 100-356 at the end of par. (3)(A), “The Secretary shall complete action on any claim submitted under this subparagraph not later than 45 days after June 28, 1988.”, see 1986 and 1988 Amendment notes below.

Subsec. (g)(3)(A). Pub. L. 101-147, §103(c), substituted last four sentences for former last two sentences which read as follows: “The Secretary, in computing losses sustained by any school district under the preceding sentence, shall base such computation on the actual amount of assistance received by such school district under this chapter for the school year ending June 30, 1982, including—

“(i) the value of assistance in the form of commodities provided in addition to those provided pursuant to section 1755(e) of this title; and

“(ii) the value of assistance provided in the form of either cash or commodity letters of credit.

The Secretary may provide cash compensation under this subparagraph only to eligible school districts that submit applications for such compensation not later than May 1, 1988.”

1988—Subsec. (g)(3)(A). Pub. L. 100-356, §2(c), inserted at end “The Secretary shall complete action on any claim submitted under this subparagraph not later than 45 days after June 28, 1988.”

Pub. L. 100-356, §2(a), inserted at end “The Secretary, in computing losses sustained by any school district under the preceding sentence, shall base such computation on the actual amount of assistance received by such school district under this chapter for the school year ending June 30, 1982, including—

“(i) the value of assistance in the form of commodities provided in addition to those provided pursuant to section 1755(e) of this title; and

“(ii) the value of assistance provided in the form of either cash or commodity letters of credit.

The Secretary may provide cash compensation under this subparagraph only to eligible school districts that submit applications for such compensation not later than May 1, 1988.”

Subsec. (g)(3)(B). Pub. L. 100-356, §2(b), substituted “such sums as may be necessary” for “\$50,000”.

1986—Subsec. (a). Pub. L. 99-500 and Pub. L. 99-591, §312, and Pub. L. 99-661, §4102, amended subsec. (a) identically, substituting “1989” for “1984”.

Subsec. (g). Pub. L. 99-500 and Pub. L. 99-591, §363, and Pub. L. 99-661, §4403, amended section identically, adding subsec. (g).

1984—Subsec. (c). Pub. L. 98-459 substituted “(b)(1)” for “(c)(1)”.

1981—Subsec. (a)(1). Pub. L. 97-35, §819(j)(1), substituted “III” for “VII”.

Subsec. (c). Pub. L. 97-35, §819(j)(2), substituted references to section 311(a)(4) and (c)(1) of the Older Americans Act of 1965, for references to section 3045f(a)(4) and (d)(4) of this title.

Subsec. (f). Pub. L. 97-35, §813(a), added subsec. (f).

1980—Subsec. (a). Pub. L. 96-499 substituted “September 30, 1984” for “September 30, 1982”.

1978—Subsec. (a)(1). Pub. L. 95-627 inserted “(which may include domestic seafood commodities and their products)” after “under such section”.

1977—Subsec. (a). Pub. L. 95-166, §6(1), extended termination date for termination of commodity distribution program to Sept. 30, 1982, from Sept. 30, 1977.

Subsecs. (c) to (e). Pub. L. 95-166, §6(2), added subsecs. (c) to (e).

1975—Pub. L. 94-105 designated existing provisions as subsec. (a), substituted “September 30, 1977” for “June 30, 1975”, and added subsec. (b).

#### EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111-296 effective Oct. 1, 2010, except as otherwise specifically provided, see section 445 of Pub. L. 111-296, set out as a note under section 1751 of this title.

#### EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105-336 effective Oct. 1, 1998, see section 401 of Pub. L. 105-336, set out as a note under section 1755 of this title.

#### EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103-448 effective Oct. 1, 1994, see section 401 of Pub. L. 103-448, set out as a note under section 1755 of this title.

#### EFFECTIVE DATE OF 1989 AMENDMENT

Pub. L. 101-147, title I, §103(b)(2)(B), Nov. 10, 1989, 103 Stat. 882, provided that: “The amendments made by subparagraph (A) [amending this section] shall take effect as if such amendments had been effective on June 28, 1988.”

#### EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-459 effective Oct. 9, 1984, see section 803(a) of Pub. L. 98-459, set out as a note under section 3001 of this title.

#### EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by section 813(a) of Pub. L. 97-35 effective 90 days after Aug. 13, 1981, and amendment by section 819(j) of Pub. L. 97-35 effective Oct. 1, 1981, see section 820(a)(4), (5) of Pub. L. 97-35, set out as a note under section 1753 of this title.

#### EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-627 effective Oct. 1, 1978, see section 14 of Pub. L. 95-627, set out as a note under section 1755 of this title.

#### STUDY OF EFFECT OF COMBINING FEDERALLY DONATED AND FEDERALLY INSPECTED MEAT OR POULTRY

Pub. L. 103-448, title III, §304, Nov. 2, 1994, 108 Stat. 4750, directed Comptroller General of the United States to conduct study on incidence and effect of States restricting or prohibiting legally contracted commercial entity from physically combining federally donated and inspected meat or poultry from another State and to submit report to Congress not later than Sept. 1, 1996.

#### § 1763. Repealed. Pub. L. 101-147, title I, § 104, Nov. 10, 1989, 103 Stat. 883

Section, act June 4, 1946, ch. 281, §15, formerly §14, as added May 14, 1970, Pub. L. 91-248, §9, 84 Stat. 213; amended Nov. 7, 1973, Pub. L. 93-150, §8, 87 Stat. 564; renumbered §15, June 30, 1974, Pub. L. 93-326, §2, 88 Stat. 286; Nov. 10, 1977, Pub. L. 95-166, §16, 91 Stat. 1344; Aug. 13, 1981, Pub. L. 97-35, title VIII, §819(i), 95 Stat. 533, established National Advisory Council on Child Nutrition.

#### § 1764. Repealed. Pub. L. 94-105, § 22, Oct. 7, 1975, 89 Stat. 528

Section, act June 4, 1946, ch. 281, §15, as added June 30, 1971, Pub. L. 92-32, §1, 85 Stat. 85, authorized use, during fiscal 1971, of not to exceed \$35,000,000 from section 612c of Title 7, and not to exceed \$100,000,000 during fiscal 1972 to carry out provisions of this chapter, with unexpended funds to remain available in accordance with last sentence of section 1752 of this title.

#### § 1765. Election to receive cash payments

(a) Notwithstanding any other provision of law, where a State phased out its commodity distribution facilities prior to June 30, 1974, such State may, for purposes of the programs authorized by this chapter and the Child Nutrition Act of 1966 [42 U.S.C. 1771 et seq.], elect to receive cash payments in lieu of donated foods. Where such an election is made, the Secretary shall

make cash payments to such State in an amount equivalent in value to the donated foods that the State would otherwise have received if it had retained its commodity distribution facilities. The amount of cash payments in the case of lunches shall be governed by section 1755(c) of this title.

(b) When such payments are made, the State educational agency shall promptly and equitably disburse any cash it receives in lieu of commodities to eligible schools and institutions, and such disbursements shall be used by such schools and institutions to purchase United States agricultural commodities and other foods for their food service programs.

(June 4, 1946, ch. 281, §16, as added Pub. L. 94-105, §12, Oct. 7, 1975, 89 Stat. 515; amended Pub. L. 101-147, title III, §309, Nov. 10, 1989, 103 Stat. 915; Pub. L. 105-336, title I, §101(b), Oct. 31, 1998, 112 Stat. 3144.)

#### REFERENCES IN TEXT

The Child Nutrition Act of 1966, referred to in subsec. (a), is Pub. L. 89-642, Oct. 11, 1966, 80 Stat. 885, as amended, which is classified generally to chapter 13A (§1771 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1771 of this title and Tables.

#### AMENDMENTS

1998—Subsec. (a). Pub. L. 105-336 substituted “1755(c)” for “1755(e)”.

1989—Pub. L. 101-147 inserted “Election to receive cash payments” as section catchline.

#### EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105-336 effective Oct. 1, 1998, see section 401 of Pub. L. 105-336, set out as a note under section 1755 of this title.

### § 1766. Child and adult care food program

#### (a) Program purpose, grant authority and institution eligibility

##### (1) In general

##### (A) Program purpose

##### (i) Findings

Congress finds that—

(I) eating habits and other wellness-related behavior habits are established early in life; and

(II) good nutrition and wellness are important contributors to the overall health of young children and essential to cognitive development.

##### (ii) Purpose

The purpose of the program authorized by this section is to provide aid to child and adult care institutions and family or group day care homes for the provision of nutritious foods that contribute to the wellness, healthy growth, and development of young children, and the health and wellness of older adults and chronically impaired disabled persons.

##### (B) Grant authority

The Secretary may carry out a program to assist States through grants-in-aid and other means to initiate and maintain nonprofit food service programs for children in institutions providing child care.

#### (2) Definition of institution

In this section, the term “institution” means—

(A) any public or private nonprofit organization providing nonresidential child care or day care outside school hours for school children, including any child care center, settlement house, recreational center, Head Start center, and institution providing child care facilities for children with disabilities;

(B) any other private organization providing nonresidential child care or day care outside school hours for school children, if—

(i) at least 25 percent of the children served by the organization meet the income eligibility criteria established under section 1758(b) of this title for free or reduced price meals; or

(ii) the organization receives compensation from amounts granted to the States under title XX of the Social Security Act (42 U.S.C. 1397 et seq.) (but only if the organization receives compensation under that title for at least 25 percent of its enrolled children or 25 percent of its licensed capacity, whichever is less);

(C) any public or private nonprofit organization acting as a sponsoring organization for one or more of the organizations described in subparagraph (A) or (B) or for an adult day care center (as defined in subsection (o)(2) of this section);

(D) any other private organization acting as a sponsoring organization for, and that is part of the same legal entity as, one or more organizations that are—

(i) described in subparagraph (B); or

(ii) proprietary title XIX or title XX centers (as defined in subsection (o)(2) of this section);

(E) any public or private nonprofit organization acting as a sponsoring organization for one or more family or group day care homes; and

(F) any emergency shelter (as defined in subsection (t) of this section).

#### (3) Age limit

Except as provided in subsection (r) of this section, reimbursement may be provided under this section only for meals or supplements served to children not over 12 years of age (except that such age limitation shall not be applicable for children of migrant workers if 15 years of age or less or for children with disabilities).

#### (4) Additional guidelines

The Secretary may establish separate guidelines for institutions that provide care to school children outside of school hours.

#### (5) Licensing

In order to be eligible, an institution (except a school or family or group day care home sponsoring organization) or family or group day care home shall—

(A)(i) be licensed, or otherwise have approval, by the appropriate Federal, State, or local licensing authority; or

(ii) be in compliance with appropriate procedures for renewing participation in the

program, as prescribed by the Secretary, and not be the subject of information possessed by the State indicating that the license of the institution or home will not be renewed;

(B) if Federal, State, or local licensing or approval is not available—

(i) meet any alternate approval standards established by the appropriate State or local governmental agency; or

(ii) meet any alternate approval standards established by the Secretary after consultation with the Secretary of Health and Human Services; or

(C) if the institution provides care to school children outside of school hours and Federal, State, or local licensing or approval is not required for the institution, meet State or local health and safety standards.

#### **(6) Eligibility criteria**

No institution shall be eligible to participate in the program unless it satisfies the following criteria:

(A) accepts final administrative and financial responsibility for management of an effective food service;

(B) has not been seriously deficient in its operation of the child and adult care food program, or any other program under this chapter or the Child Nutrition Act of 1966 [42 U.S.C. 1771 et seq.], or has not been determined to be ineligible to participate in any other publicly funded program by reason of violation of the requirements of the program, for a period of time specified by the Secretary;

(C)(i) will provide adequate supervisory and operational personnel for overall monitoring and management of the child care food program; and

(ii) in the case of a sponsoring organization, the organization shall employ an appropriate number of monitoring personnel based on the number and characteristics of child care centers and family or group day care homes sponsored by the organization, as approved by the State (in accordance with regulations promulgated by the Secretary), to ensure effective oversight of the operations of the child care centers and family or group day care homes;

(D) in the case of a family or group day care home sponsoring organization that employs more than one employee, the organization does not base payments to an employee of the organization on the number of family or group day care homes recruited;

(E) in the case of a sponsoring organization, the organization has in effect a policy that restricts other employment by employees that interferes with the responsibilities and duties of the employees of the organization with respect to the program; and

(F) in the case of a sponsoring organization that applies for initial participation in the program on or after June 20, 2000, and that operates in a State that requires such institutions to be bonded under State law, regulation, or policy, the institution is bonded in accordance with such law, regulation, or policy.

#### **(b) Limitations on cash assistance**

For the fiscal year ending September 30, 1979, and for each subsequent fiscal year, the Secretary shall provide cash assistance to States for meals as provided in subsection (f) of this section, except that, in any fiscal year, the aggregate amount of assistance provided to a State by the Secretary under this section shall not exceed the sum of (1) the Federal funds provided by the State to participating institutions within the State for that fiscal year and (2) any funds used by the State under section 10 of the Child Nutrition Act of 1966 [42 U.S.C. 1779].

#### **(c) Formula for computation of payments; national average payment rate**

(1) For purposes of this section, except as provided in subsection (f)(3) of this section, the national average payment rate for free lunches and suppers, the national average payment rate for reduced price lunches and suppers, and the national average payment rate for paid lunches and suppers shall be the same as the national average payment rates for free lunches, reduced price lunches, and paid lunches, respectively, under sections 1753 and 1759a of this title as appropriate (as adjusted pursuant to section 1759a(a) of this title).

(2) For purposes of this section, except as provided in subsection (f)(3) of this section, the national average payment rate for free breakfasts, the national average payment rate for reduced price breakfasts, and the national average payment rate for paid breakfasts shall be the same as the national average payment rates for free breakfasts, reduced price breakfasts, and paid breakfasts, respectively, under section 4(b) of the Child Nutrition Act of 1966 [42 U.S.C. 1773(b)] (as adjusted pursuant to section 1759a(a) of this title).

(3) For purposes of this section, except as provided in subsection (f)(3) of this section, the national average payment rate for free supplements shall be 30 cents, the national average payment rate for reduced price supplements shall be one-half the rate for free supplements, and the national average payment rate for paid supplements shall be 2.75 cents (as adjusted pursuant to section 1759a(a) of this title).

(4) Determinations with regard to eligibility for free and reduced price meals and supplements shall be made in accordance with the income eligibility guidelines for free lunches and reduced price lunches, respectively, under section 1758 of this title.

(5) A child shall be considered automatically eligible for benefits under this section without further application or eligibility determination, if the child is enrolled as a participant in a Head Start program authorized under the Head Start Act (42 U.S.C. 9831 et seq.), on the basis of a determination that the child meets the eligibility criteria prescribed under section 645(a)(1)(B) of the Head Start Act (42 U.S.C. 9840(a)(1)(B)).

(6) A child who has not yet entered kindergarten shall be considered automatically eligible for benefits under this section without further application or eligibility determination if the child is enrolled as a participant in the Even Start program under part B of chapter 1 of title

I of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 2741 et seq.).<sup>1</sup>

**(d) Institution approval and applications**

**(1) Institution approval**

**(A) Administrative capability**

Subject to subparagraph (B) and except as provided in subparagraph (C), the State agency shall approve an institution that meets the requirements of this section for participation in the child and adult care food program if the State agency determines that the institution—

- (i) is financially viable;
- (ii) is administratively capable of operating the program (including whether the sponsoring organization has business experience and management plans appropriate to operate the program) described in the application of the institution; and
- (iii) has internal controls in effect to ensure program accountability.

**(B) Approval of private institutions**

**(i) In general**

In addition to the requirements established by subparagraph (A) and subject to clause (ii), the State agency shall approve a private institution that meets the requirements of this section for participation in the child and adult care food program only if—

- (I) the State agency conducts a satisfactory visit to the institution before approving the participation of the institution in the program; and
- (II) the institution—
  - (aa) has tax exempt status under title 26;
  - (bb) is operating a Federal program requiring nonprofit status to participate in the program; or
  - (cc) is described in subsection (a)(2)(B) of this section.

**(ii) Exception for family or group day care homes**

Clause (i) shall not apply to a family or group day care home.

**(C) Exception for certain sponsoring organizations**

**(i) In general**

The State agency may approve an eligible institution acting as a sponsoring organization for one or more family or group day care homes or centers that, at the time of application, is not participating in the child and adult care food program only if the State agency determines that—

- (I) the institution meets the requirements established by subparagraphs (A) and (B); and
- (II) the participation of the institution will help to ensure the delivery of benefits to otherwise unserved family or group day care homes or centers or to unserved children in an area.

**(ii) Criteria for selection**

The State agency shall establish criteria for approving an eligible institution acting

as a sponsoring organization for one or more family or group day care homes or centers that, at the time of application, is not participating in the child and adult care food program for the purpose of determining if the participation of the institution will help ensure the delivery of benefits to otherwise unserved family or group day care homes or centers or to unserved children in an area.

**(D) Notification to applicants**

Not later than 30 days after the date on which an applicant institution files a completed application with the State agency, the State agency shall notify the applicant institution whether the institution has been approved or disapproved to participate in the child and adult care food program.

**(E) Permanent operating agreements**

**(i) In general**

Subject to clauses (ii) and (iii), to participate in the child and adult care food program, an institution that meets the conditions of eligibility described in this subsection shall be required to enter into a permanent agreement with the applicable State agency.

**(ii) Amendments**

A permanent agreement described in clause (i) may be amended as necessary to ensure that the institution is in compliance with all requirements established in this section or by the Secretary.

**(iii) Termination**

A permanent agreement described in clause (i)—

- (I) may be terminated for convenience by the institution or State agency that is a party to the permanent agreement; and
- (II) shall be terminated—
  - (aa) for cause by the applicable State agency in accordance with paragraph (5); or
  - (bb) on termination of participation of the institution in the child and adult care food program.

**(2) Program applications**

**(A) In general**

The Secretary shall develop a policy under which each institution providing child care that participates in the program under this section shall—

- (i) submit to the State agency an initial application to participate in the program that meets all requirements established by the Secretary by regulation;
- (ii) annually confirm to the State agency that the institution, and any facilities of the institution in which the program is operated by a sponsoring organization, is in compliance with subsection (a)(5); and
- (iii) annually submit to the State agency any additional information necessary to confirm that the institution is in compliance with all other requirements to participate in the program, as established in

<sup>1</sup> See References in Text note below.

this chapter and by the Secretary by regulation.

**(B) Required reviews of sponsored facilities**

**(i) In general**

The Secretary shall develop a policy under which each sponsoring organization participating in the program under this section shall conduct—

(I) periodic unannounced site visits at not less than 3-year intervals to sponsored child and adult care centers and family or group day care homes to identify and prevent management deficiencies and fraud and abuse under the program; and

(II) at least 1 scheduled site visit each year to sponsored child and adult care centers and family or group day care homes to identify and prevent management deficiencies and fraud and abuse under the program and to improve program operations.

**(ii) Varied timing**

Sponsoring organizations shall vary the timing of unannounced reviews under clause (i)(I) in a manner that makes the reviews unpredictable to sponsored facilities.

**(C) Required reviews of institutions**

The Secretary shall develop a policy under which each State agency shall conduct—

(i) at least 1 scheduled site visit at not less than 3-year intervals to each institution under the State agency participating in the program under this section—

(I) to identify and prevent management deficiencies and fraud and abuse under the program; and

(II) to improve program operations; and

(ii) more frequent reviews of any institution that—

(I) sponsors a significant share of the facilities participating in the program;

(II) conducts activities other than the program authorized under this section;

(III) has serious management problems, as identified in a prior review, or is at risk of having serious management problems; or

(IV) meets such other criteria as are defined by the Secretary.

**(D) Detection and deterrence of erroneous payments and false claims**

**(i) In general**

The Secretary may develop a policy to detect and deter, and recover erroneous payments to, and false claims submitted by, institutions, sponsored child and adult care centers, and family or group day care homes participating in the program under this section.

**(ii) Block claims**

**(I) Definition of block claim**

In this clause, the term “block claim” has the meaning given the term in sec-

tion 226.2 of title 7, Code of Federal Regulations (or successor regulations).

**(II) Program edit checks**

The Secretary may not require any State agency, sponsoring organization, or other institution to perform edit checks or on-site reviews relating to the detection of block claims by any child care facility.

**(III) Allowance**

Notwithstanding subclause (II), the Secretary may require any State agency, sponsoring organization, or other institution to collect, store, and transmit to the appropriate entity information necessary to develop any other policy developed under clause (i).

**(3) Program information**

**(A) In general**

On enrollment of a child in a sponsored child care center or family or group day care home participating in the program, the center or home (or its sponsoring organization) shall provide to the child’s parents or guardians—

(i) information that describes the program and its benefits; and

(ii) the name and telephone number of the sponsoring organization of the center or home and the State agency involved in the operation of the program.

**(B) Form**

The information described in subparagraph (A) shall be in a form and, to the maximum extent practicable, language easily understandable by the child’s parents or guardians.

**(4) Allowable administrative expenses for sponsoring organizations**

In consultation with State agencies and sponsoring organizations, the Secretary shall develop, and provide for the dissemination to State agencies and sponsoring organizations of, a list of allowable reimbursable administrative expenses for sponsoring organizations under the program.

**(5) Termination or suspension of participating organizations**

**(A) In general**

The Secretary shall establish procedures for the termination of participation by institutions and family or group day care homes under the program.

**(B) Standards**

Procedures established pursuant to subparagraph (A) shall include standards for terminating the participation of an institution or family or group day care home that—

(i) engages in unlawful practices, falsifies information provided to the State agency, or conceals a criminal background; or

(ii) substantially fails to fulfill the terms of its agreement with the State agency.

**(C) Corrective action**

Procedures established pursuant to subparagraph (A)—



(i) shall require an entity described in subparagraph (B) to undertake corrective action; and

(ii) may require the immediate suspension of operation of the program by an entity described in subparagraph (B), without the opportunity for corrective action, if the State agency determines that there is imminent threat to the health or safety of a participant at the entity or the entity engages in any activity that poses a threat to public health or safety.

**(D) Hearing**

**(i) In general**

Except as provided in clause (ii), an institution or family or group day care home shall be provided a fair hearing in accordance with subsection (e)(1) of this section prior to any determination to terminate participation by the institution or family or group day care home under the program.

**(ii) Exception for false or fraudulent claims**

**(I) In general**

If a State agency determines that an institution has knowingly submitted a false or fraudulent claim for reimbursement, the State agency may suspend the participation of the institution in the program in accordance with this clause.

**(II) Requirement for review**

Prior to any determination to suspend participation of an institution under subclause (I), the State agency shall provide for an independent review of the proposed suspension in accordance with subclause (III).

**(III) Review procedure**

The review shall—

(aa) be conducted by an independent and impartial official other than, and not accountable to, any person involved in the determination to suspend the institution;

(bb) provide the State agency and the institution the right to submit written documentation relating to the suspension, including State agency documentation of the alleged false or fraudulent claim for reimbursement and the response of the institution to the documentation;

(cc) require the reviewing official to determine, based on the review, whether the State agency has established, based on a preponderance of the evidence, that the institution has knowingly submitted a false or fraudulent claim for reimbursement;

(dd) require the suspension to be in effect for not more than 120 calendar days after the institution has received notification of a determination of suspension in accordance with this clause; and

(ee) require the State agency during the suspension to ensure that payments continue to be made to spon-

sored centers and family and group day care homes meeting the requirements of the program.

**(IV) Hearing**

A State agency shall provide an institution that has been suspended from participation in the program under this clause an opportunity for a fair hearing on the suspension conducted in accordance with subsection (e)(1) of this section.

**(E) List of disqualified institutions and individuals**

**(i) In general**

The Secretary shall maintain a list of institutions, sponsored family or group day care homes, and individuals that have been terminated or otherwise disqualified from participation in the program.

**(ii) Availability**

The Secretary shall make the list available to State agencies for use in approving or renewing applications by institutions, sponsored family or group day care homes, and individuals for participation in the program.

**(e) Hearings**

**(1) In general**

Except as provided in paragraph (4), each State agency shall provide, in accordance with regulations promulgated by the Secretary, an opportunity for a fair hearing and a prompt determination to any institution aggrieved by any action of the State agency that affects—

(A) the participation of the institution in the program authorized by this section; or

(B) the claim of the institution for reimbursement under this section.

**(2) Reimbursement**

In accordance with paragraph (3), a State agency that fails to meet timeframes for providing an opportunity for a fair hearing and a prompt determination to any institution under paragraph (1) in accordance with regulations promulgated by the Secretary, shall pay, from non-Federal sources, all valid claims for reimbursement to the institution and the facilities of the institution during the period beginning on the day after the end of any regulatory deadline for providing the opportunity and making the determination and ending on the date on which a hearing determination is made.

**(3) Notice to State agency**

The Secretary shall provide written notice to a State agency at least 30 days prior to imposing any liability for reimbursement under paragraph (2).

**(4) Federal audit determination**

A State is not required to provide a hearing to an institution concerning a State action taken on the basis of a Federal audit determination.

**(5) Secretarial hearing**

If a State does not provide a hearing to an institution concerning a State action taken on

the basis of a Federal audit determination, the Secretary, on request, shall afford a hearing to the institution concerning the action.

**(f) State disbursements to institutions**

(1) IN GENERAL.—

(A) REQUIREMENT.—Funds paid to any State under this section shall be disbursed to eligible institutions by the State under agreements approved by the Secretary. Disbursements to any institution shall be made only for the purpose of assisting in providing meals to children attending institutions, or in family or group day care homes. Disbursement to any institution shall not be dependent upon the collection of moneys from participating children. All valid claims from such institutions shall be paid within forty-five days of receipt by the State. The State shall notify the institution within fifteen days of receipt of a claim if the claim as submitted is not valid because it is incomplete or incorrect.

(B) FRAUD OR ABUSE.—

(i) IN GENERAL.—The State may recover funds disbursed under subparagraph (A) to an institution if the State determines that the institution has engaged in fraud or abuse with respect to the program or has submitted an invalid claim for reimbursement.

(ii) PAYMENT.—Amounts recovered under clause (i)—

(I) may be paid by the institution to the State over a period of one or more years; and

(II) shall not be paid from funds used to provide meals and supplements.

(iii) HEARING.—An institution shall be provided a fair hearing in accordance with subsection (e)(1) of this section prior to any determination to recover funds under this subparagraph.

(2)(A) Subject to subparagraph (B) of this paragraph, the disbursement for any fiscal year to any State for disbursement to institutions, other than family or group day care home sponsoring organizations, for meals provided under this section shall be equal to the sum of the products obtained by multiplying the total number of each type of meal (breakfast, lunch or supper, or supplement) served in such institution in that fiscal year by the applicable national average payment rate for each such type of meal, as determined under subsection (c) of this section.

(B) No reimbursement may be made to any institution under this paragraph, or to family or group day care home sponsoring organizations under paragraph (3) of this subsection, for more than two meals and one supplement per day per child, or in the case of an institution (but not in the case of a family or group day care home sponsoring organization), 2 meals and 1 supplement per day per child, for children that are maintained in a child care setting for eight or more hours per day.

(C) LIMITATION ON ADMINISTRATIVE EXPENSES FOR CERTAIN SPONSORING ORGANIZATIONS.—

(i) IN GENERAL.—Except as provided in clause (ii), a sponsoring organization of a day care center may reserve not more than 15 percent

of the funds provided under paragraph (1) for the administrative expenses of the organization.

(ii) WAIVER.—A State may waive the requirement in clause (i) with respect to a sponsoring organization if the organization provides justification to the State that the organization requires funds in excess of 15 percent of the funds provided under paragraph (1) to pay the administrative expenses of the organization.

(3) REIMBURSEMENT OF FAMILY OR GROUP DAY CARE HOME SPONSORING ORGANIZATIONS.—

(A) REIMBURSEMENT FACTOR.—

(i) IN GENERAL.—An institution that participates in the program under this section as a family or group day care home sponsoring organization shall be provided, for payment to a home sponsored by the organization, reimbursement factors in accordance with this subparagraph for the cost of obtaining and preparing food and prescribed labor costs involved in providing meals under this section.

(ii) TIER I FAMILY OR GROUP DAY CARE HOMES.—

(I) DEFINITION OF TIER I FAMILY OR GROUP DAY CARE HOME.—In this paragraph, the term “tier I family or group day care home” means—

(aa) a family or group day care home that is located in a geographic area, as defined by the Secretary based on census data, in which at least 50 percent of the children residing in the area are members of households whose incomes meet the income eligibility guidelines for free or reduced price meals under section 1758 of this title;

(bb) a family or group day care home that is located in an area served by a school enrolling students in which at least 50 percent of the total number of children enrolled are certified eligible to receive free or reduced price school meals under this chapter or the Child Nutrition Act of 1966 (42 U.S.C. 1771 et seq.); or

(cc) a family or group day care home that is operated by a provider whose household meets the income eligibility guidelines for free or reduced price meals under section 1758 of this title and whose income is verified by the sponsoring organization of the home under regulations established by the Secretary.

(II) REIMBURSEMENT.—Except as provided in subclause (III), a tier I family or group day care home shall be provided reimbursement factors under this clause without a requirement for documentation of the costs described in clause (i), except that reimbursement shall not be provided under this subclause for meals or supplements served to the children of a person acting as a family or group day care home provider unless the children meet the income eligibility guidelines for free or reduced price meals under section 1758 of this title.

(III) FACTORS.—Except as provided in subclause (IV), the reimbursement factors

applied to a home referred to in subclause (II) shall be the factors in effect on July 1, 1996.

(IV) ADJUSTMENTS.—The reimbursement factors under this subparagraph shall be adjusted on July 1, 1997, and each July 1 thereafter, to reflect changes in the Consumer Price Index for food at home for the most recent 12-month period for which the data are available. The reimbursement factors under this subparagraph shall be rounded to the nearest lower cent increment and based on the unrounded adjustment in effect on June 30 of the preceding school year.

(iii) TIER II FAMILY OR GROUP DAY CARE HOMES.—

(I) IN GENERAL.—

(aa) FACTORS.—Except as provided in subclause (II), with respect to meals or supplements served under this clause by a family or group day care home that does not meet the criteria set forth in clause (ii)(I), the reimbursement factors shall be 95 cents for lunches and suppers, 27 cents for breakfasts, and 13 cents for supplements.

(bb) ADJUSTMENTS.—The factors shall be adjusted on July 1, 1997, and each July 1 thereafter, to reflect changes in the Consumer Price Index for food at home for the most recent 12-month period for which the data are available. The reimbursement factors under this item shall be rounded down to the nearest lower cent increment and based on the unrounded adjustment for the preceding 12-month period.

(cc) REIMBURSEMENT.—A family or group day care home shall be provided reimbursement factors under this subclause without a requirement for documentation of the costs described in clause (i), except that reimbursement shall not be provided under this subclause for meals or supplements served to the children of a person acting as a family or group day care home provider unless the children meet the income eligibility guidelines for free or reduced price meals under section 1758 of this title.

(II) OTHER FACTORS.—A family or group day care home that does not meet the criteria set forth in clause (ii)(I) may elect to be provided reimbursement factors determined in accordance with the following requirements:

(aa) CHILDREN ELIGIBLE FOR FREE OR REDUCED PRICE MEALS.—In the case of meals or supplements served under this subsection to children who are members of households whose incomes meet the income eligibility guidelines for free or reduced price meals under section 1758 of this title, the family or group day care home shall be provided reimbursement factors set by the Secretary in accordance with clause (ii)(III).

(bb) INELIGIBLE CHILDREN.—In the case of meals or supplements served under

this subsection to children who are members of households whose incomes do not meet the income eligibility guidelines, the family or group day care home shall be provided reimbursement factors in accordance with subclause (I).

(III) INFORMATION AND DETERMINATIONS.—

(aa) IN GENERAL.—If a family or group day care home elects to claim the factors described in subclause (II), the family or group day care home sponsoring organization serving the home shall collect the necessary income information, as determined by the Secretary, from any parent or other caretaker to make the determinations specified in subclause (II) and shall make the determinations in accordance with rules prescribed by the Secretary.

(bb) CATEGORICAL ELIGIBILITY.—In making a determination under item (aa), a family or group day care home sponsoring organization may consider a child participating in or subsidized under, or a child with a parent participating in or subsidized under, a federally or State supported child care or other benefit program with an income eligibility limit that does not exceed the eligibility standard for free or reduced price meals under section 1758 of this title to be a child who is a member of a household whose income meets the income eligibility guidelines under section 1758 of this title.

(cc) FACTORS FOR CHILDREN ONLY.—A family or group day care home may elect to receive the reimbursement factors prescribed under clause (ii)(III) solely for the children participating in a program referred to in item (bb) if the home elects not to have income statements collected from parents or other caretakers.

(dd) TRANSMISSION OF INCOME INFORMATION BY SPONSORED FAMILY OR GROUP DAY CARE HOMES.—If a family or group day care home elects to be provided reimbursement factors described in subclause (II), the family or group day care home may assist in the transmission of necessary household income information to the family or group day care home sponsoring organization in accordance with the policy described in item (ee).

(ee) POLICY.—The Secretary shall develop a policy under which a sponsored family or group day care home described in item (dd) may, under terms and conditions specified by the Secretary and with the written consent of the parents or guardians of a child in a family or group day care home participating in the program, assist in the transmission of the income information of the family to the family or group day care home sponsoring organization.

(IV) SIMPLIFIED MEAL COUNTING AND REPORTING PROCEDURES.—The Secretary shall prescribe simplified meal counting and re-

porting procedures for use by a family or group day care home that elects to claim the factors under subclause (II) and by a family or group day care home sponsoring organization that sponsors the home. The procedures the Secretary prescribes may include 1 or more of the following:

(aa) Setting an annual percentage for each home of the number of meals served that are to be reimbursed in accordance with the reimbursement factors prescribed under clause (ii)(III) and an annual percentage of the number of meals served that are to be reimbursed in accordance with the reimbursement factors prescribed under subclause (I), based on the family income of children enrolled in the home in a specified month or other period.

(bb) Placing a home into 1 of 2 or more reimbursement categories annually based on the percentage of children in the home whose households have incomes that meet the income eligibility guidelines under section 1758 of this title, with each such reimbursement category carrying a set of reimbursement factors such as the factors prescribed under clause (ii)(III) or subclause (I) or factors established within the range of factors prescribed under clause (ii)(III) and subclause (I).

(cc) Such other simplified procedures as the Secretary may prescribe.

(V) MINIMUM VERIFICATION REQUIREMENTS.—The Secretary may establish any minimum verification requirements that are necessary to carry out this clause.

(B) ADMINISTRATIVE FUNDS.—

(i) IN GENERAL.—In addition to reimbursement factors described in subparagraph (A), a family or group day care home sponsoring organization shall receive reimbursement for the administrative expenses of the sponsoring organization in an amount that is not less than the product obtained each month by multiplying—

(I) the number of family and group day care homes of the sponsoring organization submitting a claim for reimbursement during the month; by

(II) the appropriate administrative rate determined by the Secretary.

(ii) ANNUAL ADJUSTMENT.—The administrative reimbursement levels specified in clause (i) shall be adjusted July 1 of each year to reflect changes in the Consumer Price Index for All Urban Consumers published by the Bureau of Labor Statistics of the Department of Labor for the most recent 12-month period for which such data are available.

(iii) CARRYOVER FUNDS.—The Secretary shall develop procedures under which not more than 10 percent of the amount made available to sponsoring organizations under this section for administrative expenses for a fiscal year may remain available for obligation or expenditure in the succeeding fiscal year.

(C)(i) Reimbursement for administrative expenses shall also include start-up funds to fi-

nance the administrative expenses for such institutions to initiate successful operation under the program and expansion funds to finance the administrative expenses for such institutions to expand into low-income or rural areas. Institutions that have received start-up funds may also apply at a later date for expansion funds. Such start-up funds and expansion funds shall be in addition to other reimbursement to such institutions for administrative expenses. Start-up funds and expansion funds shall be payable to enable institutions satisfying the criteria of subsection (d) of this section, and any other standards prescribed by the Secretary, to develop an application for participation in the program as a family or group day care home sponsoring organization or to implement the program upon approval of the application. Such start-up funds and expansion funds shall be payable in accordance with the procedures prescribed by the Secretary. The amount of start-up funds and expansion funds payable to an institution shall be not less than the institution's anticipated reimbursement for administrative expenses under the program for one month and not more than the institution's anticipated reimbursement for administrative expenses under the program for two months.

(ii) Funds for administrative expenses may be used by family or group day care home sponsoring organizations to assist unlicensed family or group day care homes in becoming licensed.

(D) LIMITATIONS ON ABILITY OF FAMILY OR GROUP DAY CARE HOMES TO TRANSFER SPONSORING ORGANIZATIONS.—

(i) IN GENERAL.—Subject to clause (ii), a State agency shall limit the ability of a family or group day care home to transfer from a sponsoring organization to another sponsoring organization more frequently than once a year.

(ii) GOOD CAUSE.—The State agency may permit or require a family or group day care home to transfer from a sponsoring organization to another sponsoring organization more frequently than once a year for good cause (as determined by the State agency), including circumstances in which the sponsoring organization of the family or group day care home ceases to participate in the child and adult care food program.

(E) PROVISION OF DATA TO FAMILY OR GROUP DAY CARE HOME SPONSORING ORGANIZATIONS.—

(i) CENSUS DATA.—The Secretary shall provide to each State agency administering a child and adult care food program under this section data from the most recent decennial census survey or other appropriate census survey for which the data are available showing which areas in the State meet the requirements of subparagraph (A)(ii)(I)(aa). The State agency shall provide the data to family or group day care home sponsoring organizations located in the State.

(ii) SCHOOL DATA.—

(I) IN GENERAL.—A State agency administering the school lunch program under this chapter or the school breakfast program under the Child Nutrition Act of 1966

(42 U.S.C. 1771 et seq.) shall provide to approved family or group day care home sponsoring organizations a list of schools serving elementary school children in the State in which not less than ½ of the children enrolled are certified to receive free or reduced price meals. The State agency shall collect the data necessary to create the list annually and provide the list on a timely basis to any approved family or group day care home sponsoring organization that requests the list.

(II) USE OF DATA FROM PRECEDING SCHOOL YEAR.—In determining for a fiscal year or other annual period whether a home qualifies as a tier I family or group day care home under subparagraph (A)(ii)(I), the State agency administering the program under this section, and a family or group day care home sponsoring organization, shall use the most current available data at the time of the determination.

(iii) DURATION OF DETERMINATION.—For purposes of this section, a determination that a family or group day care home is located in an area that qualifies the home as a tier I family or group day care home (as the term is defined in subparagraph (A)(ii)(I)), shall be in effect for 5 years (unless the determination is made on the basis of census data, in which case the determination shall remain in effect until more recent census data are available) unless the State agency determines that the area in which the home is located no longer qualifies the home as a tier I family or group day care home.

(4) By the first day of each month of operation, the State may provide advance payments for the month to each approved institution in an amount that reflects the full level of valid claims customarily received from such institution for one month's operation. In the case of a newly participating institution, the amount of the advance shall reflect the State's best estimate of the level of valid claims such institutions will submit. If the State has reason to believe that an institution will not be able to submit a valid claim covering the period for which such an advance has been made, the subsequent month's advance payment shall be withheld until the State receives a valid claim. Payments advanced to institutions that are not subsequently deducted from a valid claim for reimbursement shall be repaid upon demand by the State. Any prior payment that is under dispute may be subtracted from an advance payment.

**(g) Nutritional requirements for meals and snacks served in institutions and family or group day care homes**

**(1) Definition of dietary guidelines**

In this subsection, the term "Dietary Guidelines" means the Dietary Guidelines for Americans published under section 5341 of title 7.

**(2) Nutritional requirements**

**(A) In general**

Except as provided in subparagraph (C), reimbursable meals and snacks served by in-

stitutions, family or group day care homes, and sponsored centers participating in the program under this section shall consist of a combination of foods that meet minimum nutritional requirements prescribed by the Secretary on the basis of tested nutritional research.

**(B) Conformity with the dietary guidelines and authoritative science**

**(i) In general**

Not less frequently than once every 10 years, the Secretary shall review and, as appropriate, update requirements for meals served under the program under this section to ensure that the meals—

(I) are consistent with the goals of the most recent Dietary Guidelines; and

(II) promote the health of the population served by the program authorized under this section, as indicated by the most recent relevant nutrition science and appropriate authoritative scientific agency and organization recommendations.

**(ii) Cost review**

The review required under clause (i) shall include a review of the cost to child care centers and group or family day care homes resulting from updated requirements for meals and snacks served under the program under this section.

**(iii) Regulations**

Not later than 18 months after the completion of the review of the meal pattern under clause (i), the Secretary shall promulgate proposed regulations to update the meal patterns for meals and snacks served under the program under this section.

**(C) Exceptions**

**(i) Special dietary needs**

The minimum nutritional requirements prescribed under subparagraph (A) shall not prohibit institutions, family or group day care homes, and sponsored centers from substituting foods to accommodate the medical or other special dietary needs of individual participants.

**(ii) Exempt institutions**

The Secretary may elect to waive all or part of the requirements of this subsection for emergency shelters participating in the program under this section.

**(3) Meal service**

Institutions, family or group day care homes, and sponsored centers shall ensure that reimbursable meal service contributes to the development and socialization of enrolled children by providing that food is not used as a punishment or reward.

**(4) Fluid milk**

**(A) In general**

If an institution, family or group day care home, or sponsored center provides fluid milk as part of a reimbursable meal or sup-

plement, the institution, family or group day care home, or sponsored center shall provide the milk in accordance with the most recent version of the Dietary Guidelines.

**(B) Milk substitutes**

In the case of children who cannot consume fluid milk due to medical or other special dietary needs other than a disability, an institution, family or group day care home, or sponsored center may substitute for the fluid milk required in meals served, a nondairy beverage that—

(i) is nutritionally equivalent to fluid milk; and

(ii) meets nutritional standards established by the Secretary, including, among other requirements established by the Secretary, fortification of calcium, protein, vitamin A, and vitamin D to levels found in cow's milk.

**(C) Approval**

**(i) In general**

A substitution authorized under subparagraph (B) may be made—

(I) at the discretion of and on approval by the participating day care institution; and

(II) if the substitution is requested by written statement of a medical authority, or by the parent or legal guardian of the child, that identifies the medical or other special dietary need that restricts the diet of the child.

**(ii) Exception**

An institution, family or group day care home, or sponsored center that elects to make a substitution authorized under this paragraph shall not be required to provide beverages other than beverages the State has identified as acceptable substitutes.

**(D) Excess expenses borne by institution**

A participating institution, family or group day care home, or sponsored center shall be responsible for any expenses that—

(i) are incurred by the institution, family or group day care home, or sponsored center to provide substitutions under this paragraph; and

(ii) are in excess of expenses covered under reimbursements under this chapter.

**(5) Nondiscrimination policy**

No physical segregation or other discrimination against any person shall be made because of the inability of the person to pay, nor shall there be any overt identification of any such person by special tokens or tickets, different meals or meal service, announced or published lists of names, or other means.

**(6) Use of abundant and donated foods**

To the maximum extent practicable, each institution shall use in its food service foods that are—

(A) designated from time to time by the Secretary as being in abundance, either nationally or in the food service area; or

(B) donated by the Secretary.

**(h) Donation of agricultural commodities by Secretary; measurement of value; annual readjustment of assistance; cash in lieu of commodities; Department of Defense child care feeding program**

(1)(A) The Secretary shall donate agricultural commodities produced in the United States for use in institutions participating in the child care food program under this section.

(B) The value of the commodities donated under subparagraph (A) (or cash in lieu of commodities) to each State for each school year shall be, at a minimum, the amount obtained by multiplying the number of lunches and suppers served in participating institutions in that State during the preceding school year by the rate for commodities or cash in lieu of commodities established under section 1755(c) of this title for the school year concerned.

(C) After the end of each school year, the Secretary shall—

(i) reconcile the number of lunches and suppers served in participating institutions in each State during such school year with the number of lunches and suppers served by participating institutions in each State during the preceding school year; and

(ii) based on such reconciliation, increase or reduce subsequent commodity assistance or cash in lieu of commodities provided to each State.

(D) Any State receiving assistance under this section for institutions participating in the child care food program may, upon application to the Secretary, receive cash in lieu of some or all of the commodities to which it would otherwise be entitled under this subsection. In determining whether to request cash in lieu of commodities, the State shall base its decision on the preferences of individual participating institutions within the State, unless this proves impracticable due to the small number of institutions preferring donated commodities.

(2) The Secretary is authorized to provide agricultural commodities obtained by the Secretary under the provisions of the Agricultural Act of 1949 (7 U.S.C. 1421 et seq.) and donated under the provisions of section 416 of such Act [7 U.S.C. 1431], to the Department of Defense for use by its institutions providing child care services, when such commodities are in excess of the quantities needed to meet the needs of all other child nutrition programs, domestic and foreign food assistance and export enhancement programs. The Secretary shall require reimbursement from the Department of Defense for the costs, or some portion thereof, of delivering such commodities to overseas locations, unless the Secretary determines that it is in the best interest of the program that the Department of Agriculture shall assume such costs.

**(i) Audits**

**(1) Disregards**

**(A) In general**

Subject to subparagraph (B), in conducting management evaluations, reviews, or audits under this section, the Secretary or a State agency may disregard any overpayment to an institution for a fiscal year if the total

overpayment to the institution for the fiscal year does not exceed an amount that is consistent with the disregards allowed in other programs under this chapter and recognizes the cost of collecting small claims, as determined by the Secretary.

**(B) Criminal or fraud violations**

In carrying out this paragraph, the Secretary and a State agency shall not disregard any overpayment for which there is evidence of a violation of a criminal law or civil fraud law.

**(2) Funding**

**(A) In general**

The Secretary shall make available for each fiscal year to each State agency administering the child and adult care food program, for the purpose of conducting audits of participating institutions, an amount of up to 1.5 percent of the funds used by each State in the program under this section, during the second preceding fiscal year.

**(B) Additional funding**

**(i) In general**

Subject to clause (ii), for fiscal year 2016 and each fiscal year thereafter, the Secretary may increase the amount of funds made available to any State agency under subparagraph (A), if the State agency demonstrates that the State agency can effectively use the funds to improve program management under criteria established by the Secretary.

**(ii) Limitation**

The total amount of funds made available to any State agency under this paragraph shall not exceed 2 percent of the funds used by each State agency in the program under this section, during the second preceding fiscal year.

**(j) Agreements**

**(1) In general**

The Secretary shall issue regulations directing States to develop and provide for the use of a standard form of agreement between each sponsoring organization and the family or group day care homes or sponsored day care centers participating in the program under such organization, for the purpose of specifying the rights and responsibilities of each party.

**(2) Duration**

An agreement under paragraph (1) shall remain in effect until terminated by either party to the agreement.

**(k) Training and technical assistance**

A State participating in the program established under this section shall provide sufficient training, technical assistance, and monitoring to facilitate effective operation of the program. The Secretary shall assist the State in developing plans to fulfill the requirements of this subsection.

**(l) Non-diminishment of State and local funds**

Expenditures of funds from State and local sources for the maintenance of food programs

for children shall not be diminished as a result of funds received under this section.

**(m) Accounts and records**

States and institutions participating in the program under this section shall keep such accounts and records as may be necessary to enable the Secretary to determine whether there has been compliance with the requirements of this section. Such accounts and records shall be available at any reasonable time for inspection and audit by representatives of the Secretary, the Comptroller General of the United States, and appropriate State representatives and shall be preserved for such period of time, not in excess of five years, as the Secretary determines necessary.

**(n) Authorization of appropriations**

There are hereby authorized to be appropriated for each fiscal year such funds as are necessary to carry out the purposes of this section.

**(o) Participation of older persons and chronically impaired disabled persons**

(1) For purposes of this section, adult day care centers shall be considered eligible institutions for reimbursement for meals or supplements served to persons 60 years of age or older or to chronically impaired disabled persons, including victims of Alzheimer's disease and related disorders with neurological and organic brain dysfunction. Reimbursement provided to such institutions for such purposes shall improve the quality of meals or level of services provided or increase participation in the program. Lunches served by each such institution for which reimbursement is claimed under this section shall provide, on the average, approximately  $\frac{1}{3}$  of the daily recommended dietary allowance established by the Food and Nutrition Board of the National Research Council of the National Academy of Sciences. Such institutions shall make reasonable efforts to serve meals that meet the special dietary requirements of participants, including efforts to serve foods in forms palatable to participants.

(2) For purposes of this subsection—

(A) the term "adult day care center" means any public agency or private nonprofit organization, or any proprietary title XIX or title XX center, which—

(i) is licensed or approved by Federal, State, or local authorities to provide adult day care services to chronically impaired disabled adults or persons 60 years of age or older in a group setting outside their homes, or a group living arrangement, on a less than 24-hour basis; and

(ii) provides for such care and services directly or under arrangements made by the agency or organization whereby the agency or organization maintains professional management responsibility for all such services; and

(B) the term "proprietary title XIX or title XX center" means any private, for-profit center providing adult day care services for which it receives compensation from amounts granted to the States under title XIX or XX of the Social Security Act [42 U.S.C. 1396 et seq., 1397

et seq.] and which title XIX or title XX beneficiaries were not less than 25 percent of enrolled eligible participants in a calendar month preceding initial application or annual reapplication for program participation.

(3)(A) The Secretary, in consultation<sup>2</sup> with the Assistant Secretary for Aging, shall establish, within 6 months of October 1, 1988, separate guidelines for reimbursement of institutions described in this subsection. Such reimbursement shall take into account the nutritional requirements of eligible persons, as determined by the Secretary on the basis of tested nutritional research, except that such reimbursement shall not be less than would otherwise be required under this section.

(B) The guidelines shall contain provisions designed to assure that reimbursement under this subsection shall not duplicate reimbursement under part C of title III of the Older Americans Act of 1965 [42 U.S.C. 3030e et seq.], for the same meal served.

(4) For the purpose of establishing eligibility for free or reduced price meals or supplements under this subsection, income shall include only the income of an eligible person and, if any, the spouse and dependents with whom the eligible person resides.

(5) A person described in paragraph (1) shall be considered automatically eligible for free meals or supplements under this subsection, without further application or eligibility determination, if the person is—

(A) a member of a household receiving assistance under the Food and Nutrition Act of 2008 (7 U.S.C. 2011 et seq.); or

(B) a recipient of assistance under title XVI or XIX of the Social Security Act [42 U.S.C. 1381 et seq., 1396 et seq.].

(6) The Governor of any State may designate to administer the program under this subsection a State agency other than the agency that administers the child care food program under this section.

**(p) Repealed. Pub. L. 111-296, title IV, § 441(a)(7), Dec. 13, 2010, 124 Stat. 3264**

**(q) Management support**

**(1) Technical and training assistance**

In addition to the training and technical assistance that is provided to State agencies under other provisions of this chapter and the Child Nutrition Act of 1966 (42 U.S.C. 1771 et seq.), the Secretary shall provide training and technical assistance in order to assist the State agencies in improving their program management and oversight under this section.

**(2) Technical and training assistance for identification and prevention of fraud and abuse**

As part of training and technical assistance provided under paragraph (1), the Secretary shall provide training on a continuous basis to State agencies, and shall ensure that such training is provided to sponsoring organizations, for the identification and prevention of fraud and abuse under the program and to improve management of the program.

**(r) Program for at-risk school children**

**(1) Definition of at-risk school child**

In this subsection, the term “at-risk school child” means a school child who—

(A) is not more than 18 years of age, except that the age limitation provided by this subparagraph shall not apply to a child described in section 1760(d)(1)(A) of this title; and

(B) participates in a program authorized under this section operated at a site located in a geographical area served by a school in which at least 50 percent of the children enrolled are certified as eligible to receive free or reduced price school meals under this chapter or the Child Nutrition Act of 1966 (42 U.S.C. 1771 et seq.).

**(2) Participation in child and adult care food program**

An institution may participate in the program authorized under this section only if the institution provides meals or supplements under a program—

(A) organized primarily to provide care to at-risk school children during after-school hours, weekends, or holidays during the regular school year; and

(B) with an educational or enrichment purpose.

**(3) Administration**

Except as otherwise provided in this subsection, the other provisions of this section apply to an institution described in paragraph (2).

**(4) Meal and supplement reimbursement**

**(A) Limitations**

An institution may claim reimbursement under this subsection only for one meal per child per day and one supplement per child per day served under a program organized primarily to provide care to at-risk school children during after-school hours, weekends, or holidays during the regular school year.

**(B) Rates**

**(i) Meals**

A meal shall be reimbursed under this subsection at the rate established for free meals under subsection (c) of this section.

**(ii) Supplements**

A supplement shall be reimbursed under this subsection at the rate established for a free supplement under subsection (c)(3) of this section.

**(C) No charge**

A meal or supplement claimed for reimbursement under this subsection shall be served without charge.

**(5) Limitation**

An institution participating in the program under this subsection may not claim reimbursement for meals and snacks that are served under section 1769(h) of this title on the same day.

<sup>2</sup>So in original. Probably should be “consultation”.



**(6) Handbook****(A) In general**

Not later than 180 days after December 13, 2010, the Secretary shall—

- (i) issue guidelines for afterschool meals for at-risk school children; and
- (ii) publish a handbook reflecting those guidelines.

**(B) Review**

Each year after the issuance of guidelines under subparagraph (A), the Secretary shall—

- (i) review the guidelines; and
- (ii) issue a revised handbook reflecting changes made to the guidelines.

**(s) Information concerning the special supplemental nutrition program for women, infants, and children****(1) In general**

The Secretary shall provide each State agency administering a child and adult care food program under this section with information concerning the special supplemental nutrition program for women, infants, and children authorized under section 17 of the Child Nutrition Act of 1966 (42 U.S.C. 1786).

**(2) Requirements for State agencies**

Each State agency shall ensure that each participating family and group day care home and child care center (other than an institution providing care to school children outside school hours)—

- (A) receives materials that include—
  - (i) a basic explanation of the importance and benefits of the special supplemental nutrition program for women, infants, and children;
  - (ii) the maximum State income eligibility standards, according to family size, for the program; and
  - (iii) information concerning how benefits under the program may be obtained;

(B) receives periodic updates of the information described in subparagraph (A); and

(C) provides the information described in subparagraph (A) to parents of enrolled children at enrollment.

**(t) Participation by emergency shelters****(1) Definition of emergency shelter**

In this subsection, the term “emergency shelter” means—

- (A) an emergency shelter (as defined in section 11351 of this title); or
- (B) a site operated by the shelter.

**(2) Administration**

Except as otherwise provided in this subsection, an emergency shelter shall be eligible to participate in the program authorized under this section in accordance with the terms and conditions applicable to eligible institutions described in subsection (a) of this section.

**(3) Licensing requirements**

The licensing requirements contained in subsection (a)(5) of this section shall not apply to an emergency shelter.

**(4) Health and safety standards**

To be eligible to participate in the program authorized under this section, an emergency shelter shall comply with applicable State or local health and safety standards.

**(5) Meal or supplement reimbursement****(A) Limitations**

An emergency shelter may claim reimbursement under this subsection—

- (i) only for a meal or supplement served to children residing at an emergency shelter, if the children are—
  - (I) not more than 18 years of age; or
  - (II) children with disabilities; and

(ii) for not more than 3 meals, or 2 meals and a supplement, per child per day.

**(B) Rate**

A meal or supplement eligible for reimbursement shall be reimbursed at the rate at which free meals and supplements are reimbursed under subsection (c) of this section.

**(C) No charge**

A meal or supplement claimed for reimbursement shall be served without charge.

**(u) Promoting health and wellness in child care****(1) Physical activity and electronic media use**

The Secretary shall encourage participating child care centers and family or group day care homes—

(A) to provide to all children under the supervision of the participating child care centers and family or group day care homes daily opportunities for structured and unstructured age-appropriate physical activity; and

(B) to limit among children under the supervision of the participating child care centers and family or group day care homes the use of electronic media to an appropriate level.

**(2) Water consumption**

Participating child care centers and family or group day care homes shall make available to children, as nutritionally appropriate, potable water as an acceptable fluid for consumption throughout the day, including at meal times.

**(3) Technical assistance and guidance****(A) In general**

The Secretary shall provide technical assistance to institutions participating in the program under this section to assist participating child care centers and family or group day care homes in complying with the nutritional requirements and wellness recommendations prescribed by the Secretary in accordance with this subsection and subsection (g).

**(B) Guidance**

Not later than January 1, 2012, the Secretary shall issue guidance to States and institutions to encourage participating child care centers and family or group day care homes serving meals and snacks under this section to—

(i) include foods that are recommended for increased serving consumption in amounts recommended by the most recent Dietary Guidelines for Americans published under section 5341 of title 7, including fresh, canned, dried, or frozen fruits and vegetables, whole grain products, lean meat products, and low-fat and non-fat dairy products; and

(ii) reduce sedentary activities and provide opportunities for regular physical activity in quantities recommended by the most recent Dietary Guidelines for Americans described in clause (i).

#### **(C) Nutrition**

Technical assistance relating to the nutritional requirements of this subsection and subsection (g) shall include—

(i) nutrition education, including education that emphasizes the relationship between nutrition, physical activity, and health;

(ii) menu planning;

(iii) interpretation of nutrition labels; and

(iv) food preparation and purchasing guidance to produce meals and snacks that are—

(I) consistent with the goals of the most recent Dietary Guidelines; and

(II) promote the health of the population served by the program under this section, as recommended by authoritative scientific organizations.

#### **(D) Physical activity**

Technical assistance relating to the physical activity requirements of this subsection shall include—

(i) education on the importance of regular physical activity to overall health and well being; and

(ii) sharing of best practices for physical activity plans in child care centers and homes as recommended by authoritative scientific organizations.

#### **(E) Electronic media use**

Technical assistance relating to the electronic media use requirements of this subsection shall include—

(i) education on the benefits of limiting exposure to electronic media by children; and

(ii) sharing of best practices for the development of daily activity plans that limit use of electronic media.

#### **(F) Minimum assistance**

At a minimum, the technical assistance required under this paragraph shall include a handbook, developed by the Secretary in coordination with the Secretary for Health and Human Services, that includes recommendations, guidelines, and best practices for participating institutions and family or group day care homes that are consistent with the nutrition, physical activity, and wellness requirements and recommendations of this subsection.

#### **(G) Additional assistance**

In addition to the requirements of this paragraph, the Secretary shall develop and

provide such appropriate training and education materials, guidance, and technical assistance as the Secretary considers to be necessary to comply with the nutritional and wellness requirements of this subsection and subsection (g).

#### **(H) 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 provide technical assistance under this subsection \$10,000,000, 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 subsection the funds transferred under clause (i), without further appropriation.

(June 4, 1946, ch. 281, § 17, as added Pub. L. 94-105, § 16, Oct. 7, 1975, 89 Stat. 522; amended Pub. L. 95-166, §§ 3, 19(d), Nov. 10, 1977, 91 Stat. 1332, 1345; Pub. L. 95-627, § 2, Nov. 10, 1978, 92 Stat. 3603; Pub. L. 96-499, title II, §§ 207(a), 208(b), (c), Dec. 5, 1980, 94 Stat. 2602; Pub. L. 97-35, title VIII, §§ 810, 817(c), 819(k), Aug. 13, 1981, 95 Stat. 528, 532, 534; Pub. L. 99-500, title III, §§ 361, 372(a), Oct. 18, 1986, 100 Stat. 1783-367, 1783-369, and Pub. L. 99-591, title III, §§ 361, 372(a), Oct. 30, 1986, 100 Stat. 3341-370, 3341-372; Pub. L. 99-661, div. D, title IV, § 4401, title V, § 4502(a), Nov. 14, 1986, 100 Stat. 4079, 4080; Pub. L. 100-175, title IV, § 401, Nov. 29, 1987, 101 Stat. 972; Pub. L. 100-435, title II, §§ 211, 214, Sept. 19, 1988, 102 Stat. 1657, 1659; Pub. L. 100-460, title VI, § 641, Oct. 1, 1988, 102 Stat. 2265; Pub. L. 101-147, title I, §§ 105(a), (b), 131(b), title II, § 204(a), title III, §§ 310, 312(2), Nov. 10, 1989, 103 Stat. 883, 907, 909, 915, 916; Pub. L. 102-342, title II, §§ 202, 203, Aug. 14, 1992, 106 Stat. 913; Pub. L. 102-375, title VIII, § 811(a), Sept. 30, 1992, 106 Stat. 1295; Pub. L. 103-171, § 3(b)(4), Dec. 2, 1993, 107 Stat. 1991; Pub. L. 103-448, title I, §§ 105(c), 109(b), 116, Nov. 2, 1994, 108 Stat. 4702, 4705, 4714; Pub. L. 104-193, title VII, § 708(a)-(j), Aug. 22, 1996, 110 Stat. 2293-2299; Pub. L. 105-336, title I, §§ 101(b), 107(a)-(j)(1), (2)(B), (3)(C), Oct. 31, 1998, 112 Stat. 3144, 3149-3153; Pub. L. 106-224, title II, § 243(a), (b)(1)-(4)(A), (5), (c)-(g)(1), (h), (i), June 20, 2000, 114 Stat. 413-420; Pub. L. 106-400, § 2, Oct. 30, 2000, 114 Stat. 1675; Pub. L. 106-472, title III, § 307(c), Nov. 9, 2000, 114 Stat. 2073; Pub. L. 106-554, § 1(a)(4) [div. B, title I, § 101(a)], Dec. 21, 2000, 114 Stat. 2763, 2763A-214; Pub. L. 107-76, title VII, §§ 743, 771, Nov. 28, 2001, 115 Stat. 738, 745; Pub. L. 108-7, div. A, title VII, § 735, Feb. 20, 2003, 117 Stat. 43; Pub. L. 108-134, § 2, Nov. 22, 2003, 117 Stat. 1389; Pub. L. 108-211, § 2, Mar. 31, 2004, 118 Stat. 566; Pub. L. 108-265, title I, § 119(a)-(h), June 30, 2004, 118 Stat. 753-755; Pub. L. 110-134, § 29(c)(2), Dec. 12, 2007, 121 Stat. 1449; Pub. L. 110-161, div. A, title VII, § 744, Dec. 26, 2007, 121 Stat. 1881; Pub. L. 110-234, title IV, § 4002(b)(1)(B), (2)(Z), May 22, 2008, 122 Stat. 1096, 1097; Pub. L. 110-246, § 4(a), title IV, § 4002(b)(1)(B), (2)(Z), June 18, 2008, 122 Stat. 1664, 1857, 1859; Pub. L. 111-8, div. A, title VII, § 735, Mar. 11, 2009, 123 Stat. 559; Pub. L. 111-80, title

VII, §730, Oct. 21, 2009, 123 Stat. 2125; Pub. L. 111-296, title I, §§121, 122, title II, §221, title III, §§331-335, title IV, §441(a)(7), (8), Dec. 13, 2010, 124 Stat. 3205, 3224, 3248-3252, 3264.)

## REFERENCES IN TEXT

The Social Security Act, referred to in subsecs. (a)(2)(B)(ii) and (o)(2)(B), (5)(B), is act Aug. 14, 1935, ch. 531, 49 Stat. 620. Titles XVI, XIX, and XX of the Act are classified generally to subchapters XVI (§1381 et seq.), XIX (§1396 et seq.), and XX (§1397 et seq.), respectively, of chapter 7 of this title. For complete classification of this Act to the Code, see section 1305 of this title and Tables.

The Child Nutrition Act of 1966, referred to in subsecs. (a)(6)(B), (f)(3)(A)(ii)(I)(bb), (E)(ii)(I), (q)(1), and (r)(1)(B), is Pub. L. 89-642, Oct. 11, 1966, 80 Stat. 885, which is classified generally to chapter 13A (§1771 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1771 of this title and Tables.

The Head Start Act, referred to in subsec. (c)(5), is subchapter B (§§635-657) of chapter 8 of subtitle A of title VI of Pub. L. 97-35, Aug. 13, 1981, 95 Stat. 499, which is classified generally to subchapter II (§9831 et seq.) of chapter 105 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 9801 of this title and Tables.

Part B of chapter 1 of title I of the Elementary and Secondary Education Act of 1965, referred to in subsec. (c)(6), means part B of chapter 1 of title I of Pub. L. 89-10 which was classified generally to part B (§2741 et seq.) of division 1 of subchapter I of chapter 47 of Title 20, Education, prior to being omitted in the general amendment of Pub. L. 89-10 by Pub. L. 103-382, title I, §101, Oct. 20, 1994, 108 Stat. 3519.

The Agricultural Act of 1949, referred to in subsec. (h)(2), is act Oct. 31, 1949, ch. 792, 63 Stat. 1051, which is classified principally to chapter 35A (§1421 et seq.) of Title 7, Agriculture. For complete classification of this Act to the Code, see Short Title note set out under section 1421 of Title 7 and Tables.

The Older Americans Act of 1965, referred to in subsec. (o)(3)(B), is Pub. L. 89-73, July 14, 1965, 79 Stat. 218. Part C of title III of the Older Americans Act of 1965 is classified generally to part C (§3030e et seq.) of subchapter III of chapter 35 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 3001 of this title and Tables.

The Food and Nutrition Act of 2008, referred to in subsec. (o)(5)(A), is Pub. L. 88-525, Aug. 31, 1964, 78 Stat. 703, which is classified generally to chapter 51 (§2011 et seq.) of Title 7, Agriculture. For complete classification of this Act to the Code, see Short Title note set out under section 2011 of Title 7 and Tables.

## CODIFICATION

Pub. L. 110-234 and Pub. L. 110-246 made identical amendments to this section. The amendments by Pub. L. 110-234 were repealed by section 4(a) of Pub. L. 110-246.

October 1, 1988, referred to in subsec. (o)(3)(A) [formerly (p)(3)(A)], was in the original "enactment", which was translated as meaning the date of enactment of Pub. L. 100-460, which amended subsec. (p)(3)(A) generally, to reflect the probable intent of Congress.

Pub. L. 99-591 is a corrected version of Pub. L. 99-500.

## AMENDMENTS

2010—Subsec. (a). Pub. L. 111-296, §221(1), substituted "Program purpose, grant authority and institution eligibility" for "Grant authority and institution eligibility" in heading.

Subsec. (a)(1). Pub. L. 111-296, §221(1), added par. (1) and struck out former par. (1). Prior to amendment, text read as follows: "The Secretary may carry out a program to assist States through grants-in-aid and other means to initiate and maintain nonprofit food service programs for children in institutions providing child care."

Subsec. (d)(1)(E). Pub. L. 111-296, §331(a), added subpar. (E).

Subsec. (d)(2). Pub. L. 111-296, §331(b), added par. (2) and struck out former par. (2). Prior to amendment, text read as follows:

"(2)(A) The Secretary shall develop a policy that—

"(i) allows institutions providing child care that participate in the program under this section, at the option of the State agency, to reapply for assistance under this section at 3-year intervals;

"(ii)(I) requires periodic unannounced site visits at not less than 3-year intervals to sponsored child care centers and family or group day care homes to identify and prevent management deficiencies and fraud and abuse under the program;

"(II) requires at least one scheduled site visit each year to sponsored child care centers and family or group day care homes to identify and prevent management deficiencies and fraud and abuse under the program and to improve program operations; and

"(III) requires at least one scheduled site visit at not less than 3-year intervals to sponsoring organizations and nonsponsored child care centers to identify and prevent management deficiencies and fraud and abuse under the program and to improve program operations; and

"(iii) requires periodic site visits to private institutions that the State agency determines have a high probability of program abuse.

"(B) Each State agency that exercises the option authorized by subparagraph (A) shall confirm on an annual basis that each such institution is in compliance with the licensing or approval provisions of subsection (a)(5) of this section."

Subsec. (e). Pub. L. 111-296, §332, inserted subsec. heading, added pars. (1) to (3), redesignated former pars. (2) and (3) as (4) and (5), respectively, and inserted par. headings, and struck out former par. (1) which read as follows: "Except as provided in paragraph (2), the State shall provide, in accordance with regulations issued by the Secretary, a fair hearing and a prompt determination to any institution aggrieved by the action of the State as it affects the participation of such institution in the program authorized by this section, or its claim for reimbursement under this section."

Subsec. (f)(3)(A)(ii)(I)(bb). Pub. L. 111-296, §121, struck out "elementary" after "school enrolling".

Subsec. (f)(3)(A)(iii)(III)(dd), (ee). Pub. L. 111-296, §333, added items (dd) and (ee).

Subsec. (f)(3)(B). Pub. L. 111-296, §334, added subpar. (B) and struck out former subpar. (B) which read as follows: "Family or group day care home sponsoring organizations shall also receive reimbursement for their administrative expenses in amounts not exceeding the maximum allowable levels prescribed by the Secretary. Such levels shall be adjusted July 1 of each year to reflect changes in the Consumer Price Index for all items for the most recent 12-month period for which such data are available."

Subsec. (g). Pub. L. 111-296, §221(2), added subsec. (g) and struck out former subsec. (g) which related to meals served by participating institutions and compliance assistance.

Subsec. (i)(2). Pub. L. 111-296, §335, added par. (2) and struck out former par. (2). Prior to amendment, text read as follows: "The Secretary shall make available for each fiscal year to States administering the child care food program, for the purpose of conducting audits of participating institutions, an amount up to 1.5 percent (except, in the case of each of fiscal years 2005 through 2007, 1 percent) of the funds used by each State in the program under this section, during the second preceding fiscal year."

Subsec. (j)(1). Pub. L. 111-296, §331(c), substituted "Secretary shall" for "Secretary may", struck out "family or group day care" after "agreement between each", and inserted "or sponsored day care centers" after "day care homes".

Subsec. (p). Pub. L. 111-296, §441(a)(7), struck out subsec. (p) which related to rural area eligibility determination for day care homes.

Subsec. (q)(3). Pub. L. 111-296, §441(a)(8), struck out par. (3). Text read as follows: "For each of fiscal years 2005 and 2006, the Secretary shall reserve to carry out paragraph (1) \$1,000,000 of the amounts made available to carry out this section."

Subsec. (r)(5), (6). Pub. L. 111-296, §122, added pars. (5) and (6) and struck out former par. (5). Prior to amendment, text read as follows: "The Secretary shall limit reimbursement under this subsection for meals served under a program to institutions located in the District of Columbia and thirteen States, of which eleven States shall be Connecticut, Nevada, Wisconsin, Vermont, Maryland, West Virginia, Illinois, Pennsylvania, Missouri, Delaware, and Michigan and two States shall be approved by the Secretary through a competitive application process."

Subsec. (u). Pub. L. 111-296, §221(3), added subsec. (u). 2009—Subsec. (r)(5). Pub. L. 111-80 substituted "the District of Columbia and thirteen" for "ten" and "eleven" for "eight" and inserted "Connecticut, Nevada, Wisconsin," before "Vermont,".

Pub. L. 111-8 substituted "located in ten" for "located in eight" and "of which eight" for "of which six" and inserted "Vermont, Maryland," before "West Virginia,".

2008—Subsec. (o)(5)(A). Pub. L. 110-246, §4002(b)(1)(B), (2)(Z), substituted "Food and Nutrition Act of 2008" for "Food Stamp Act of 1977".

2007—Subsec. (c)(5). Pub. L. 110-134 substituted "the child meets the eligibility criteria prescribed under section 645(a)(1)(B) of the Head Start Act (42 U.S.C. 9840(a)(1)(B))" for "the child is a member of a family that meets the low-income criteria prescribed under section 645(a)(1)(A) of the Head Start Act (42 U.S.C. 9840(a)(1)(A))".

Subsec. (r)(5). Pub. L. 110-161 substituted "eight" for "seven" and "six" for "five" and inserted "West Virginia," before "Illinois, Pennsylvania,".

2004—Subsec. (a)(2)(B)(i). Pub. L. 108-265, §119(a)(1), struck out "during the period beginning on December 21, 2000, and ending on June 30, 2004," before "at least".

Pub. L. 108-211 substituted "June 30, 2004" for "March 31, 2004".

Subsec. (a)(6)(B). Pub. L. 108-265, §119(h)(1), inserted "and adult" after "child".

Subsec. (f)(3)(E)(iii). Pub. L. 108-265, §119(b), substituted "5 years" for "3 years".

Subsec. (i). Pub. L. 108-265, §119(c), inserted subsec. heading, designated existing provisions as par. (2), inserted par. heading, and added par. (1).

Subsec. (j). Pub. L. 108-265, §119(d), inserted subsec. heading, designated existing provisions as par. (1), inserted par. heading, and added par. (2).

Subsec. (p). Pub. L. 108-265, §119(e), added subsec. (p). Pub. L. 108-265, §119(a)(2), struck out subsec. (p),

which related to demonstration projects for qualification under this section of private for-profit organizations providing nonresidential day care services.

Subsec. (q)(3). Pub. L. 108-265, §119(f), substituted "2005 and 2006" for "1999 through 2003".

Subsec. (t)(3). Pub. L. 108-265, §119(h)(2), substituted "subsection (a)(5)" for "subsection (a)(1)".

Subsec. (t)(5)(A)(i). Pub. L. 108-265, §119(g), in subcl. (I), substituted "18" for "12" and inserted "or" at end, redesignated subcl. (III) as (II), and struck out former subcl. (II) which read as follows: "children of migrant workers, if the children are not more than 15 years of age; or".

2003—Subsec. (a)(2)(B)(i). Pub. L. 108-134 substituted "March 31, 2004" for "September 30, 2003".

Pub. L. 108-7 substituted "2003" for "2002".

2001—Subsec. (a)(2)(B)(i). Pub. L. 107-76, §743, substituted "2002" for "2001".

Subsec. (r)(5). Pub. L. 107-76, §771, substituted "located in seven" for "located in six" and "of which five" for "of which four" and inserted "Illinois," before "Pennsylvania".

2000—Pub. L. 106-472, §307(c)(1)(A), made technical amendment to section catchline.

Subsec. (a). Pub. L. 106-224, §243(a)(1)-(7), inserted subsec. (a) heading, inserted par. (1) designation and

heading before "The Secretary may carry", substituted par. (2) for "For purposes of this section, the term 'institution' means any public or private nonprofit organization providing nonresidential child care, including, but not limited to, child care centers, settlement houses, recreational centers, Head Start centers, and institutions providing child care facilities for children with disabilities; and such term shall also mean any other private organization providing nonresidential day care services for which it receives compensation from amounts granted to the States under title XX of the Social Security Act (but only if such organization receives compensation under such title for at least 25 percent of its enrolled children or 25 percent of its licensed capacity, whichever is less). In addition, the term 'institution' shall include programs developed to provide day care outside school hours for schoolchildren, public or nonprofit private organizations that sponsor family or group day care homes, and emergency shelters (as provided in subsection (t) of this section).", inserted par. (3) designation and heading before "Except as provided in subsection (r)", inserted par. (4) designation and heading before "The Secretary may establish separate guidelines", inserted par. (5) designation and heading after "school children outside of school hours.", substituted "In order to be eligible," for "For purposes of determining eligibility—", struck out former par. (1) designation before "an institution (except a school or family)", substituted "standards." for "standards; and", and substituted par. (6) designation and heading for former par. (2) designation and "No institution" for "no institution".

Subsec. (a)(2)(B). Pub. L. 106-554 substituted "children, if—" for "children for which", added cl. (i), and designated remaining provisions as cl. (ii).

Subsec. (a)(6)(B). Pub. L. 106-224, §243(a)(8)(A), inserted ", or has not been determined to be ineligible to participate in any other publicly funded program by reason of violation of the requirements of the program" before ", for a period".

Subsec. (a)(6)(C). Pub. L. 106-224, §243(a)(8)(B), designated existing provisions as cl. (i) and added cl. (ii).

Subsec. (a)(6)(C)(ii). Pub. L. 106-472, §307(c)(1)(B), struck out "and" at end.

Subsec. (a)(6)(D). Pub. L. 106-224, §243(a)(8)(C), substituted a semicolon for the period at end.

Subsec. (a)(6)(E), (F). Pub. L. 106-224, §243(a)(8)(D), added subpars. (E) and (F).

Subsec. (d). Pub. L. 106-224, §243(b)(1), inserted subsec. heading.

Subsec. (d)(1). Pub. L. 106-224, §243(b)(1), added par. (1) and struck out former par. (1), which had provided that any eligible public institution would be approved upon its request, that any eligible private institution would be approved if it had been visited by a State agency and had either tax exempt status or had been operating a Federal program requiring nonprofit status, and set forth provisions relating to tax exempt certification of family or group day care homes, authorizing temporary participation for an institution moving toward compliance, and requiring notice of approval or disapproval of application within 30 days after filing.

Subsec. (d)(2)(A)(ii), (iii). Pub. L. 106-224, §243(b)(2), added cl. (ii) and redesignated former cl. (ii) as (iii).

Subsec. (d)(2)(B). Pub. L. 106-224, §243(b)(3), substituted "subsection (a)(5)" for "subsection (a)(1)".

Subsec. (d)(3). Pub. L. 106-224, §243(b)(4)(A), added par. (3).

Subsec. (d)(4). Pub. L. 106-224, §243(b)(5), added par. (4).

Subsec. (d)(5). Pub. L. 106-224, §243(c), added par. (5).

Subsec. (d)(5)(D). Pub. L. 106-472, §307(c)(2), designated existing provisions as cl. (i), inserted cl. (i) heading, substituted "Except as provided in cl. (ii), an institution" for "An institution", and added cl. (ii).

Subsec. (f). Pub. L. 106-224, §243(d)(1), inserted heading.

Subsec. (f)(1). Pub. L. 106-224, §243(d), inserted par. heading, designated existing provisions as subpar. (A), inserted subpar. heading, and added subpar. (B).

Subsec. (f)(2)(C). Pub. L. 106-224, §243(e), added subpar. (C).

Subsec. (f)(3)(D). Pub. L. 106-224, §243(f), added subpar. (D) and struck out former subpar. (D), which required the Secretary to reserve \$5,000,000 of the amount made available for fiscal year 1997 for grants to States to provide assistance to family or group day care homes and set forth provisions relating to allocation and retention of funds and additional payments.

Subsec. (p)(1). Pub. L. 106-224, §243(g)(1)(A), substituted "State-wide demonstration projects in three States" for "2 statewide demonstration projects" in first sentence of introductory provisions.

Subsec. (p)(3). Pub. L. 106-224, §243(g)(1)(B)(i), inserted "in" after "subsection" in introductory provisions.

Subsec. (p)(3)(C). Pub. L. 106-224, §243(g)(1)(B)(ii)-(iv), added subpar. (C).

Subsec. (p)(3)(C)(iii). Pub. L. 106-472, §307(c)(3)(A), substituted "all low-income families" for "all families".

Subsec. (p)(3)(C)(iv). Pub. L. 106-472, §307(c)(3)(B), substituted "reported for fiscal year 1998" for "made".

Subsec. (q)(2), (3). Pub. L. 106-224, §243(h), added par. (2) and redesignated former par. (2) as (3).

Subsec. (r)(2). Pub. L. 106-224, §243(i)(1), inserted "meals or" before "supplements" in introductory provisions.

Subsec. (r)(4). Pub. L. 106-224, §243(i)(2)(A), substituted "Meal and supplement" for "Supplement" in par. heading.

Subsec. (r)(4)(A). Pub. L. 106-224, §243(i)(2)(B), substituted "only for one meal per child per day and one supplement per child per day" for "only for—", struck out "(i) a supplement" before "served under", substituted a period for "; and", and struck out cl. (ii) which read as follows: "one supplement per child per day."

Subsec. (r)(4)(B). Pub. L. 106-224, §243(i)(2)(C), in par. heading, substituted "Rates" for "Rate", added cl. (i), designated existing provisions as cl. (ii), and inserted cl. (ii) heading.

Subsec. (r)(4)(C). Pub. L. 106-224, §243(i)(2)(D), inserted "meal or" before "supplement".

Subsec. (r)(5). Pub. L. 106-224, §243(i)(3), added par. (5).

Subsec. (t)(1)(A). Pub. L. 106-400 made technical amendment to reference in original act which appears in text as reference to section 11351 of this title.

1998—Subsec. (a). Pub. L. 105-336, §107(j)(3)(C), substituted "children with disabilities" for "children with handicaps" in two places in introductory provisions.

Pub. L. 105-336, §107(j)(2)(B), in third sentence of introductory provisions, substituted "public" for "and public" and inserted, "and emergency shelters (as provided in subsection (t) of this section)" before period at end.

Pub. L. 105-336, §107(a)(1), in fourth sentence of introductory provisions, substituted "Except as provided in subsection (r) of this section, reimbursement" for "Reimbursement".

Subsec. (a)(1). Pub. L. 105-336, §107(a)(2), added par. (1) and struck out former par. (1) which read as follows: "no institution, other than a family or group day care home sponsoring organization, or family or group day care home shall be eligible to participate in the program unless it has Federal, State, or local licensing or approval, or is complying with appropriate renewal procedures as prescribed by the Secretary and the State has no information indicating that the institution's license will not be renewed; or where Federal, State, or local licensing or approval is not available, it receives funds under title XX of the Social Security Act or otherwise demonstrates that it meets either any applicable State or local government licensing or approval standards or approval standards established by the Secretary after consultation with the Secretary of Health and Human Services; and".

Subsec. (c)(6). Pub. L. 105-336, §107(b), struck out "(A)" before "A child" and struck out subpar. (B) which read as follows: "Subparagraph (A) shall apply only with respect to the provision of benefits under this

section for the period beginning September 1, 1995, and ending September 30, 1997."

Subsec. (d)(1). Pub. L. 105-336, §107(c)(1), (d), inserted "has been visited by a State agency prior to approval and it" after "if it" in second sentence, inserted "An institution moving toward compliance with the requirement for tax exempt status shall be allowed to participate in the child and adult care food program for a period of not more than 180 days, except that a State agency may grant a single extension of not to exceed an additional 90 days if the institution demonstrates, to the satisfaction of the State agency, that the inability of the institution to obtain tax exempt status within the 180-day period is due to circumstances beyond the control of the institution." after third sentence, and struck out at end "If an institution submits an incomplete application to the State, the State shall so notify the institution within fifteen days of receipt of the application."

Subsec. (d)(2)(A). Pub. L. 105-336, §107(c)(2), substituted "policy that—" for "policy that", inserted "(i)" before "allows institutions", substituted "and" for period at end, and added cl. (ii).

Subsec. (h)(1)(B). Pub. L. 105-336, §101(b), substituted "1755(c)" for "1755(e)".

Subsec. (i). Pub. L. 105-336, §107(e), substituted "1.5 percent (except, in the case of each of fiscal years 2005 through 2007, 1 percent)" for "2 percent".

Subsec. (p)(4), (5). Pub. L. 105-336, §107(f), struck out pars. (4) and (5) which read as follows:

"(4) Such project shall—

"(A) commence not earlier than May 1, 1990, and not later than June 30, 1990; and

"(B) terminate on September 30, 1998.

"(5) Notwithstanding paragraph (4)(B), the Secretary shall continue until September 30, 1998, the two pilot projects established under this subsection to the extent, and in such amounts, as are provided for in advance in appropriations Acts."

Subsec. (q). Pub. L. 105-336, §107(g), added subsec. (q).

Subsec. (r). Pub. L. 105-336, §107(h), added subsec. (r).

Subsec. (s). Pub. L. 105-336, §107(i), added subsec. (s).

Subsec. (t). Pub. L. 105-336, §107(j)(1), added subsec. (t).

1996—Subsec. (a). Pub. L. 104-193, §708(a), substituted "initiate and maintain nonprofit food service programs" for "initiate, maintain, and expand nonprofit food service programs" in first sentence.

Subsec. (a)(2)(D). Pub. L. 104-193, §708(b), added subpar. (D).

Subsec. (c)(1) to (3). Pub. L. 104-193, §708(e)(4), inserted "except as provided in subsection (f)(3) of this section," after "For purposes of this section."

Subsec. (d)(1). Pub. L. 104-193, §708(c), struck out "and shall provide technical assistance, if necessary, to the institution for the purpose of completing its application" before period at end.

Subsec. (f)(2)(B). Pub. L. 104-193, §708(d), substituted "2 meals and 1 supplement" for "two meals and two supplements or three meals and one supplement".

Subsec. (f)(3). Pub. L. 104-193, §708(e)(1), inserted heading.

Subsec. (f)(3)(A). Pub. L. 104-193, §708(e)(1), added heading and text of subpar. (A) and struck out former subpar. (A) which read as follows: "Institutions that participate in the program under this section as family or group day care home sponsoring organizations shall be provided, for payment to such homes, a reimbursement factor set by the Secretary for the cost of obtaining and preparing food and prescribed labor costs, involved in providing meals under this section, without a requirement for documentation of such costs, except that reimbursement shall not be provided under this subparagraph for meals or supplements served to the children of a person acting as a family or group day care home provider unless such children meet the eligibility standards for free or reduced price meals under section 1758 of this title. The reimbursement factor in effect as of August 13, 1981, shall be reduced by 10 percent. The reimbursement factor under this subpara-

graph shall be adjusted on July 1 of each year to reflect changes in the Consumer Price Index for food away from home for the most recent 12-month period for which such data are available. The reimbursement factor under this subparagraph shall be rounded to the nearest one-fourth cent."

Subsec. (f)(3)(B). Pub. L. 104-193, § 708(f)(1)(A), struck out at end "The maximum allowable levels for administrative expense payments, as in effect as of August 13, 1981, shall be adjusted by the Secretary so as to achieve a 10 percent reduction in the total amount of reimbursement provided to institutions for such administrative expenses. In making the reduction required by the preceding sentence, the Secretary shall increase the economy of scale factors used to distinguish institutions that sponsor a greater number of family or group day care homes from those that sponsor a lesser number of such homes."

Subsec. (f)(3)(C)(ii). Pub. L. 104-193, § 708(f)(1)(B), substituted "assist unlicensed family or group day care homes in becoming" for "conduct outreach and recruitment to unlicensed family or group day care homes so that the day care homes may become".

Subsec. (f)(3)(D). Pub. L. 104-193, § 708(e)(2), added subpar. (D).

Subsec. (f)(3)(E). Pub. L. 104-193, § 708(e)(3), added subpar. (E).

Subsec. (f)(4). Pub. L. 104-193, § 708(f)(2), substituted "State may provide" for "State shall provide" in first sentence.

Subsec. (g)(1)(A). Pub. L. 104-193, § 708(g)(1), struck out at end "Such meals shall be served free to needy children."

Subsec. (g)(1)(B). Pub. L. 104-193, § 708(g)(2), struck out at end "The Secretary shall provide additional technical assistance to those institutions and family or group day care home sponsoring organizations that are having difficulty maintaining compliance with the requirements."

Subsec. (k). Pub. L. 104-193, § 708(h), added heading and text of subsec. (k) and struck out former subsec. (k) consisting of pars. (1) to (3) which related to training and technical assistance, monitoring, research, and demonstration projects.

Subsec. (m). Pub. L. 104-193, § 708(i), substituted "available at any reasonable time" for "available at all times".

Subsec. (q). Pub. L. 104-193, § 708(j), struck out subsec. (q) which related to provision of information concerning special supplemental nutrition program for women, infants, and children.

1994—Subsec. (c)(5). Pub. L. 103-448, § 109(b), added par. (5).

Subsec. (c)(6). Pub. L. 103-448, § 116(a), added par. (6).  
Subsec. (d)(2)(A). Pub. L. 103-448, § 116(b), substituted "3-year intervals" for "2-year intervals".

Subsec. (f)(3)(C). Pub. L. 103-448, § 116(c), designated existing provisions as cl. (i) and added cl. (ii).

Subsec. (g)(1). Pub. L. 103-448, § 105(c), designated existing provisions as subpar. (A) and added subpar. (B).

Subsec. (k)(4). Pub. L. 103-448, § 116(d), added par. (4).

Subsec. (p). Pub. L. 103-448, § 116(e), substituted "25 percent of the children enrolled in the organization or 25 percent of the licensed capacity of the organization for children, whichever is less," for "25 percent of the children served by such organization" in par. (1)(A), "1998" for "1992" in par. (4)(B), and "1998" for "1994" in par. (5).

Subsec. (q). Pub. L. 103-448, § 116(f), added subsec. (q).  
1993—Subsec. (o)(3)(A). Pub. L. 103-171 substituted "Assistant Secretary for Aging" for "Commissioner of Aging".

1992—Subsec. (a). Pub. L. 102-342, § 202, substituted "of its enrolled children or 25 percent of its licensed capacity, whichever is less" for "of the children for which the organization provides such nonresidential day care services".

Subsec. (o)(2)(A)(i). Pub. L. 102-375 inserted ", or a group living arrangement," after "homes".

Subsec. (p)(5). Pub. L. 102-342, § 203, added par. (5).

1989—Pub. L. 101-147, § 105(a), substituted "Child and adult care food program" for "Child care food program" in section catchline.

Subsec. (a). Pub. L. 101-147, § 310(a)(1), substituted "children with handicaps" for "handicapped children" wherever appearing.

Subsec. (c). Pub. L. 101-147, § 312(2), substituted "reduced price" for "reduced-price" wherever appearing.

Subsec. (d). Pub. L. 101-147, § 204(a), designated existing provisions as par. (1), redesignated cls. (1) and (2) as (A) and (B), respectively, and added par. (2).

Subsec. (d)(1). Pub. L. 101-147, § 310(a)(2), substituted "Internal Revenue Code of 1986" for "Internal Revenue Code of 1954", which for purposes of codification was translated as "title 26" thus requiring no change in text.

Subsec. (e). Pub. L. 101-147, § 310(b), amended subsec. (e), as identically amended by Pub. L. 99-500 and 99-591, § 361, and Pub. L. 99-661, § 4401, to read as if only the amendment by Pub. L. 99-661 was enacted, resulting in no change in text, see 1986 Amendment note below.

Subsec. (f)(1). Pub. L. 101-147, § 310(a)(3)(A), substituted "day care" for "day-care".

Subsec. (f)(2)(B). Pub. L. 101-147, § 310(a)(3)(B), struck out second period at end.

Subsec. (f)(3)(A). Pub. L. 101-147, § 312(2), substituted "reduced price" for "reduced-price".

Subsec. (f)(3)(C). Pub. L. 101-147, § 105(b)(1), inserted before period at end of first sentence "and expansion funds to finance the administrative expenses for such institutions to expand into low-income or rural areas", inserted "and expansion funds" after "start-up funds" in second, fourth, and fifth sentences and after "Start-up funds" in third sentence, and inserted after first sentence "Institutions that have received start-up funds may also apply at a later date for expansion funds."

Subsec. (h)(1). Pub. L. 101-147, § 131(b), amended par. (1) generally. Prior to amendment, par. (1) read as follows: "The Secretary shall donate agricultural commodities produced in the United States for use in institutions participating in the child care food program under this section. The value of such commodities (or cash in lieu of commodities) donated to each State for each school year shall be, at a minimum, the amount obtained by multiplying the number of lunches and suppers served in participating institutions in that State during that school year by the rate for commodities or cash in lieu thereof established for that school year under section 1755(e) of this title. Any State receiving assistance under this section for institutions participating in the child care food program may, upon application to the Secretary, receive cash in lieu of some or all of the commodities to which it would otherwise be entitled under this subsection. In determining whether to request cash in lieu of commodities, the State shall base its decision on the preferences of individual participating institutions within the State, unless this proves impracticable due to the small number of institutions preferring donated commodities."

Subsec. (k). Pub. L. 101-147, § 310(a)(4), redesignated subsec. (l) as (k) and struck out former subsec. (k) which related to study and report on maximum administrative payments reflecting costs of institutions.

Subsec. (l). Pub. L. 101-147, § 310(a)(4), redesignated subsec. (m) as (l). Former subsec. (l) redesignated (k).

Pub. L. 101-147, § 105(b)(2), designated existing provisions as par. (1) and added pars. (2) and (3).

Subsecs. (m), (n). Pub. L. 101-147, § 310(a)(4), redesignated subsecs. (n) and (o) as (m) and (n), respectively. Former subsec. (m) redesignated (l).

Subsec. (o). Pub. L. 101-147, § 312(2), substituted "reduced price" for "reduced-price" in par. (4).

Pub. L. 101-147, § 310(a)(4), redesignated subsec. (p) as (o). Former subsec. (o) redesignated (n).

Subsec. (p). Pub. L. 101-147, § 310(a)(4), redesignated subsec. (q) as (p). Former subsec. (p) redesignated (o).

Pub. L. 101-147, § 105(b)(3)(A), inserted at end of par. (1) "Lunches served by each such institution for which reimbursement is claimed under this section shall pro-

vide, on the average, approximately 1/3 of the daily recommended dietary allowance established by the Food and Nutrition Board of the National Research Council of the National Academy of Sciences. Such institutions shall make reasonable efforts to serve meals that meet the special dietary requirements of participants, including efforts to serve foods in forms palatable to participants."

Pub. L. 101-147, §105(b)(3)(B), added par. (6).

Subsec. (q). Pub. L. 101-147, §310(a)(4), redesignated subsec. (q) as (p).

Pub. L. 101-147, §105(b)(4), added subsec. (q).

1988—Subsec. (f)(2)(B). Pub. L. 100-435, §211, inserted provisions relating to reimbursement to institutions maintaining a child care setting for eight or more hours per day.

Subsec. (h). Pub. L. 100-435, §214, designated existing provisions as par. (1) and added par. (2).

Subsec. (p)(3)(A). Pub. L. 100-460, §641(c), amended subpar. (A) generally. Prior to amendment, subpar. (A) read as follows: "The Secretary of Agriculture, in consultation with the Commissioner on Aging, may establish separate guidelines for reimbursement of institutions described in this subsection."

Subsec. (p)(4). Pub. L. 100-460, §641(a), added par. (4).

Subsec. (p)(5). Pub. L. 100-460, §641(b), added par. (5).

1987—Subsec. (p). Pub. L. 100-175 added subsec. (p).

1986—Subsec. (a)(1). Pub. L. 99-500 and Pub. L. 99-591, §372(a), and Pub. L. 99-661, §4502(a), amended par. (1) identically, substituting "Health and Human Services" for "Health, Education, and Welfare".

Subsec. (e). Pub. L. 99-500 and Pub. L. 99-591, §361, and Pub. L. 99-661, §4401, amended subsec. (e) identically, designating existing provisions as par. (1), substituting "Except as provided in paragraph (2), the" for "The", and adding pars. (2) and (3).

1981—Subsec. (a). Pub. L. 97-35, §810(a), inserted provisions respecting 25 percent requirement for children receiving nonresidential day care services, and reimbursement for meals and supplements.

Subsec. (b). Pub. L. 97-35, §810(b), substituted provisions respecting applicability of subsec. (f), for provisions respecting applicability of subsec. (c).

Subsec. (c). Pub. L. 97-35, §810(c), substituted provisions respecting applicability, determinations, etc., for national average payment rates for free lunches and suppers, etc., for provisions respecting formula for computation of payments, and applicability of national average payment rates.

Subsec. (f)(1). Pub. L. 97-35, §819(k), struck out authorization respecting financing the cost of meals.

Subsec. (f)(2) to (5). Pub. L. 97-35, §810(d), in par. (2) substituted provisions setting forth formula for disbursements for meals for provisions setting forth maximum per meal rates of reimbursements, struck out par. (3) which related to election rights of institutions other than family or group day care home sponsoring organizations, redesignated par. (4) as (3) and, as so redesignated, substantially revised and restructured provisions, and redesignated par. (5) as (4).

Subsec. (g). Pub. L. 97-35, §810(e), struck out par. (2) which related to prohibitions respecting meals served by institutions, and redesignated pars. (3) and (4) as (2) and (3), respectively.

Subsec. (i). Pub. L. 97-35, §§810(f), 817(c)(2), struck out subsec. (i) which related to information required from State plans. Former subsec. (j) redesignated (i).

Subsecs. (j) to (l). Pub. L. 97-35, §§810(g), 817(c)(2), redesignated subsecs. (k), (l), and (o) as (j), (k), and (l), respectively, and in subsec. (l), as so redesignated, struck out provision respecting availability of funds from food service equipment program. Former subsecs. (j) to (l) redesignated (i) to (k), respectively.

Subsec. (m). Pub. L. 97-35, §817(c), struck out subsec. (m) which related to withholding of funds. Subsec. (p) redesignated (m).

Subsec. (n). Pub. L. 97-35, §§810(f), 817(c)(2), struck out subsec. (n) which related to appropriations, etc., for equipment assistance. Subsec. (q) redesignated (n).

Subsecs. (o) to (r). Pub. L. 97-35, §817(c)(2), redesignated subsecs. (o) to (r) as (l) to (o), respectively.

1980—Subsec. (a). Pub. L. 96-499, §207(a), included in definition of "institution" any private organization providing nonresidential day care services for which compensation was received from amounts granted to the States under title XX of the Social Security Act.

Subsec. (c). Pub. L. 96-499, §208(b), inserted provision in pars. (1), (2), and (3) that the average payment rates for supplements served in such institutions was to be three cents lower than the adjusted rates prescribed by the Secretary in accordance with the adjustment formulas contained in such pars. (1), (2), and (3).

Subsec. (n)(1). Pub. L. 96-499, §208(c), substituted "\$4,000,000" for "\$6,000,000".

1978—Subsec. (a). Pub. L. 95-627 excepted family or group day care homes from licensing requirements, set out guidelines for institutions providing care for children outside of school hours, and set out criteria for determining eligibility under this section.

Subsec. (b). Pub. L. 95-627 substituted provisions limiting the aggregate amount of cash assistance to a State under this section for provisions setting out a formula for computation of payments under this section and adjustments to such payments. See subsec. (c) of this section.

Subsec. (c). Pub. L. 95-627 substituted provisions relating to the formula for the computation of payments under this section and the prescription of a national average payment rate for provisions relating to the maintenance of national nutritional standards and the prohibition of discrimination and identification of children unable to pay under the program.

Subsec. (d). Pub. L. 95-627 substituted provisions stating requirements for approval for participation in the program and requiring written notification of such approval or disapproval for provisions relating to State disbursements to participating institutions.

Subsec. (e). Pub. L. 95-627 substituted provisions relating to fair hearings for provisions relating to donations of agricultural commodities and cash in lieu of commodities. See subsec. (h) of this section.

Subsec. (f). Pub. L. 95-627 substituted provisions relating to disbursements to participating institutions by the State for provisions calling for direct disbursements to participating institutions by the Secretary and prescribing conditions therefor.

Subsec. (g). Pub. L. 95-627 substituted provisions relating to meals served at participating institutions and the necessary nutritional content thereof for provisions prohibiting the diminution of expenditures by State and local sources by reason of the availability of Federal funds.

Subsec. (h). Pub. L. 95-627 substituted provisions relating to donations of agricultural land commodities and cash in lieu of commodities for provisions authorizing appropriations to meet the administrative expenditures of the Secretary.

Subsec. (i). Pub. L. 95-627 substituted provisions relating to information required from State plans for provisions requiring adequate accounts and general record-keeping by States, State educational agencies, and participating institutions.

Subsec. (j). Pub. L. 95-627 substituted provisions relating to the availability of Federal funds to the States for audits of participating institutions for provisions relating to food service equipment assistance and the apportionment of unused funds.

Subsec. (k). Pub. L. 95-627 substituted provisions relating to the use of a standard form of agreement and the issuance of regulations pertaining to such use for provisions relating to the issuance of rules and regulations to carry out this section by the Secretary.

Subsecs. (l) to (r). Pub. L. 95-627 added subsecs. (l) to (r).

1977—Subsec. (e). Pub. L. 95-166, §19(d), substituted in last sentence "school year" for "fiscal year" in three instances.

Subsec. (j)(1). Pub. L. 95-166, §3, substituted "food service equipment assistance" for "nonfood assistance".

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111-296 effective Oct. 1, 2010, except as otherwise specifically provided, see section 445 of Pub. L. 111-296, set out as a note under section 1751 of this title.

EFFECTIVE DATE OF 2008 AMENDMENT

Amendment of this section and repeal of Pub. L. 110-234 by Pub. L. 110-246 effective May 22, 2008, the date of enactment of Pub. L. 110-234, except as otherwise provided, see section 4 of Pub. L. 110-246, set out as an Effective Date note under section 8701 of Title 7, Agriculture.

Amendment by section 4002(b)(1)(B), (2)(Z) of Pub. L. 110-246 effective Oct. 1, 2008, see section 4407 of Pub. L. 110-246, set out as a note under section 1161 of Title 2, The Congress.

EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by section 119(a), (b), (d)-(f), (h) of Pub. L. 108-265 effective June 30, 2004, and amendment by section 119(c), (g) of Pub. L. 108-265 effective Oct. 1, 2004, see section 502(a), (b)(2) of Pub. L. 108-265, as amended, set out as an Effective Date note under section 1754 of this title.

EFFECTIVE DATE OF 2000 AMENDMENT

Pub. L. 106-224, title II, §243(b)(4)(B), June 20, 2000, 114 Stat. 417, provided that: "In the case of a child that is enrolled in a sponsored child care center or family or group day care home participating in the child and adult care food program under section 17 of the Richard B. Russell National School Lunch Act (42 U.S.C. 1766) before the date of the enactment of this Act [June 20, 2000], the center or home shall provide information to the child's parents or guardians pursuant to section 17(d)(3) of that Act [42 U.S.C. 1766(d)(3)], as added by subparagraph (A), not later than 90 days after the date of the enactment of this Act."

Pub. L. 106-224, title II, §243(g)(2), June 20, 2000, 114 Stat. 419, provided that: "The Secretary may carry out demonstration projects in the State described in section 17(p)(3)(C) of the Richard B. Russell National School Lunch Act [42 U.S.C. 1766(p)(3)(C)], as added by paragraph (1)(B)(iv), beginning not earlier than October 1, 2001."

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by section 107(j)(1), (2)(B) of Pub. L. 105-336 effective July 1, 1999, see section 107(j)(4) of Pub. L. 105-336, set out as a note under section 1761 of this title.

Amendment by sections 101(b) and 107(a)-(i), (j)(3)(C) of Pub. L. 105-336 effective Oct. 1, 1998, see section 401 of Pub. L. 105-336, set out as a note under section 1755 of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

Pub. L. 104-193, title VII, §708(k)(1), (2), Aug. 22, 1996, 110 Stat. 2299, provided that:

"(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section [amending this section] shall become effective on the date of enactment of this Act [Aug. 22, 1996].

"(2) IMPROVED TARGETING OF DAY CARE HOME REIMBURSEMENTS.—The amendments made by paragraphs (1) and (4) of subsection (e) [amending this section] shall become effective on July 1, 1997."

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by sections 105(c) and 116 of Pub. L. 103-448 effective Oct. 1, 1994, see section 401 of Pub. L. 103-448, set out as a note under section 1755 of this title.

Amendment by section 109(b) of Pub. L. 103-448 effective Sept. 25, 1995, see section 109(c) of Pub. L. 103-448, set out as a note under section 1758 of this title.

EFFECTIVE DATE OF 1992 AMENDMENT

Pub. L. 102-375, title VIII, §811(b), Sept. 30, 1992, 106 Stat. 1295, provided that: "The amendment made by

subsection (a) [amending this section] shall take effect as if the amendment had been included in the Older Americans Act Amendments of 1987 [Pub. L. 100-375]."

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by section 131(b) of Pub. L. 101-147 effective July 1, 1989, see section 131(c) of Pub. L. 101-147, set out as a note under section 1755 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by section 211 of Pub. L. 100-435 to be effective and implemented on July 1, 1989, and amendment by section 214 of Pub. L. 100-435 to be effective and implemented on Oct. 1, 1988, see section 701(a), (b)(4) of Pub. L. 100-435, set out as a note under section 2012 of Title 7, Agriculture.

EFFECTIVE DATE OF 1987 AMENDMENT

Amendment by Pub. L. 100-175 effective Oct. 1, 1987, see section 701(a) of Pub. L. 100-175, set out as a note under section 3001 of this title.

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by sections 810(a), (f), (g), 817(c), and 819(k) of Pub. L. 97-35 effective Oct. 1, 1981, see section 820(a)(3), (4) of Pub. L. 97-35, set out as a note under section 1753 of this title. For effective dates of amendments by section 810(b)-(e) of Pub. L. 97-35, see section 820(a)(1)(B)-(D), (3), (4), (6) of Pub. L. 97-35.

EFFECTIVE DATE OF 1980 AMENDMENT

Pub. L. 96-499, title II, §207(b), Dec. 5, 1980, 94 Stat. 2602, provided that: "The amendment made by subsection (a) of this section [amending this section] shall apply with respect to all fiscal years beginning on or after October 1, 1980."

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-627 effective Oct. 1, 1978, see section 14 of Pub. L. 95-627, set out as a note under section 1755 of this title.

EFFECTIVE DATE OF 1977 AMENDMENT

Pub. L. 95-166, §19, Nov. 10, 1977, 91 Stat. 1345, provided that the amendment made by that section is effective July 1, 1977.

IMPLEMENTATION OF 1989 AMENDMENTS

Pub. L. 101-147, title I, §105(d), Nov. 10, 1989, 103 Stat. 885, provided that:

"(1) EXPANSION; DEMONSTRATION PROJECT.—The Secretary of Agriculture shall implement the amendments made by subsections (b)(1) and (b)(2) [amending this section] not later than July 1, 1990.

"(2) DIETARY REQUIREMENTS FOR ADULT DAY CARE FOOD PROGRAM.—Not later than July 1, 1990, the Secretary of Agriculture shall issue final regulations to implement the amendments made by subsection (b)(3) [amending this section]."

REGULATIONS

Pub. L. 104-193, title VII, §708(k)(3), Aug. 22, 1996, 110 Stat. 2300, provided that:

"(A) INTERIM REGULATIONS.—Not later than January 1, 1997, the Secretary of Agriculture shall issue interim regulations to implement—

"(i) the amendments made by paragraphs (1), (3), and (4) of subsection (e) [amending this section]; and

"(ii) section 17(f)(3)(C) of the [Richard B. Russell] National School Lunch Act (42 U.S.C. 1766(f)(3)(C)).

"(B) FINAL REGULATIONS.—Not later than July 1, 1997, the Secretary of Agriculture shall issue final regulations to implement the provisions of law referred to in subparagraph (A)."

Pub. L. 101-147, title II, §204(b), Nov. 10, 1989, 103 Stat. 910, provided that: "Not later than July 1, 1990, the Secretary shall issue final regulations to implement the amendments made by subsection (a) [amending this section]."



INTERAGENCY COORDINATION TO PROMOTE HEALTH AND WELLNESS IN CHILD CARE LICENSING

Pub. L. 111-296, title II, §222, Dec. 13, 2010, 124 Stat. 3228, provided that: “The Secretary [of Agriculture] shall coordinate with the Secretary of Health and Human Services to encourage State licensing agencies to include nutrition and wellness standards within State licensing standards that ensure, to the maximum extent practicable, that licensed child care centers and family or group day care homes—

“(1) provide to all children under the supervision of the child care centers and family or group day care homes daily opportunities for age-appropriate physical activity;

“(2) limit among children under the supervision of the child care centers and family or group day care homes the use of electronic media and the quantity of time spent in sedentary activity to an appropriate level;

“(3) serve meals and snacks that are consistent with the requirements of the child and adult care food program established under section 17 of the Richard B. Russell National School Lunch Act (42 U.S.C. 1766); and

“(4) promote such other nutrition and wellness goals as the Secretaries determine to be necessary.”

REDUCING PAPERWORK AND IMPROVING PROGRAM ADMINISTRATION

Pub. L. 111-296, title III, §336, Dec. 13, 2010, 124 Stat. 3252, provided that:

“(a) DEFINITION OF PROGRAM.—In this section, the term ‘program’ means the child and adult care food program established under section 17 of the Richard B. Russell National School Lunch Act (42 U.S.C. 1766).

“(b) ESTABLISHMENT.—The Secretary [of Agriculture], in conjunction with States and participating institutions, shall continue to examine the feasibility of reducing unnecessary or duplicative paperwork resulting from regulations and recordkeeping requirements for State agencies, institutions, family and group day care homes, and sponsored centers participating in the program.

“(c) DUTIES.—At a minimum, the examination shall include—

“(1) review and evaluation of the recommendations, guidance, and regulatory priorities developed and issued to comply with section 119(i) of the Child Nutrition and WIC Reauthorization Act of 2004 (42 U.S.C. 1766 note; Public Law 108-265); and

“(2) examination of additional paperwork and administrative requirements that have been established since February 23, 2007, that could be reduced or simplified.

“(d) ADDITIONAL DUTIES.—The Secretary, in conjunction with States and institutions participating in the program, may also examine any aspect of administration of the program.

“(e) REPORT.—Not later than 4 years after the date of enactment of this Act [Dec. 13, 2010], the Secretary shall submit to Congress a report that describes the actions that have been taken to carry out this section, including—

“(1) actions taken to address administrative and paperwork burdens identified as a result of compliance with section 119(i) of the Child Nutrition and WIC Reauthorization Act of 2004 (42 U.S.C. 1766 note; Public Law 108-265);

“(2) administrative and paperwork burdens identified as a result of compliance with section 119(i) of that Act for which no regulatory action or policy guidance has been taken;

“(3) additional steps that the Secretary is taking or plans to take to address any administrative and paperwork burdens identified under subsection (c)(2) and paragraph (2), including—

“(A) new or updated regulations, policy, guidance, or technical assistance; and

“(B) a timeframe for the completion of those steps; and

“(4) recommendations to Congress for modifications to existing statutory authorities needed to address identified administrative and paperwork burdens.”

RECOVERY AND REALLOCATION OF AUDIT FUNDS

Pub. L. 109-97, title VII, §769, Nov. 10, 2005, 119 Stat. 2159, provided that: “Hereafter, notwithstanding any other provision of law, funds made available to States administering the Child and Adult Care Food Program, for the purpose of conducting audits of participating institutions, funds identified by the Secretary as having been unused during the initial fiscal year of availability may be recovered and reallocated by the Secretary: *Provided*, That States may use the reallocated funds until expended for the purpose of conducting audits of participating institutions.”

Similar provisions were contained in the following prior appropriation act:

Pub. L. 108-447, div. A, title VII, §796, Dec. 8, 2004, 118 Stat. 2852.

PAPERWORK REDUCTION

Pub. L. 108-265, title I, §119(i), June 30, 2004, 118 Stat. 755, provided that: “The Secretary of Agriculture, in conjunction with States and participating institutions, shall examine the feasibility of reducing paperwork resulting from regulations and recordkeeping requirements for State agencies, family child care homes, child care centers, and sponsoring organizations participating in the child and adult care food program established under section 17 of the Richard B. Russell National School Lunch Act (42 U.S.C. 1766).”

EARLY CHILD NUTRITION EDUCATION

Pub. L. 108-265, title I, §119(j), June 30, 2004, 118 Stat. 755, provided that:

“(1) IN GENERAL.—Subject to the availability of funds made available under paragraph (6), for a period of 4 successive years, the Secretary of Agriculture shall award to 1 or more entities with expertise in designing and implementing health education programs for limited-English-proficient individuals 1 or more grants to enhance obesity prevention activities for child care centers and sponsoring organizations providing services to limited-English-proficient individuals through the child and adult care food program under section 17 of the Richard B. Russell National School Lunch Act (42 U.S.C. 1766) in each of 4 States selected by the Secretary in accordance with paragraph (2).

“(2) STATES.—The Secretary shall provide grants under this subsection in States that have experienced a growth in the limited-English-proficient population of the States of at least 100 percent between the years 1990 and 2000, as measured by the census.

“(3) REQUIRED ACTIVITIES.—Activities carried out under paragraph (1) shall include—

“(A) developing an interactive and comprehensive tool kit for use by lay health educators and training activities;

“(B) conducting training and providing ongoing technical assistance for lay health educators; and

“(C) establishing collaborations with child care centers and sponsoring organizations participating in the child and adult care food program under section 17 of the Richard B. Russell National School Lunch Act (42 U.S.C. 1766) to—

“(i) identify limited-English-proficient children and families; and

“(ii) enhance the capacity of the child care centers and sponsoring organizations to use appropriate obesity prevention strategies.

“(4) EVALUATION.—Each grant recipient shall identify an institution of higher education to conduct an independent evaluation of the effectiveness of the grant.

“(5) REPORT.—The Secretary shall submit to the Committee on Education and the Workforce of the House of Representatives, and the Committee on Agriculture, Nutrition, and Forestry and the Committee on

Health, Education, Labor, and Pensions, of the Senate a report that includes—

“(A) the evaluation completed by the institution of higher education under paragraph (4);

“(B) the effectiveness of lay health educators in reducing childhood obesity; and

“(C) any recommendations of the Secretary concerning the grants.

“(6) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out this subsection \$250,000 for each of fiscal years 2005 through 2009.”

STUDY OF IMPACT OF AMENDMENTS BY PUB. L. 104-193 ON PROGRAM PARTICIPATION AND FAMILY DAY CARE LICENSING

Pub. L. 104-193, title VII, §708(l), Aug. 22, 1996, 110 Stat. 2300, directed Secretary of Agriculture, in conjunction with Secretary of Health and Human Services, to conduct study and report to Congress not later than 2 years after Aug. 22, 1996, on impact of the amendments made by section 708 of Pub. L. 104-193, amending this section, on the number of family day care homes and day care home sponsoring organizations participating in the child and adult care food program established under this section, the number of day care homes that are licensed, certified, registered, or approved by each State in accordance with regulations issued by the Secretary, the rate of growth of such numbers, the nutritional adequacy and quality of meals served in family day care homes, and the proportion of low-income children participating in the program prior to such amendments to this section and the proportion of low-income children participating in the program after such amendments to this section, and further required each State agency participating in the child and adult care food program under this section to submit to the Secretary of Agriculture data necessary to carry out this study.

FAMILY OR GROUP DAY CARE HOME DEMONSTRATION PROJECT

Pub. L. 100-435, title V, §503, Sept. 19, 1988, 102 Stat. 1672, as amended by Pub. L. 101-147, title I, §105(c)(1), Nov. 10, 1989, 103 Stat. 885, directed Secretary of Agriculture to conduct a demonstration project to begin 30 days after Sept. 19, 1988, but in no event earlier than Oct. 1, 1988, in one State (selected by the Secretary) regarding the Child Care Food Program authorized under 42 U.S.C. 1766 in which day care institutions and family or group day care sponsoring organizations shall receive a reimbursement (in addition to that received under 42 U.S.C. 1766(d) and (f)) for providing one additional meal or supplement for children that are maintained in a day care institution or in a family or group day care home setting for eight or more hours per day, directed Secretary to submit a preliminary report to Congress not later than Aug. 1, 1989, and a final report after the conclusion of such project, with project to terminate Sept. 30, 1990.

REVIEW AND REVISION OF NUTRITION REQUIREMENTS FOR MEALS SERVED UNDER BREAKFAST PROGRAM; PROMULGATION OF REGULATIONS

Pub. L. 99-500, title III, §330(b), Oct. 18, 1986, 100 Stat. 1783-363, Pub. L. 99-591, title III, §330(b), Oct. 30, 1986, 100 Stat. 3341-366, and Pub. L. 99-661, div. D, title II, §4210(b), Nov. 14, 1986, 100 Stat. 4074, directed Secretary of Agriculture to review and revise nutrition requirements for meals served under the breakfast program authorized under the Child Nutrition Act of 1966 (42 U.S.C. 1771 et seq.) and this section to improve nutritional quality of meals, taking into consideration both findings of National Evaluation of School Nutrition Programs and need to provide increased flexibility in meal planning to local food authorities, and to promul-

gate regulations to implement revisions not later than 180 days after Oct. 18, 1986.

ADJUSTMENTS IN NATIONAL AVERAGE PAYMENT RATE FOR SUPPLEMENTS DURING FISCAL YEAR ENDING SEPTEMBER 30, 1981

Pub. L. 96-499, title II, §208(a), Dec. 5, 1980, 94 Stat. 2602, related to adjustments required under the former pars. (1) through (3) of subsec. (c) of this section applicable in determining the national average payment rate for supplements during the fiscal year ending Sept. 30, 1981.

§ 1766a. Meal supplements for children in after-school care

(a) General authority

(1) Grants to States

The Secretary shall carry out a program to assist States through grants-in-aid and other means to provide meal supplements under a program organized primarily to provide care for children in afterschool care in eligible elementary and secondary schools.

(2) Eligible schools

For the purposes of this section, the term “eligible elementary and secondary schools” means schools that—

(A) operate school lunch programs under this chapter;

(B) sponsor afterschool care programs; and

(C) operate afterschool programs with an educational or enrichment purpose.

(b) Eligible children

Reimbursement may be provided under this section only for supplements served to school children who are not more than 18 years of age, except that the age limitation provided by this subsection shall not apply to a child described in section 1760(d)(1)(A) of this title.

(c) Reimbursement

(1) At-risk school children

In the case of an eligible child who is participating in a program authorized under this section operated at a site located in a geographical area served by a school in which at least 50 percent of the children enrolled are certified as eligible to receive free or reduced price school meals under this chapter or the Child Nutrition Act of 1966 (42 U.S.C. 1771 et seq.), a supplement provided under this section to the child shall be—

(A) reimbursed at the rate at which free supplements are reimbursed under section 1766(c)(3) of this title; and

(B) served without charge.

(2) Other school children

In the case of an eligible child who is participating in a program authorized under this section at a site that is not described in paragraph (1), for the purposes of this section, the national average payment rate for supplements shall be equal to those established under section 1766(c)(3) of this title (as adjusted pursuant to section 1759a(a)(3) of this title).

(d) Contents of supplements

The requirements that apply to the content of meal supplements served under child care food

programs operated with assistance under this chapter shall apply to the content of meal supplements served under programs operated with assistance under this section.

(June 4, 1946, ch. 281, §17A, as added Pub. L. 101-147, title I, §106(a), Nov. 10, 1989, 103 Stat. 885; amended Pub. L. 105-336, title I, §108, Oct. 31, 1998, 112 Stat. 3153.)

## REFERENCES IN TEXT

The Child Nutrition Act of 1966, referred to in subsec. (c)(1), is Pub. L. 89-642, Oct. 11, 1966, 80 Stat. 885, as amended, which is classified generally to chapter 13A (§1771 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1771 of this title and Tables.

## AMENDMENTS

1998—Subsec. (a)(1). Pub. L. 105-336, §108(a)(1), substituted “supplements under a program organized primarily to provide care for” for “supplements to”.

Subsec. (a)(2)(C). Pub. L. 105-336, §108(a)(2), added subpar. (C) and struck out former subpar. (C) which read as follows: “are participating in the child care food program under section 1766 of this title on May 15, 1989.”

Subsec. (b). Pub. L. 105-336, §108(b), substituted “served to school children who are not more than 18 years of age, except that the age limitation provided by this subsection shall not apply to a child described in section 1760(d)(1)(A) of this title.” for “served to children—

“(1) who are not more than 12 years of age; or

“(2) in the case of children of migrant workers or children with handicaps, who are not more than 15 years of age.”

Subsec. (c). Pub. L. 105-336, §108(c), added par. (1), designated existing provisions as par. (2), inserted heading, and substituted “In the case of an eligible child who is participating in a program authorized under this section at a site that is not described in paragraph (1), for the purposes” for “For the purposes”.

## EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105-336 effective Oct. 1, 1998, see section 401 of Pub. L. 105-336, set out as a note under section 1755 of this title.

## REGULATIONS

Pub. L. 101-147, title I, §106(b), Nov. 10, 1989, 103 Stat. 886, provided that: “Not later than July 1, 1990, the Secretary of Agriculture shall issue final regulations to implement section 17A of the [Richard B. Russell] National School Lunch Act [this section] (as added by subsection (a) of this section).”

**§ 1766b. Repealed. Pub. L. 105-336, title I, § 107(j)(2)(C)(i), Oct. 31, 1998, 112 Stat. 3153**

Section, act June 4, 1946, ch. 281, §17B, as added Pub. L. 103-448, title I, §117(a)(1), Nov. 2, 1994, 108 Stat. 4715, related to homeless children nutrition program.

## EFFECTIVE DATE OF REPEAL

Repeal effective July 1, 1999, see section 107(j)(4) of Pub. L. 105-336, set out as an Effective Date of 1998 Amendment note under section 1761 of this title.

**§§ 1767, 1768. Repealed. Pub. L. 99-500, title III, § 371(a)(1), Oct. 18, 1986, 100 Stat. 1783-368, and Pub. L. 99-591, title III, § 371(a)(1), Oct. 30, 1986, 100 Stat. 3341-371; Pub. L. 99-661, div. D, title V, § 4501(a)(1), Nov. 14, 1986, 100 Stat. 4080**

Pub. L. 99-591 is a corrected version of Pub. L. 99-500. Section 1767, act June 4, 1946, ch. 281, §18, as added Oct. 7, 1975, Pub. L. 94-105, §19, 89 Stat. 526, authorized nutrition program staff study.

Section 1768, act June 4, 1946, ch. 281, §19, as added Oct. 7, 1975, Pub. L. 94-105, §20, 89 Stat. 527, authorized appropriations to assist Trust Territory of Pacific Islands.

**§ 1769. Pilot projects**

**(a) Repealed. Pub. L. 111-296, title IV, § 441(a)(9), Dec. 13, 2010, 124 Stat. 3264**

**(b) Extension of eligibility of certain school districts to receive cash or commodity letters of credit assistance for school lunch programs**

(1) Upon request to the Secretary, any school district that on January 1, 1987, was receiving all cash payments or all commodity letters of credit in lieu of entitlement commodities for its school lunch program shall receive all cash payments or all commodity letters of credit in lieu of entitlement commodities for its school lunch program beginning July 1, 1987. The Secretary, directly or through contract, shall administer the project under this subsection.

(2) Any school district that elects under paragraph (1) to receive all cash payments or all commodity letters of credit in lieu of entitlement commodities for its school lunch program shall receive bonus commodities in the same manner as if such school district was receiving all entitlement commodities for its school lunch program.

**(c) Alternative counting and claiming procedures**

(1) The Secretary may conduct pilot projects to test alternative counting and claiming procedures.

(2) Each pilot program carried out under this subsection shall be evaluated by the Secretary after it has been in operation for 3 years.

**(d) to (f) Repealed. Pub. L. 111-296, title IV, § 441(a)(11)-(13), Dec. 13, 2010, 124 Stat. 3264**

**(g) Access to local foods: farm to school program**

**(1) Definition of eligible school**

In this subsection, the term “eligible school” means a school or institution that participates in a program under this chapter or the school breakfast program established under section 1773 of this title.

**(2) Program**

The Secretary shall carry out a program to assist eligible schools, State and local agencies, Indian tribal organizations, agricultural producers or groups of agricultural producers, and nonprofit entities through grants and technical assistance to implement farm to school programs that improve access to local foods in eligible schools.

**(3) Grants**

**(A) In general**

The Secretary shall award competitive grants under this subsection to be used for—

- (i) training;
- (ii) supporting operations;
- (iii) planning;
- (iv) purchasing equipment;
- (v) developing school gardens;
- (vi) developing partnerships; and
- (vii) implementing farm to school programs.

**(B) Regional balance**

In making awards under this subsection, the Secretary shall, to the maximum extent practicable, ensure—

- (i) geographical diversity; and
- (ii) equitable treatment of urban, rural, and tribal communities.

**(C) Maximum amount**

The total amount provided to a grant recipient under this subsection shall not exceed \$100,000.

**(4) Federal share****(A) In general**

The Federal share of costs for a project funded through a grant awarded under this subsection shall not exceed 75 percent of the total cost of the project.

**(B) Federal matching**

As a condition of receiving a grant under this subsection, a grant recipient shall provide matching support in the form of cash or in-kind contributions, including facilities, equipment, or services provided by State and local governments, nonprofit organizations, and private sources.

**(5) Criteria for selection**

To the maximum extent practicable, in providing assistance under this subsection, the Secretary shall give the highest priority to funding projects that, as determined by the Secretary—

- (A) make local food products available on the menu of the eligible school;
- (B) serve a high proportion of children who are eligible for free or reduced price lunches;
- (C) incorporate experiential nutrition education activities in curriculum planning that encourage the participation of school children in farm and garden-based agricultural education activities;
- (D) demonstrate collaboration between eligible schools, nongovernmental and community-based organizations, agricultural producer groups, and other community partners;
- (E) include adequate and participatory evaluation plans;
- (F) demonstrate the potential for long-term program sustainability; and
- (G) meet any other criteria that the Secretary determines appropriate.

**(6) Evaluation**

As a condition of receiving a grant under this subsection, each grant recipient shall agree to cooperate in an evaluation by the Secretary of the program carried out using grant funds.

**(7) Technical assistance**

The Secretary shall provide technical assistance and information to assist eligible schools, State and local agencies, Indian tribal organizations, and nonprofit entities—

- (A) to facilitate the coordination and sharing of information and resources in the Department that may be applicable to the farm to school program;

- (B) to collect and share information on best practices; and

- (C) to disseminate research and data on existing farm to school programs and the potential for programs in underserved areas.

**(8) Funding****(A) In general**

On October 1, 2012, and each October 1 thereafter, out of any funds in the Treasury not otherwise appropriated, the Secretary of the Treasury shall transfer to the Secretary to carry out this subsection \$5,000,000, to remain available until expended.

**(B) Receipt and acceptance**

The Secretary shall be entitled to receive, shall accept, and shall use to carry out this subsection the funds transferred under subparagraph (A), without further appropriation.

**(9) Authorization of appropriations**

In addition to the amounts made available under paragraph (8), there are authorized to be appropriated to carry out this subsection such sums as are necessary for each of fiscal years 2011 through 2015.

**(h) Pilot program for high-poverty schools****(1) In general****(A) Definitions**

In this paragraph:

**(i) Eligible program**

The term “eligible program” means—

- (I) a school-based program with hands-on vegetable gardening and nutrition education that is incorporated into the curriculum for 1 or more grades at 2 or more eligible schools; or

- (II) a community-based summer program with hands-on vegetable gardening and nutrition education that is part of, or coordinated with, a summer enrichment program at 2 or more eligible schools.

**(ii) Eligible school**

The term “eligible school” means a public school, at least 50 percent of the students of which are eligible for free or reduced price meals under this chapter.

**(B) Establishment**

The Secretary shall carry out a pilot program under which the Secretary shall provide to nonprofit organizations or public entities in not more than 5 States grants to develop and run, through eligible programs, community gardens at eligible schools in the States that would—

- (i) be planted, cared for, and harvested by students at the eligible schools; and

- (ii) teach the students participating in the community gardens about agriculture production practices and diet.

**(C) Priority States**

Of the States in which grantees under this paragraph are located—

- (i) at least 1 State shall be among the 15 largest States, as determined by the Secretary;

(ii) at least 1 State shall be among the 16th to 30th largest States, as determined by the Secretary; and

(iii) at least 1 State shall be a State that is not described in clause (i) or (ii).

**(D) Use of produce**

Produce from a community garden provided a grant under this paragraph may be—

(i) used to supplement food provided at the eligible school;

(ii) distributed to students to bring home to the families of the students; or

(iii) donated to a local food bank or senior center nutrition program.

**(E) No cost-sharing requirement**

A nonprofit organization or public entity that receives a grant under this paragraph shall not be required to share the cost of carrying out the activities assisted under this paragraph.

**(F) Evaluation**

A nonprofit organization or public entity that receives a grant under this paragraph shall be required to cooperate in an evaluation carried out by the Secretary.

**(2) Authorization of appropriations**

There are authorized to be appropriated such sums as are necessary to carry out this subsection for each of fiscal years 2004 through 2015.

**(i) Year-round services for eligible entities**

**(1) In general**

A service institution that is described in section 1761(a)(6) of this title (excluding a public school), or a private nonprofit organization described in section 1761(a)(7) of this title, and that is located in the State of California may be reimbursed—

(A) for up to 2 meals during each day of operation served—

(i) during the months of May through September;

(ii) in the case of a service institution that operates a food service program for children on school vacation, at anytime under a continuous school calendar; and

(iii) in the case of a service institution that provides meal service at a nonschool site to children who are not in school for a period during the school year due to a natural disaster, building repair, court order, or similar case, at anytime during such a period; and

(B) for a snack served during each day of operation after school hours, weekends, and school holidays during the regular school calendar.

**(2) Payments**

The service institution shall be reimbursed consistent with section 1761(b)(1) of this title.

**(3) Administration**

To receive reimbursement under this subsection, a service institution shall comply with section 1761 of this title, other than subsections (b)(2) and (c)(1) of that section.

**(4) Evaluation**

Not later than September 30, 2007, the State agency shall submit to the Secretary a report

on the effect of this subsection on participation in the summer food service program for children established under section 1761 of this title.

**(5) Funding**

The Secretary shall provide to the State of California such sums as are necessary to carry out this subsection for each of fiscal years 2011 through 2015.

**(j) Free lunch and breakfast eligibility**

**(1) In general**

Subject to the availability of funds under paragraph (4), the Secretary shall expand the service of free lunches and breakfasts provided at schools participating in the school lunch program under this chapter or the school breakfast program under section 1773 of this title in all or part of 5 States selected by the Secretary (of which at least 1 shall be a largely rural State with a significant Native American population).

**(2) Income eligibility**

The income guidelines for determining eligibility for free lunches or breakfasts under this subsection shall be 185 percent of the applicable family size income levels contained in the nonfarm income poverty guidelines prescribed by the Office of Management and Budget, as adjusted annually in accordance with section 1758(b)(1)(B) of this title.

**(3) Evaluation**

**(A) In general**

Not later than 3 years after the implementation of this subsection, the Secretary shall conduct an evaluation to assess the impact of the changed income eligibility guidelines by comparing the school food authorities operating under this subsection to school food authorities not operating under this subsection.

**(B) Impact assessment**

**(i) Children**

The evaluation shall assess the impact of this subsection separately on—

(I) children in households with incomes less than 130 percent of the applicable family income levels contained in the nonfarm poverty income guidelines prescribed by the Office of Management and Budget, as adjusted annually in accordance with section 1758(b)(1)(B) of this title; and

(II) children in households with incomes greater than 130 percent and not greater than 185 percent of the applicable family income levels contained in the nonfarm poverty income guidelines prescribed by the Office of Management and Budget, as adjusted annually in accordance with section 1758(b)(1)(B) of this title.

**(ii) Factors**

The evaluation shall assess the impact of this subsection on—

(I) certification and participation rates in the school lunch and breakfast programs;

(II) rates of lunch- and breakfast-skipping;

(III) academic achievement;

(IV) the allocation of funds authorized in title I of the Elementary and Secondary Education Act [20 U.S.C. 6301 et seq.] to local educational agencies and public schools; and

(V) other factors determined by the Secretary.

**(C) Cost assessment**

The evaluation shall assess the increased costs associated with providing additional free, reduced price, or paid meals in the school food authorities operating under this subsection.

**(D) Report**

On completion of the evaluation, the Secretary shall submit to the Committee on Education and the Workforce of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate a report describing the results of the evaluation under this paragraph.

**(4) Authorization of appropriations**

There are authorized to be appropriated such sums as are necessary to carry out this subsection, to remain available until expended.

**(k) Organic food pilot program**

**(1) Establishment**

The Secretary shall establish an organic food pilot program (referred to in this subsection as the “pilot program”) under which the Secretary shall provide grants on a competitive basis to school food authorities selected under paragraph (3).

**(2) Use of funds**

**(A) In general**

The Secretary shall use funds provided under this section—

(i) to enter into competitively awarded contracts or cooperative agreements with school food authorities selected under paragraph (3); or

(ii) to make grants to school food authority applicants selected under paragraph (3).

**(B) School food authority uses of funds**

A school food authority that receives a grant under this section shall use the grant funds to establish a pilot program that increases the quantity of organic foods provided to schoolchildren under the school lunch program established under this chapter.

**(3) Application**

**(A) In general**

A school food authority seeking a contract, grant, or cooperative agreement under this subsection shall submit to the Secretary an application in such form, containing such information, and at such time as the Secretary shall prescribe.

**(B) Criteria**

In selecting contract, grant, or cooperative agreement recipients, the Secretary shall consider—

(i) the poverty line (as defined in section 9902(2) of this title, including any revision required by that section))<sup>1</sup> applicable to a family of the size involved of the households in the district served by the school food authority, giving preference to school food authority applicants in which not less than 50 percent of the households in the district are at or below the Federal poverty line;

(ii) the commitment of each school food authority applicant—

(I) to improve the nutritional value of school meals;

(II) to carry out innovative programs that improve the health and wellness of schoolchildren; and

(III) to evaluate the outcome of the pilot program; and

(iii) any other criteria the Secretary determines to be appropriate.

**(4) Authorization of appropriations**

There are authorized to be appropriated to carry out this subsection \$10,000,000 for fiscal years 2011 through 2015.

(June 4, 1946, ch. 281, § 18, formerly § 20, as added Pub. L. 95-166, § 10(2), Nov. 10, 1977, 91 Stat. 1336; amended Pub. L. 95-627, § 11, Nov. 10, 1978, 92 Stat. 3624; renumbered § 18 and amended Pub. L. 99-500, title III, §§ 327, 371(c)(1), Oct. 18, 1986, 100 Stat. 1783-362, 1783-368, and Pub. L. 99-591, title III, §§ 327, 371(c)(1), Oct. 30, 1986, 100 Stat. 3341-365, 3341-372; renumbered § 18 and amended Pub. L. 99-661, div. D, title II, § 4207, title V, § 4501(c)(1), Nov. 14, 1986, 100 Stat. 4073, 4080; Pub. L. 100-237, § 5, Jan. 8, 1988, 101 Stat. 1739; Pub. L. 101-147, title I, § 107, title II, § 205(a), title III, § 311, Nov. 10, 1989, 103 Stat. 886, 910, 916; Pub. L. 102-342, title I, § 101(a), title III, § 301, Aug. 14, 1992, 106 Stat. 911, 913; Pub. L. 102-512, title I, § 102, Oct. 24, 1992, 106 Stat. 3363; Pub. L. 103-448, title I, §§ 117(a)(2)(A), (b), 118, Nov. 2, 1994, 108 Stat. 4717, 4719; Pub. L. 104-193, title VII, § 709, Aug. 22, 1996, 110 Stat. 2301; Pub. L. 105-336, title I, § 109(a)-(c)(1), Oct. 31, 1998, 112 Stat. 3154-3156; Pub. L. 106-554, § 1(a)(4) [div. B, title I, § 102(a)], Dec. 21, 2000, 114 Stat. 2763, 2763A-215; Pub. L. 107-171, title IV, § 4305(a), May 13, 2002, 116 Stat. 332; Pub. L. 108-30, § 1, May 29, 2003, 117 Stat. 774; Pub. L. 108-134, § 5(2), Nov. 22, 2003, 117 Stat. 1390; Pub. L. 108-211, § 5(b), Mar. 31, 2004, 118 Stat. 567; Pub. L. 108-265, title I, §§ 116(f), 120-124, June 30, 2004, 118 Stat. 750, 756-760; Pub. L. 109-97, title VII, § 777(a), Nov. 10, 2005, 119 Stat. 2161; Pub. L. 110-161, div. A, title VII, § 738(b), Dec. 26, 2007, 121 Stat. 1880; Pub. L. 110-234, title IV, §§ 4303, 4304(b), May 22, 2008, 122 Stat. 1126, 1131; Pub. L. 110-246, § 4(a), title IV, §§ 4303, 4304(b), June 18, 2008, 122 Stat. 1664, 1887, 1892; Pub. L. 111-80, title VII, § 749(d), Oct. 21, 2009, 123 Stat. 2132; Pub. L. 111-296, title II, §§ 210, 243, title IV, §§ 405, 441(a)(9)-(13), Dec. 13, 2010, 124 Stat. 3223, 3236, 3259, 3264.)

REFERENCES IN TEXT

The Elementary and Secondary Education Act of 1965, referred to in subsec. (j)(3)(B)(i)(IV), is Pub. L. 89-10, Apr. 11, 1965, 79 Stat. 27. Title I of the Act is clas-

<sup>1</sup> So in original.







and section 1776 of this title and enacting provisions set out as a note under section 1771 of this title] and the amendments made by this title shall become effective on September 30, 1992.”

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-627 effective Oct. 1, 1978, see section 14 of Pub. L. 95-627, set out as a note under section 1755 of this title.

OTHER DEMONSTRATION PROJECTS FOR FEEDING HOMELESS CHILDREN

Pub. L. 102-342, title I, §101(b), Aug. 14, 1992, 106 Stat. 911, as amended by Pub. L. 105-336, title I, §109(c)(2), Oct. 31, 1998, 112 Stat. 3157, provided that: “The Secretary of Agriculture may conduct demonstration projects to identify effective means of providing food assistance to homeless children residing in temporary shelters.”

ALTERNATIVE COUNTING AND CLAIMING PROCEDURES; PROMULGATION OF REGULATIONS

Pub. L. 101-147, title II, §205(b), Nov. 10, 1989, 103 Stat. 911, provided that not later than July 1, 1990, Secretary of Agriculture was to issue final regulations to implement subsec. (g) of this section.

**§ 1769a. Fresh fruit and vegetable program**

**(a) In general**

For the school year beginning July 2008 and each subsequent school year, the Secretary shall provide grants to States to carry out a program to make free fresh fruits and vegetables available in elementary schools (referred to in this section as the “program”).

**(b) Program**

A school participating in the program shall make free fresh fruits and vegetables available to students throughout the school day (or at such other times as are considered appropriate by the Secretary) in 1 or more areas designated by the school.

**(c) Funding to States**

**(1) Minimum grant**

Except as provided in subsection (i)(2), the Secretary shall provide to each of the 50 States and the District of Columbia an annual grant in an amount equal to 1 percent of the funds made available for a year to carry out the program.

**(2) Additional funding**

Of the funds remaining after grants are made under paragraph (1), the Secretary shall allocate additional funds to each State that is operating a school lunch program under section 4 based on the proportion that—

- (A) the population of the State; bears to
- (B) the population of the United States.

**(d) Selection of schools**

**(1) In general**

Except as provided in paragraph (2) of this subsection and section 4304(a)(2) of the Food, Conservation, and Energy Act of 2008, each year, in selecting schools to participate in the program, each State shall—

- (A) ensure that each school chosen to participate in the program is a school—
  - (i) in which not less than 50 percent of the students are eligible for free or reduced price meals under this chapter; and

- (ii) that submits an application in accordance with subparagraph (D);

- (B) to the maximum extent practicable, give the highest priority to schools with the highest proportion of children who are eligible for free or reduced price meals under this chapter;

- (C) ensure that each school selected is an elementary school (as defined in section 7801 of title 20);

- (D) solicit applications from interested schools that include—

- (i) information pertaining to the percentage of students enrolled in the school submitting the application who are eligible for free or reduced price school lunches under this chapter;

- (ii) a certification of support for participation in the program signed by the school food manager, the school principal, and the district superintendent (or equivalent positions, as determined by the school);

- (iii) a plan for implementation of the program, including efforts to integrate activities carried out under this section with other efforts to promote sound health and nutrition, reduce overweight and obesity, or promote physical activity; and

- (iv) such other information as may be requested by the Secretary; and

- (E) encourage applicants to submit a plan for implementation of the program that includes a partnership with 1 or more entities that will provide non-Federal resources (including entities representing the fruit and vegetable industry).

**(2) Exception**

Clause (i) of paragraph (1)(A) shall not apply to a State if all schools that meet the requirements of that clause have been selected and the State does not have a sufficient number of additional schools that meet the requirement of that clause.

**(3) Outreach to low-income schools**

**(A) In general**

Prior to making decisions regarding school participation in the program, a State agency shall inform the schools within the State with the highest proportion of free and reduced price meal eligibility, including Native American schools, of the eligibility of the schools for the program with respect to priority granted to schools with the highest proportion of free and reduced price eligibility under paragraph (1)(B).

**(B) Requirement**

In providing information to schools in accordance with subparagraph (A), a State agency shall inform the schools that would likely be chosen to participate in the program under paragraph (1)(B).

**(e) Notice of availability**

If selected to participate in the program, a school shall widely publicize within the school the availability of free fresh fruits and vegetables under the program.

**(f) Per-student grant**

The per-student grant provided to a school under this section shall be—

- (1) determined by a State agency; and
- (2) not less than \$50, nor more than \$75.

**(g) Limitation**

To the maximum extent practicable, each State agency shall ensure that in making the fruits and vegetables provided under this section available to students, schools offer the fruits and vegetables separately from meals otherwise provided at the school under this chapter or the Child Nutrition Act of 1966 (42 U.S.C. 1771 et seq.).

**(h) Evaluation and reports****(1) In general**

The Secretary shall conduct an evaluation of the program, including a determination as to whether children experienced, as a result of participating in the program—

- (A) increased consumption of fruits and vegetables;
- (B) other dietary changes, such as decreased consumption of less nutritious foods; and
- (C) such other outcomes as are considered appropriate by the Secretary.

**(2) Report**

Not later than September 30, 2011, the Secretary shall submit to the Committee on Education and Labor of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate a report that describes the results of the evaluation under paragraph (1).

**(i) Funding****(1) In general**

Out of the funds made available under subsection (b)(2)(A) of section 612c-6 of title 7, the Secretary shall use the following amounts to carry out this section:

- (A) On October 1, 2008, \$40,000,000.
- (B) On July 1, 2009, \$65,000,000.
- (C) On July 1, 2010, \$101,000,000.
- (D) On July 1, 2011, \$150,000,000.
- (E) On July 1, 2012, and each July 1 thereafter, the amount made available for the preceding fiscal year, as adjusted to reflect changes for the 12-month period ending the preceding April 30 in the Consumer Price Index for All Urban Consumers published by the Bureau of Labor Statistics of the Department of Labor, for items other than food.

**(2) Maintenance of existing funding**

In allocating funding made available under paragraph (1) among the States in accordance with subsection (c), the Secretary shall ensure that each State that received funding under section 1769(f) of this title on the day before the date of enactment of the Food, Conservation, and Energy Act of 2008 shall continue to receive sufficient funding under this section to maintain the caseload level of the State under that section as in effect on that date.

**(3) Evaluation funding**

On October 1, 2008, out of any funds made available under subsection (b)(2)(A) of section 612c-6 of title 7, the Secretary shall use to

carry out the evaluation required under subsection (h), \$3,000,000, to remain available for obligation until September 30, 2010.

**(4) Receipt and acceptance**

The Secretary shall be entitled to receive, shall accept, and shall use to carry out this section any funds transferred for that purpose, without further appropriation.

**(5) Authorization of appropriations**

In addition to any other amounts made available to carry out this section, there are authorized to be appropriated such sums as are necessary to expand the program established under this section.

**(6) Administrative costs****(A) In general**

Of funds made available to carry out this section for a fiscal year, the Secretary may use not more than \$500,000 for the administrative costs of carrying out the program.

**(B) Reservation of funds**

The Secretary shall allow each State to reserve such funding as the Secretary determines to be necessary to administer the program in the State (with adjustments for the size of the State and the grant amount), but not to exceed the amount required to pay the costs of 1 full-time coordinator for the program in the State.

**(7) Reallocation****(A) Among States**

The Secretary may reallocate any amounts made available to carry out this section that are not obligated or expended by a date determined by the Secretary.

**(B) Within States**

A State that receives a grant under this section may reallocate any amounts made available under the grant that are not obligated or expended by a date determined by the Secretary.

(June 4, 1946, ch. 281, §19, as added Pub. L. 110-234, title IV, §4304(a)(1), May 22, 2008, 122 Stat. 1127, and Pub. L. 110-246, §4(a), title IV, §4304(a)(1), June 18, 2008, 122 Stat. 1664, 1888.)

## REFERENCES IN TEXT

Section 4304(a)(2) of the Food, Conservation, and Energy Act of 2008, referred to in subsec. (d)(1), is section 4304(a)(2) of Pub. L. 110-246, which is set out as a note below.

The Child Nutrition Act of 1966, referred to in subsec. (g), is Pub. L. 89-642, Oct. 11, 1966, 80 Stat. 885, which is classified generally to chapter 13A (§1771 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1771 of this title and Tables.

The date of enactment of the Food, Conservation, and Energy Act of 2008, referred to in subsec. (i)(2), is the date of enactment of Pub. L. 110-246, which was approved June 18, 2008.

## CODIFICATION

Pub. L. 110-234 and Pub. L. 110-246 enacted identical sections. Pub. L. 110-234 was repealed by section 4(a) of Pub. L. 110-246.

## PRIOR PROVISIONS

A prior section 1769a, act June 4, 1946, ch. 281, §19, formerly §21, as added Nov. 10, 1977, Pub. L. 95-166, §13, 91

Stat. 1338; renumbered §19, Oct. 18, 1986, Pub. L. 99-500, title III, §371(c)(1), 100 Stat. 1783-368, and Oct. 30, 1986, Pub. L. 99-591, title III, §371(c)(1), 100 Stat. 3341-372; renumbered §19, Nov. 14, 1986, Pub. L. 99-661, div. D, title V, §4501(c)(1), 100 Stat. 4080; Nov. 10, 1989, Pub. L. 101-147, title I, §108, 103 Stat. 887; Nov. 2, 1994, Pub. L. 103-448, title I, §119, 108 Stat. 4726, directed Secretary to reduce paperwork required in carrying out functions under this chapter and under the Child Nutrition Act of 1966 (42 U.S.C. 1771 et seq.), prior to repeal by Pub. L. 104-193, title VII, §710, Aug. 22, 1996, 110 Stat. 2301.

#### CHANGE OF NAME

Committee on Education and Labor of House of Representatives changed to Committee on Education and the Workforce of House of Representatives by House Resolution No. 5, One Hundred Twelfth Congress, Jan. 5, 2011.

#### EFFECTIVE DATE

Enactment of this section and repeal of Pub. L. 110-234 by Pub. L. 110-246 effective May 22, 2008, the date of enactment of Pub. L. 110-234, except as otherwise provided, see section 4 of Pub. L. 110-246, set out as a note under section 8701 of Title 7, Agriculture.

Section effective Oct. 1, 2008, see section 4407 of Pub. L. 110-246, set out as an Effective Date of 2008 Amendment note under section 1161 of Title 2, The Congress.

#### TRANSITION OF EXISTING SCHOOLS

Pub. L. 110-234, title IV, §4304(a)(2), May 22, 2008, 122 Stat. 1130, and Pub. L. 110-246, §4(a), title IV, §4304(a)(2), June 18, 2008, 122 Stat. 1664, 1891, provided that:

“(A) EXISTING SECONDARY SCHOOLS.—Section 19(d)(1)(C) of the Richard B. Russell National School Lunch Act [42 U.S.C. 1769a(d)(1)(C)] (as amended by paragraph (1)) may be waived by a State until July 1, 2010, for each secondary school in the State that has been awarded funding under section 18(f) of that Act (42 U.S.C. 1769(f)) for the school year beginning July 1, 2008.

“(B) SCHOOL YEAR BEGINNING JULY 1, 2008.—To facilitate transition from the program authorized under section 18(f) of the Richard B. Russell National School Lunch Act (42 U.S.C. 1769(f)) (as in effect on the day before the date of enactment of this Act [June 18, 2008]) to the program established under section 19 of that Act [42 U.S.C. 1769a] (as amended by paragraph (1))—

“(i) for the school year beginning July 1, 2008, the Secretary [of Agriculture] may permit any school selected for participation under section 18(f) of that Act (42 U.S.C. 1769(f)) for that school year to continue to participate under section 19 of that Act [42 U.S.C. 1769a] until the end of that school year; and

“(ii) funds made available under that Act [42 U.S.C. 1751 et seq.] for fiscal year 2009 may be used to support the participation of any schools selected to participate in the program authorized under section 18(f) of that Act (42 U.S.C. 1769(f)) (as in effect on the day before the date of enactment of this Act [June 18, 2008]).”

[Pub. L. 110-234 and Pub. L. 110-246 enacted identical provisions. Pub. L. 110-234 was repealed by section 4(a) of Pub. L. 110-246, set out as a note under section 8701 of Title 7, Agriculture.]

### § 1769b. Department of Defense overseas dependents' schools

#### (a) Purpose of program; availability of payments and commodities

For the purpose of obtaining Federal payments and commodities in conjunction with the provision of lunches to students attending Department of Defense dependents' schools which are located outside the United States, its territories or possessions, the Secretary of Agriculture shall make available to the Department

of Defense, from funds appropriated for such purpose, the same payments and commodities as are provided to States for schools participating in the National School Lunch Program in the United States.

#### (b) Administration of program; eligibility determinations and regulations

The Secretary of Defense shall administer lunch programs authorized by this section and shall determine eligibility for free and reduced price lunches under the criteria published by the Secretary of Agriculture, except that the Secretary of Defense shall prescribe regulations governing computation of income eligibility standards for families of students participating in the National School Lunch Program under this section.

#### (c) Nutritional standards for meals; noncompliance with standards

The Secretary of Defense shall be required to offer meals meeting nutritional standards prescribed by the Secretary of Agriculture; however, the Secretary of Defense may authorize deviations from Department of Agriculture prescribed meal patterns and fluid milk requirements when local conditions preclude strict compliance or when such compliance is impracticable.

#### (d) Authorization of appropriations

Funds are hereby authorized to be appropriated for any fiscal year in such amounts as may be necessary for the administrative expenses of the Department of Defense under this section.

#### (e) Technical assistance for administration of program

The Secretary of Agriculture shall provide the Secretary of Defense with the technical assistance in the administration of the school lunch programs authorized by this section.

(June 4, 1946, ch. 281, §20, formerly §22, as added Pub. L. 95-561, title XIV, §1408(a), Nov. 1, 1978, 92 Stat. 2368; renumbered §20 and amended Pub. L. 99-500, title III, §§328(a), 371(c)(1), Oct. 18, 1986, 100 Stat. 1783-362, 1783-368, and Pub. L. 99-591, title III, §§328(a), 371(c)(1), Oct. 30, 1986, 100 Stat. 3341-365, 3341-372; renumbered §20 and amended Pub. L. 99-661, div. D, title II, §4208(a), title V, §4501(c)(1), Nov. 14, 1986, 100 Stat. 4073, 4080; Pub. L. 101-147, title III, §312(2), Nov. 10, 1989, 103 Stat. 916.)

#### CODIFICATION

Pub. L. 99-591 is a corrected version of Pub. L. 99-500.

#### PRIOR PROVISIONS

A prior section 20 of act June 4, 1946, was renumbered section 18 of act June 4, 1946, and is classified to section 1769 of this title.

#### AMENDMENTS

1989—Subsec. (b). Pub. L. 101-147 substituted “reduced price” for “reduced-price”.

1986—Subsec. (d). Pub. L. 99-500 and Pub. L. 99-591, §328(a), and Pub. L. 99-661, §4208(a), amended subsec. (d) identically, striking out “and for payment of the difference between the value of commodities and payments received from the Secretary of Agriculture and (1) the full cost of each lunch for each student eligible

for a free lunch, and (2) the full cost of each lunch, less any amounts required by law or regulation to be paid by each student eligible for a reduced-price lunch" after "this section".

EFFECTIVE DATE

Section effective Oct. 1, 1978 and no provision herein to be construed as impairing or preventing the taking effect of any other Act providing for the transfer of functions described herein to an executive department having responsibility for education, see section 1415 of Pub. L. 95-561, set out as a note under section 921 of Title 20, Education.

**§ 1769b-1. Training, technical assistance, and food service management institute**

**(a) General authority**

The Secretary—

(1) subject to the availability of, and from, amounts appropriated pursuant to subsection (e)(1) of this section, shall conduct training activities and provide—

(A) training and technical assistance to improve the skills of individuals employed in—

(i) food service programs carried out with assistance under this chapter and, to the maximum extent practicable, using individuals who administer exemplary local food service programs in the State;

(ii) school breakfast programs carried out with assistance under section 1773 of this title; and

(iii) as appropriate, other federally assisted feeding programs; and

(B) assistance, on a competitive basis, to State agencies for the purpose of aiding schools and school food authorities with at least 50 percent of enrolled children certified to receive free or reduced price meals (and, if there are any remaining funds, other schools and school food authorities) in meeting the cost of acquiring or upgrading technology and information management systems for use in food service programs carried out under this chapter and section 1773 of this title, if the school or school food authority submits to the State agency an infrastructure development plan that—

(i) addresses the cost savings and improvements in program integrity and operations that would result from the use of new or upgraded technology;

(ii) ensures that there is not any overt identification of any child by special tokens or tickets, announced or published list of names, or by any other means;

(iii) provides for processing and verifying applications for free and reduced price school meals;

(iv) integrates menu planning, production, and serving data to monitor compliance with section 1758(f)(1) of this title; and

(v) establishes compatibility with statewide reporting systems;

(C) assistance, on a competitive basis, to State agencies with low proportions of schools or students that—

(i) participate in the school breakfast program under section 1773 of this title; and

(ii) demonstrate the greatest need, for the purpose of aiding schools in meeting costs associated with initiating or expanding a school breakfast program under section 1773 of this title, including outreach and informational activities; and

(2) from amounts appropriated pursuant to subsection (e)(2) of this section, is authorized to provide financial and other assistance to the University of Mississippi, in cooperation with the University of Southern Mississippi, to establish and maintain a food service management institute.

**(b) Minimum requirements**

The activities conducted and assistance provided as required by subsection (a)(1) of this section shall at least include activities and assistance with respect to—

(1) menu planning;

(2) implementation of regulations and appropriate guidelines; and

(3) compliance with program requirements and accountability for program operations.

**(c) Duties of food service management institute**

**(1) In general**

Any food service management institute established as authorized by subsection (a)(2) of this section shall carry out activities to improve the general operation and quality of—

(A) food service programs assisted under this chapter;

(B) school breakfast programs assisted under section 1773 of this title; and

(C) as appropriate, other federally assisted feeding programs.

**(2) Required activities**

Activities carried out under paragraph (1) shall include—

(A) conducting research necessary to assist schools and other organizations that participate in such programs in providing high quality, nutritious, cost-effective meal service to the children served;

(B) providing training and technical assistance with respect to—

(i) efficient use of physical resources;

(ii) financial management;

(iii) efficient use of computers;

(iv) procurement;

(v) sanitation;

(vi) safety, including food handling, hazard analysis and critical control point plan implementation, emergency readiness, responding to a food recall, and food biosecurity training;

(vii) meal planning and related nutrition activities;

(viii) culinary skills; and

(ix) other appropriate activities;

(C) establishing a national network of trained professionals to present training programs and workshops for food service personnel;

(D) developing training materials for use in the programs and workshops described in subparagraph (C);

(E) acting as a clearinghouse for research, studies, and findings concerning all aspects of the operation of food service programs;

(F) training food service personnel to comply with the nutrition guidance and objectives established by the Secretary through a national network of instructors or other means;

(G) preparing informational materials, such as video instruction tapes and menu planners, to promote healthier food preparation; and

(H) assisting State educational agencies in providing additional nutrition and health instructions and instructors, including training personnel to comply with the nutrition guidance and objectives established by the Secretary.

**(d) Coordination**

**(1) In general**

The Secretary shall coordinate activities carried out and assistance provided as required by subsection (b) of this section with activities carried out by any food service management institute established as authorized by subsection (a)(2) of this section.

**(2) Use of institute for dietary and nutrition activities**

The Secretary shall use any food service management institute established under subsection (a)(2) of this section to assist in carrying out dietary and nutrition activities of the Secretary.

**(e) Food service management institute**

**(1) Funding**

**(A) In general**

In addition to any amounts otherwise made available for fiscal year 2011, on October 1, 2010, and each October 1 thereafter, out of any funds in the Treasury not otherwise appropriated, the Secretary of the Treasury shall transfer to the Secretary to carry out subsection (a)(2) \$5,000,000, to remain available until expended.

**(B) Receipt and acceptance**

The Secretary shall be entitled to receive, shall accept, and shall use to carry out subsection (a)(2) the funds transferred under subparagraph (A), without further appropriation.

**(2) Additional funding**

In addition to amounts made available under paragraph (1), there are authorized to be appropriated to carry out subsection (a)(2) of this section such sums as are necessary for fiscal year 1995 and each subsequent fiscal year. The Secretary shall carry out activities under subsection (a)(2) of this section, in addition to the activities funded under paragraph (1), to the extent provided for, and in such amounts as are provided for, in advance in appropriations Acts.

**(3) Funding for education, training, or applied research or studies**

In addition to amounts made available under paragraphs (1) and (2), from amounts otherwise appropriated to the Secretary in discretionary appropriations, the Secretary may provide funds to any food service management insti-

tute established under subsection (a)(2) of this section for projects specified by the Secretary that will contribute to implementing dietary or nutrition initiatives. Any additional funding under this subparagraph shall be provided noncompetitively in a separate cooperative agreement.

**(f) Administrative training and technical assistance material**

In collaboration with State educational agencies, local educational agencies, and school food authorities of varying sizes, the Secretary shall develop and distribute training and technical assistance material relating to the administration of school meals programs that are representative of the best management and administrative practices.

**(g) Federal administrative support**

**(1) Funding**

**(A) In general**

Out of any funds in the Treasury not otherwise appropriated, the Secretary of the Treasury shall transfer to the Secretary of Agriculture to carry out this subsection—

(i) on October 1, 2004, and October 1, 2005, \$3,000,000;

(ii) on October 1, 2006, October 1, 2007, October 1, 2008, and October 1, 2009, \$2,000,000; and

(iii) on October 1, 2010, and every October 1 thereafter, \$4,000,000.

**(B) Receipt and acceptance**

The Secretary shall be entitled to receive, shall accept, and shall use to carry out this subsection the funds transferred under subparagraph (A), without further appropriation.

**(C) Availability of funds**

Funds transferred under subparagraph (A) shall remain available until expended.

**(2) Use of funds**

The Secretary may use funds provided under this subsection—

(A) to provide training and technical assistance and material related to improving program integrity and administrative accuracy in school meals programs; and

(B) to assist State educational agencies in reviewing the administrative practices of local educational agencies, to the extent determined by the Secretary.

(June 4, 1946, ch. 281, §21, as added Pub. L. 101-147, title I, §109, Nov. 10, 1989, 103 Stat. 887; amended Pub. L. 102-337, §1, Aug. 7, 1992, 106 Stat. 865; Pub. L. 103-448, title I, §120, Nov. 2, 1994, 108 Stat. 4726; Pub. L. 105-336, title I, §§103(c)(2), 110, Oct. 31, 1998, 112 Stat. 3147, 3157; Pub. L. 108-265, title I, §§125, 126(a), title II, §205(b), June 30, 2004, 118 Stat. 761, 763, 787; Pub. L. 108-447, div. A, title VII, §788(c), Dec. 8, 2004, 118 Stat. 2851; Pub. L. 111-80, title VII, §749(e), Oct. 21, 2009, 123 Stat. 2132; Pub. L. 111-296, title IV, §§406, 407, Dec. 13, 2010, 124 Stat. 3259, 3260.)

AMENDMENTS

2010—Subsec. (e). Pub. L. 111-296, §406, substituted “Food service management institute” for “Authoriza-

tion of appropriations” in heading, added par. (1), redesignated former subpars. (B) and (C) of former par. (2) as pars. (2) and (3), respectively, and realigned margins, substituted “paragraph (1)” for “subparagraph (A)” in two places in par. (2) and “paragraphs (1) and (2)” for “subparagraphs (A) and (B)” in par. (3), and struck out former pars. (1) and (2)(A) which related to authorization of appropriations for training activities and technical assistance and funding for the food service management institute, respectively.

Subsec. (g)(1)(A)(iii). Pub. L. 111-296, § 407, added cl. (iii).

2009—Subsec. (g)(1)(A)(ii). Pub. L. 111-80 substituted “October 1, 2008, and October 1, 2009” for “and October 1, 2008”.

2004—Subsec. (a)(1). Pub. L. 108-265, § 125(a), substituted provisions relating to training and technical assistance under this chapter, section 1773 of this title, and other federally assisted programs, including assistance on a competitive basis to State agencies for the purpose of aiding schools with at least 50 percent of enrolled children certified to receive free or reduced price meals, and to State agencies with low proportions of students that participate in the school breakfast program and demonstrate the greatest need, for provisions relating to training activities and technical assistance under this chapter, section 1773 of this title, and other federally assisted programs.

Subsec. (c)(2)(B)(vi) to (x). Pub. L. 108-265, § 125(b), added cl. (vi), struck out former cls. (vi) and (vii), which related to safety and food handling, respectively, and redesignated former cls. (viii) to (x) as (vii) to (ix), respectively.

Subsec. (c)(2)(E). Pub. L. 108-265, § 205(b), struck out “, including activities carried out with assistance provided under section 1788 of this title” before semicolon at end.

Subsec. (e)(1). Pub. L. 108-265, § 125(c)(1), substituted “2009” for “2003”.

Subsec. (e)(2)(A). Pub. L. 108-447 inserted “and” after “2005”.

Pub. L. 108-265, § 125(c)(2), substituted “provide to the Secretary” for “provide to the Secretary \$147,000 for fiscal year 1995, \$2,000,000 for each of fiscal years 1996 through 1998, and” and “2004 and \$4,000,000 for fiscal year 2005” for “1999 and”.

Subsecs. (f), (g). Pub. L. 108-265, § 126(a), added subsecs. (f) and (g).

1998—Subsec. (c)(2)(F), (H). Pub. L. 105-336, § 110(a), substituted “established by the Secretary” for “of section 1769e of this title”.

Subsec. (e)(1). Pub. L. 105-336, § 110(b), substituted “2003” for “1998”.

Subsec. (e)(2)(A). Pub. L. 105-336, § 110(c), substituted “\$2,000,000 for each of fiscal years 1996 through 1998, and \$3,000,000 for fiscal year 1999 and each subsequent fiscal year,” for “and \$2,000,000 for fiscal year 1996 and each subsequent fiscal year,” in first sentence.

Pub. L. 105-336, § 103(c)(2), inserted “, without further appropriation” before period at end of second sentence.

1994—Subsec. (a)(1). Pub. L. 103-448, § 120(c)(1), substituted “subject to the availability of, and from, amounts” for “from amounts” in introductory provisions.

Subsec. (c)(2)(B)(ix), (x). Pub. L. 103-448, § 120(a)(1), added cl. (ix) and redesignated former cl. (ix) as (x).

Subsec. (c)(2)(F) to (H). Pub. L. 103-448, § 120(a)(2)-(4), added subpars. (F) to (H).

Subsec. (d). Pub. L. 103-448, § 120(b), designated existing provisions as par. (1), inserted heading, and added par. (2).

Subsec. (e). Pub. L. 103-448, § 120(c)(2), added subsec. (e) and struck out former subsec. (e) which read as follows: “There are authorized to be appropriated—

“(1) \$3,000,000 for the fiscal year 1990, \$2,000,000 for the fiscal year 1991, and \$1,000,000 for each of the fiscal years 1992, 1993, and 1994 for purposes of carrying out subsection (a)(1) of this section; and

“(2) \$1,000,000 for the fiscal year 1990 and \$4,000,000 for each of the fiscal years 1991, 1992, 1993, and 1994 for

purposes of carrying out subsection (a)(2) of this section.”

1992—Subsec. (a)(2). Pub. L. 102-337 inserted “to provide financial and other assistance to the University of Mississippi, in cooperation with the University of Southern Mississippi,” after “is authorized”.

#### EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111-296 effective Oct. 1, 2010, except as otherwise specifically provided, see section 445 of Pub. L. 111-296, set out as a note under section 1751 of this title.

#### EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105-336 effective Oct. 1, 1998, see section 401 of Pub. L. 105-336, set out as a note under section 1755 of this title.

#### EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103-448 effective Oct. 1, 1994, see section 401 of Pub. L. 103-448, set out as a note under section 1755 of this title.

### § 1769c. Compliance and accountability

#### (a) Unified accountability system

##### (1)<sup>1</sup> In general

There shall be a unified system prescribed and administered by the Secretary to ensure that local food service authorities participating in the school lunch program established under this chapter and the school breakfast program established by section 4 of the Child Nutrition Act of 1966 (42 U.S.C. 1773) comply with those Acts, including compliance with—

(A) the nutritional requirements of section 1758(f) of this title for school lunches; and

(B) as applicable, the nutritional requirements for school breakfasts under section 4(e)(1) of the Child Nutrition Act of 1966 (42 U.S.C. 1773(e)(1)).

#### (b) Functions of system

##### (1) In general

Under the system described in subsection (a) of this section, each State educational agency shall—

(A) require that local food service authorities comply with the nutritional requirements described in subparagraphs (A) and (B) of paragraph (1);<sup>2</sup>

(B) to the maximum extent practicable, ensure compliance through reasonable audits and supervisory assistance reviews;

(C) in conducting audits and reviews for the purpose of determining compliance with this chapter, including the nutritional requirements of section 1758(f) of this title—

(i) conduct audits and reviews during a 3-year cycle or other period prescribed by the Secretary;

(ii) select schools for review in each local educational agency using criteria established by the Secretary;

(iii) report the final results of the reviews to the public in the State in an accessible, easily understood manner in accordance with guidelines promulgated by the Secretary; and

<sup>1</sup> So in original. No par. (2) has been enacted.

<sup>2</sup> So in original. Probably means subpars. (A) and (B) of par. (1) of subsec. (a).

(iv) submit to the Secretary each year a report containing the results of the reviews in accordance with procedures developed by the Secretary; and

(D) when any local food service authority is reviewed under this section, ensure that the final results of the review by the State educational agency are posted and otherwise made available to the public on request in an accessible, easily understood manner in accordance with guidelines promulgated by the Secretary.

**(2) Minimization of additional duties**

Each State educational agency shall coordinate the compliance and accountability activities described in paragraph (1) in a manner that minimizes the imposition of additional duties on local food service authorities.

**(3) Additional review requirement for selected local educational agencies**

**(A) Definition of selected local educational agencies**

In this paragraph, the term “selected local educational agency” means a local educational agency that has a demonstrated high level of, or a high risk for, administrative error, as determined by the Secretary.

**(B) Additional administrative review**

In addition to any review required by subsection (a) of this section or paragraph (1), each State educational agency shall conduct an administrative review of each selected local educational agency during the review cycle established under subsection (a) of this section.

**(C) Scope of review**

In carrying out a review under subparagraph (B), a State educational agency shall only review the administrative processes of a selected local educational agency, including application, certification, verification, meal counting, and meal claiming procedures.

**(D) Results of review**

If the State educational agency determines (on the basis of a review conducted under subparagraph (B)) that a selected local educational agency fails to meet performance criteria established by the Secretary, the State educational agency shall—

(i) require the selected local educational agency to develop and carry out an approved plan of corrective action;

(ii) except to the extent technical assistance is provided directly by the Secretary, provide technical assistance to assist the selected local educational agency in carrying out the corrective action plan; and

(iii) conduct a followup review of the selected local educational agency under standards established by the Secretary.

**(4) Retaining funds after administrative reviews**

**(A) In general**

Subject to subparagraphs (B) and (C), if the local educational agency fails to meet

administrative performance criteria established by the Secretary in both an initial review and a followup review under paragraph (1) or (3) or subsection (a) of this section, the Secretary may require the State educational agency to retain funds that would otherwise be paid to the local educational agency for school meals programs under procedures prescribed by the Secretary.

**(B) Amount**

The amount of funds retained under subparagraph (A) shall equal the value of any overpayment made to the local educational agency or school food authority as a result of an erroneous claim during the time period described in subparagraph (C).

**(C) Time period**

The period for determining the value of any overpayment under subparagraph (B) shall be the period—

(i) beginning on the date the erroneous claim was made; and

(ii) ending on the earlier of the date the erroneous claim is corrected or—

(I) in the case of the first followup review conducted by the State educational agency of the local educational agency under this section after July 1, 2005, the date that is 60 days after the beginning of the period under clause (i); or

(II) in the case of any subsequent followup review conducted by the State educational agency of the local educational agency under this section, the date that is 90 days after the beginning of the period under clause (i).

**(5) Use of retained funds**

**(A) In general**

Subject to subparagraph (B), funds retained under paragraph (4) shall—

(i) be returned to the Secretary, and may be used—

(I) to provide training and technical assistance related to administrative practices designed to improve program integrity and administrative accuracy in school meals programs to State educational agencies and, to the extent determined by the Secretary, to local educational agencies and school food authorities;

(II) to assist State educational agencies in reviewing the administrative practices of local educational agencies in carrying out school meals programs; and

(III) to carry out section 1769b-1(f) of this title; or

(ii) be credited to the child nutrition programs appropriation account.

**(B) State share**

A State educational agency may retain not more than 25 percent of an amount recovered under paragraph (4), to carry out school meals program integrity initiatives to assist local educational agencies and school food authorities that have repeatedly failed, as determined by the Secretary, to meet administrative performance criteria.

**(C) Requirement**

To be eligible to retain funds under subparagraph (B), a State educational agency shall—

(i) submit to the Secretary a plan describing how the State educational agency will use the funds to improve school meals program integrity, including measures to give priority to local educational agencies from which funds were retained under paragraph (4);

(ii) consider using individuals who administer exemplary local food service programs in the provision of training and technical assistance; and

(iii) obtain the approval of the Secretary for the plan.

**(6) Eligibility determination review for selected local educational agencies****(A) In general**

A local educational agency that has demonstrated a high level of, or a high risk for, administrative error associated with certification, verification, and other administrative processes, as determined by the Secretary, shall ensure that the initial eligibility determination for each application is reviewed for accuracy prior to notifying a household of the eligibility or ineligibility of the household for free or reduced price meals.

**(B) Timeliness**

The review of initial eligibility determinations—

(i) shall be completed in a timely manner; and

(ii) shall not result in the delay of an eligibility determination for more than 10 operating days after the date on which the application is submitted.

**(C) Acceptable types of review**

Subject to standards established by the Secretary, the system used to review eligibility determinations for accuracy shall be conducted by an individual or entity that did not make the initial eligibility determination.

**(D) Notification of household**

Once the review of an eligibility determination has been completed under this paragraph, the household shall be notified immediately of the determination of eligibility or ineligibility for free or reduced price meals.

**(E) Reporting****(i) Local educational agencies**

In accordance with procedures established by the Secretary, each local educational agency required to review initial eligibility determinations shall submit to the relevant State agency a report describing the results of the reviews, including—

(I) the number and percentage of reviewed applications for which the eligibility determination was changed and the type of change made; and

(II) such other information as the Secretary determines to be necessary.

**(ii) State agencies**

In accordance with procedures established by the Secretary, each State agency shall submit to the Secretary a report describing the results of the reviews of initial eligibility determinations, including—

(I) the number and percentage of reviewed applications for which the eligibility determination was changed and the type of change made; and

(II) such other information as the Secretary determines to be necessary.

**(iii) Transparency**

The Secretary shall publish annually the results of the reviews of initial eligibility determinations by State, number, percentage, and type of error.

**(c) Role of Secretary**

In carrying out this section, the Secretary shall—

(1) assist the State educational agency in the monitoring of programs conducted by local food service authorities; and

(2) through management evaluations, review the compliance of the State educational agency and the local school food service authorities with regulations issued under this chapter.

**(d) Authorization of appropriations**

There is authorized to be appropriated for purposes of carrying out the compliance and accountability activities referred to in subsection (c) of this section \$10,000,000 for each of fiscal years 2011 through 2015.

**(e) Fines for violating program requirements****(1) School food authorities and schools****(A) In general**

The Secretary shall establish criteria by which the Secretary or a State agency may impose a fine against any school food authority or school administering a program authorized under this chapter or the Child Nutrition Act of 1966 (42 U.S.C. 1771 et seq.) if the Secretary or the State agency determines that the school food authority or school has—

(i) failed to correct severe mismanagement of the program;

(ii) disregarded a program requirement of which the school food authority or school had been informed; or

(iii) failed to correct repeated violations of program requirements.

**(B) Limits****(i) In general**

In calculating the fine for a school food authority or school, the Secretary shall base the amount of the fine on the reimbursement earned by school food authority or school for the program in which the violation occurred.

**(ii) Amount**

The amount under clause (i) shall not exceed—

(I) 1 percent of the amount of meal reimbursements earned for the fiscal year



for the first finding of 1 or more program violations under subparagraph (A);

(II) 5 percent of the amount of meal reimbursements earned for the fiscal year for the second finding of 1 or more program violations under subparagraph (A); and

(III) 10 percent of the amount of meal reimbursements earned for the fiscal year for the third or subsequent finding of 1 or more program violations under subparagraph (A).

## (2) State agencies

### (A) In general

The Secretary shall establish criteria by which the Secretary may impose a fine against any State agency administering a program authorized under this chapter or the Child Nutrition Act of 1966 (42 U.S.C. 1771 et seq.) if the Secretary determines that the State agency has—

- (i) failed to correct severe mismanagement of the program;
- (ii) disregarded a program requirement of which the State had been informed; or
- (iii) failed to correct repeated violations of program requirements.

### (B) Limits

In the case of a State agency, the amount of a fine under subparagraph (A) shall not exceed—

- (i) 1 percent of funds made available under section 7(a) of the Child Nutrition Act of 1966 (42 U.S.C. 1776(a)) for State administrative expenses during a fiscal year for the first finding of 1 or more program violations under subparagraph (A);
- (ii) 5 percent of funds made available under section 7(a) of the Child Nutrition Act of 1966 (42 U.S.C. 1776(a)) for State administrative expenses during a fiscal year for the second finding of 1 or more program violations under subparagraph (A); and
- (iii) 10 percent of funds made available under section 7(a) of the Child Nutrition Act of 1966 (42 U.S.C. 1776(a)) for State administrative expenses during a fiscal year for the third or subsequent finding of 1 or more program violations under subparagraph (A).

## (3) Source of funding

Funds to pay a fine imposed under paragraph (1) or (2) shall be derived from non-Federal sources.

(June 4, 1946, ch. 281, §22, as added Pub. L. 101-147, title I, §110(a), Nov. 10, 1989, 103 Stat. 889; amended Pub. L. 103-448, title I, §121, Nov. 2, 1994, 108 Stat. 4727; Pub. L. 105-336, title I, §111, Oct. 31, 1998, 112 Stat. 3157; Pub. L. 108-265, title I, §§126(b)(1), 127, June 30, 2004, 118 Stat. 763, 767; Pub. L. 111-296, title II, §207, title III, §§303, 304, title IV, §408, Dec. 13, 2010, 124 Stat. 3220, 3240, 3242, 3260.)

#### REFERENCES IN TEXT

The Child Nutrition Act of 1966, referred to in subsecs. (a)(1) and (e)(1)(A), (2)(A), is Pub. L. 89-642, Oct. 11,

1966, 80 Stat. 885, which is classified generally to chapter 13A (§1771 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1771 of this title and Tables.

Those Acts, referred to in subsec. (a)(1), mean the Richard B. Russell National School Lunch Act, which was in the original “this Act” and was translated to read “this chapter”, and the Child Nutrition Act of 1966. See above.

#### PRIOR PROVISIONS

A prior section 1769c, act June 4, 1946, ch. 281, §22, as added Nov. 10, 1978, Pub. L. 95-627, §9, 92 Stat. 3623, directed a study of menu choice, prior to repeal by Pub. L. 99-500, title III, §371(b), Oct. 18, 1986, 100 Stat. 1783-368, and Pub. L. 99-591, title III, §371(b), Oct. 30, 1986, 100 Stat. 3341-372; Pub. L. 99-661, div. D, title V, §4501(b), Nov. 14, 1986, 100 Stat. 4080.

#### AMENDMENTS

2010—Subsec. (a). Pub. L. 111-296, §207(1), added subsec. (a) and struck out former subsec. (a). Prior to amendment, text read as follows: “There shall be a unified system prescribed and administered by the Secretary for ensuring that local food service authorities that participate in the school lunch program under this chapter comply with the provisions of this chapter. Such system shall be established through the publication of regulations and the provision of an opportunity for public comment, consistent with the provisions of section 553 of title 5.”

Subsec. (b)(1). Pub. L. 111-296, §207(2), added subpars. (A) to (D) and struck out former subpars. (A) and (B) which read as follows:

“(A) require that local food service authorities comply with the provisions of this chapter; and

“(B) ensure such compliance through reasonable audits and supervisory assistance reviews.”

Subsec. (b)(6). Pub. L. 111-296, §304, added par. (6).

Subsec. (d). Pub. L. 111-296, §408, substituted “\$10,000,000 for each of fiscal years 2011 through 2015” for “\$6,000,000 for each of fiscal years 2004 through 2009”.

Subsec. (e). Pub. L. 111-296, §303, added subsec. (e).

2004—Subsec. (b)(3) to (5). Pub. L. 108-265, §126(b)(1), added pars. (3) to (5).

Subsec. (d). Pub. L. 108-265, §127, substituted “\$6,000,000 for each of fiscal years 2004 through 2009” for “\$3,000,000 for each of the fiscal years 1994 through 2003”.

1998—Subsec. (d). Pub. L. 105-336 substituted “2003” for “1996”.

1994—Subsec. (d). Pub. L. 103-448 substituted “fiscal years 1994 through 1996” for “fiscal years 1990, 1991, 1992, 1993, and 1994”.

#### EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111-296 effective Oct. 1, 2010, except as otherwise specifically provided, see section 445 of Pub. L. 111-296, set out as a note under section 1751 of this title.

#### EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by section 126(b)(1) of Pub. L. 108-265 effective July 1, 2005, and amendment by section 127 of Pub. L. 108-265 effective June 30, 2004, see section 502(a), (b)(4) of Pub. L. 108-265, as amended, set out as an Effective Date note under section 1754 of this title.

#### EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105-336 effective Oct. 1, 1998, see section 401 of Pub. L. 105-336, set out as a note under section 1755 of this title.

#### EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103-448 effective Oct. 1, 1994, see section 401 of Pub. L. 103-448, set out as a note under section 1755 of this title.

## REGULATIONS

Pub. L. 101-147, title I, §110(b), Nov. 10, 1989, 103 Stat. 889, provided that: “Not later than July 1, 1990, the Secretary of Agriculture shall issue final regulations to implement section 22 of the [Richard B. Russell] National School Lunch Act [this section] (as added by subsection (a) of this section).”

## INTERPRETATION

Pub. L. 108-265, title I, §126(b)(2), June 30, 2004, 118 Stat. 765, provided that: “Nothing in the amendment made by paragraph (1) [amending this section] affects the requirements for fiscal actions as described in the regulations issued pursuant to section 22(a) of the Richard B. Russell National School Lunch Act (42 U.S.C. 1769c(a)).”

**§ 1769d. Childhood hunger research****(a) Research on causes and consequences of childhood hunger****(1) In general**

The Secretary shall conduct research on—

(A) the causes of childhood hunger and food insecurity;

(B) the characteristics of households with childhood hunger and food insecurity; and

(C) the consequences of childhood hunger and food insecurity.

**(2) Authority**

In carrying out research under paragraph (1), the Secretary may—

(A) enter into competitively awarded contracts or cooperative agreements; or

(B) provide grants to States or public or private agencies or organizations, as determined by the Secretary.

**(3) Application**

To be eligible to enter into a contract or cooperative agreement or receive a grant under this subsection, a State or public or private agency or organization shall submit to the Secretary an application at such time, in such manner, and containing such information as the Secretary shall require.

**(4) Areas of inquiry**

The Secretary shall design the research program to advance knowledge and understanding of information on the issues described in paragraph (1), such as—

(A) economic, health, social, cultural, demographic, and other factors that contribute to childhood hunger or food insecurity;

(B) the geographic distribution of childhood hunger and food insecurity;

(C) the extent to which—

(i) existing Federal assistance programs, including title 26, reduce childhood hunger and food insecurity; and

(ii) childhood hunger and food insecurity persist due to—

(I) gaps in program coverage;

(II) the inability of potential participants to access programs; or

(III) the insufficiency of program benefits or services;

(D) the public health and medical costs of childhood hunger and food insecurity;

(E) an estimate of the degree to which the Census Bureau measure of food insecurity

underestimates childhood hunger and food insecurity because the Census Bureau excludes certain households, such as homeless, or other factors;

(F) the effects of childhood hunger on child development, well-being, and educational attainment; and

(G) such other critical outcomes as are determined by the Secretary.

**(5) Funding****(A) In general**

On October 1, 2012, out of any funds in the Treasury not otherwise appropriated, the Secretary of the Treasury shall transfer to the Secretary to carry out this subsection \$10,000,000, to remain available until expended.

**(B) Receipt and acceptance**

The Secretary shall be entitled to receive, shall accept, and shall use to carry out this subsection the funds transferred under subparagraph (A), without further appropriation.

**(b) Demonstration projects to end childhood hunger****(1) Definitions**

In this subsection:

**(A) Child**

The term “child” means a person under the age of 18.

**(B) Supplemental nutrition assistance program**

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

**(2) Purpose**

Under such terms and conditions as are established by the Secretary, the Secretary shall carry out demonstration projects that test innovative strategies to end childhood hunger, including alternative models for service delivery and benefit levels that promote the reduction or elimination of childhood hunger and food insecurity.

**(3) Projects**

Demonstration projects carried out under this subsection may include projects that—

(A) enhance benefits provided under the supplemental nutrition assistance program for eligible households with children;

(B) enhance benefits or provide for innovative program delivery models in the school meals, afterschool snack, and child and adult care food programs under this chapter and the Child Nutrition Act of 1966 (42 U.S.C. 1771 et seq.); and

(C) target Federal, State, or local assistance, including emergency housing or family preservation services, at households with children who are experiencing hunger or food insecurity, to the extent permitted by the legal authority establishing those assistance programs and services.

**(4) Grants****(A) Demonstration projects****(i) In general**

In carrying out this subsection, the Secretary may enter into competitively awarded contracts or cooperative agreements with, or provide grants to, public or private organizations or agencies (as determined by the Secretary), for use in accordance with demonstration projects that meet the purposes of this subsection.

**(ii) Requirement**

At least 1 demonstration project funded under this subsection shall be carried out on an Indian reservation in a rural area with a service population with a prevalence of diabetes that exceeds 15 percent, as determined by the Director of the Indian Health Service.

**(B) Application**

To be eligible to receive a contract, cooperative agreement, or grant under this subsection, an organization or agency shall submit to the Secretary an application at such time, in such manner, and containing such information as the Secretary may require.

**(C) Selection criteria**

Demonstration projects shall be selected based on publicly disseminated criteria that may include—

- (i) an identification of a low-income target group that reflects individuals experiencing hunger or food insecurity;
- (ii) a commitment to a demonstration project that allows for a rigorous outcome evaluation as described in paragraph (6);
- (iii) a focus on innovative strategies to reduce the risk of childhood hunger or provide a significant improvement to the food security status of households with children; and
- (iv) such other criteria as are determined by the Secretary.

**(5) Consultation**

In determining the range of projects and defining selection criteria under this subsection, the Secretary shall consult with—

- (A) the Secretary of Health and Human Services;
- (B) the Secretary of Labor; and
- (C) the Secretary of Housing and Urban Development.

**(6) Evaluation and reporting****(A) Independent evaluation**

The Secretary shall provide for an independent evaluation of each demonstration project carried out under this subsection that—

- (i) measures the impact of each demonstration project on appropriate participation, food security, nutrition, and associated behavioral outcomes among participating households; and
- (ii) uses rigorous experimental designs and methodologies, particularly random assignment or other methods that are ca-

pable of producing scientifically valid information regarding which activities are effective in reducing the prevalence or preventing the incidence of food insecurity and hunger in the community, especially among children.

**(B) Reporting**

Not later than December 31, 2013 and each December 31 thereafter until the date on which the last evaluation under subparagraph (A) is completed, the Secretary shall—

(i) submit to the Committee on Agriculture and the Committee on Education and Labor of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate a report that includes a description of—

(I) the status of each demonstration project; and

(II) the results of any evaluations of the demonstration projects completed during the previous fiscal year; and

(ii) ensure that the evaluation results are shared broadly to inform policy makers, service providers, other partners, and the public in order to promote the wide use of successful strategies.

**(7) Funding****(A) In general**

On October 1, 2012, out of any funds in the Treasury not otherwise appropriated, the Secretary of the Treasury shall transfer to the Secretary to carry out this subsection \$40,000,000, to remain available until September 30, 2017.

**(B) Receipt and acceptance**

The Secretary shall be entitled to receive, shall accept, and shall use to carry out this subsection the funds transferred under subparagraph (A), without further appropriation.

**(C) Use of funds****(i) In general**

Funds made available under subparagraph (A) may be used to carry out this subsection, including to pay Federal costs associated with developing, soliciting, awarding, monitoring, evaluating, and disseminating the results of each demonstration project under this subsection.

**(ii) Indian reservations**

Of amounts made available under subparagraph (A), the Secretary shall use a portion of the amounts to carry out research relating to hunger, obesity and type 2 diabetes on Indian reservations, including research to determine the manner in which Federal nutrition programs can help to overcome those problems.

**(iii) Report**

Not later than 1 year after December 13, 2010, the Secretary shall submit to the Committee on Agriculture of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate a report that—

(I) describes the manner in which Federal nutrition programs can help to overcome child hunger nutrition problems on Indian reservations; and

(II) contains proposed administrative and legislative recommendations to strengthen and streamline all relevant Department of Agriculture nutrition programs to reduce childhood hunger, obesity, and type 2 diabetes on Indian reservations.

**(D) Limitations**

**(i) Duration**

No project may be funded under this subsection for more than 5 years.

**(ii) Project requirements**

No project that makes use of, alters, or coordinates with the supplemental nutrition assistance program may be funded under this subsection unless the project is fully consistent with the project requirements described in section 17(b)(1)(B) of the Food and Nutrition Act of 2008 (7 U.S.C. 2026(b)(1)(B)).

**(iii) Hunger-free communities**

No project may be funded under this subsection that receives funding under section 7517 of title 7.

**(iv) Other benefits**

Funds made available under this subsection may not be used for any project in a manner that is inconsistent with—

- (I) this chapter;
- (II) the Child Nutrition Act of 1966 (42 U.S.C. 1771 et seq.);
- (III) the Food and Nutrition Act of 2008 (7 U.S.C. 2011 et seq.); or
- (IV) the Emergency Food Assistance Act of 1983 (7 U.S.C. 7501 et seq.).

(June 4, 1946, ch. 281, §23, as added Pub. L. 111-296, title I, §141, Dec. 13, 2010, 124 Stat. 3206.)

REFERENCES IN TEXT

The Food and Nutrition Act of 2008, referred to in subsec. (b)(1)(B), (7)(D)(iv)(III), is Pub. L. 88-525, Aug. 31, 1964, 78 Stat. 703, which is classified generally to chapter 51 (§2011 et seq.) of Title 7, Agriculture. For complete classification of this Act to the Code, see Short Title note set out under section 2011 of Title 7 and Tables.

The Child Nutrition Act of 1966, referred to in subsec. (b)(3)(B), (7)(D)(iv)(II), is Pub. L. 89-642, Oct. 11, 1966, 80 Stat. 885, which is classified generally to chapter 13A (§1771 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1771 of this title and Tables.

The Emergency Food Assistance Act of 1983, referred to in subsec. (b)(7)(D)(iv)(IV), is title II of Pub. L. 98-8, Mar. 24, 1983, 97 Stat. 35, which is classified principally to chapter 102 (§7501 et seq.) of Title 7, Agriculture. For complete classification of this Act to the Code, see Short Title note set out under section 7501 of Title 7 and Tables.

PRIOR PROVISIONS

A prior section 1769d, act June 4, 1946, ch. 281, §23, as added Nov. 10, 1989, Pub. L. 101-147, title I, §111, 103 Stat. 890, directed Secretary to provide each appropriate State agency with information on income eligibility for free or reduced price meals under each pro-

gram established under this chapter and the Child Nutrition Act of 1966, prior to repeal by Pub. L. 104-193, title VII, §711, Aug. 22, 1996, 110 Stat. 2301.

EFFECTIVE DATE

Section effective Oct. 1, 2010, except as otherwise specifically provided, see section 445 of Pub. L. 111-296, set out as an Effective Date of 2010 Amendment note under section 1751 of this title.

**§ 1769e. State childhood hunger challenge grants**

**(a) Definitions**

In this section:

**(1) Child**

The term “child” means a person under the age of 18.

**(2) Supplemental nutrition assistance program**

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

**(b) Purpose**

Under such terms and conditions as are established by the Secretary, funds made available under this section may be used to competitively award grants to or enter into cooperative agreements with Governors to carry out comprehensive and innovative strategies to end childhood hunger, including alternative models for service delivery and benefit levels that promote the reduction or elimination of childhood hunger by 2015.

**(c) Projects**

State demonstration projects carried out under this section may include projects that—

- (1) enhance benefits provided under the supplemental nutrition assistance program for eligible households with children;
- (2) enhance benefits or provide for innovative program delivery models in the school meals, afterschool snack, and child and adult care food programs under this chapter and the Child Nutrition Act of 1966 (42 U.S.C. 1771 et seq.);
- (3) target Federal, State, or local assistance, including emergency housing, family preservation services, child care, or temporary assistance at households with children who are experiencing hunger or food insecurity, to the extent permitted by the legal authority establishing those assistance programs and services;
- (4) enhance outreach to increase access and participation in Federal nutrition assistance programs; and
- (5) improve the coordination of Federal, State, and community resources and services aimed at preventing food insecurity and hunger, including through the establishment and expansion of State food policy councils.

**(d) Grants**

**(1) In general**

In carrying out this section, the Secretary may competitively award grants or enter into competitively awarded cooperative agreements with Governors for use in accordance

with demonstration projects that meet the purposes of this section.

**(2) Application**

To be eligible to receive a grant or cooperative agreement under this section, a Governor shall submit to the Secretary an application at such time, in such manner, and containing such information as the Secretary may require.

**(3) Selection criteria**

The Secretary shall evaluate proposals based on publicly disseminated criteria that may include—

(A) an identification of a low-income target group that reflects individuals experiencing hunger or food insecurity;

(B) a commitment to approaches that allow for a rigorous outcome evaluation as described in subsection (f);

(C) a comprehensive and innovative strategy to reduce the risk of childhood hunger or provide a significant improvement to the food security status of households with children; and

(D) such other criteria as are determined by the Secretary.

**(4) Requirements**

Any project funded under this section shall provide for—

(A) a baseline assessment, and subsequent annual assessments, of the prevalence and severity of very low food security among children in the State, based on a methodology prescribed by the Secretary;

(B) a collaborative planning process including key stakeholders in the State that results in a comprehensive agenda to eliminate childhood hunger that is—

(i) described in a detailed project plan; and

(ii) provided to the Secretary for approval;

(C) an annual budget;

(D) specific performance goals, including the goal to sharply reduce or eliminate food insecurity among children in the State by 2015, as determined through a methodology prescribed by the Secretary and carried out by the Governor; and

(E) an independent outcome evaluation of not less than 1 major strategy of the project that measures—

(i) the specific impact of the strategy on food insecurity among children in the State; and

(ii) if applicable, the nutrition assistance participation rate among children in the State.

**(e) Consultation**

In determining the range of projects and defining selection criteria under this section, the Secretary shall consult with—

(1) the Secretary of Health and Human Services;

(2) the Secretary of Labor;

(3) the Secretary of Education; and

(4) the Secretary of Housing and Urban Development.

**(f) Evaluation and reporting**

**(1) General performance assessment**

Each project authorized under this section shall require an independent assessment that—

(A) measures the impact of any activities carried out under the project on the level of food insecurity in the State that—

(i) focuses particularly on the level of food insecurity among children in the State; and

(ii) includes a preimplementation baseline and annual measurements taken during the project of the level of food insecurity in the State; and

(B) is carried out using a methodology prescribed by the Secretary.

**(2) Independent evaluation**

Each project authorized under this section shall provide for an independent evaluation of not less than 1 major strategy that—

(A) measures the impact of the strategy on appropriate participation, food security, nutrition, and associated behavioral outcomes among participating households; and

(B) uses rigorous experimental designs and methodologies, particularly random assignment or other methods that are capable of producing scientifically valid information regarding which activities are effective in reducing the prevalence or preventing the incidence of food insecurity and hunger in the community, especially among children.

**(3) Reporting**

Not later than December 31, 2011 and each December 31 thereafter until the date on which the last evaluation under paragraph (1) is completed, the Secretary shall—

(A) submit to the Committee on Agriculture and the Committee on Education and Labor of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate a report that includes a description of—

(i) the status of each State demonstration project; and

(ii) the results of any evaluations of the demonstration projects completed during the previous fiscal year; and

(B) ensure that the evaluation results are shared broadly to inform policy makers, service providers, other partners, and the public in order to promote the wide use of successful strategies.

**(g) Authorization of appropriations**

**(1) In general**

There are authorized to be appropriated to carry out this section such sums as are necessary for each of fiscal years 2011 through 2014, to remain available until expended.

**(2) Use of funds**

Funds made available under paragraph (1) may be used to carry out this section, including to pay Federal costs associated with developing, soliciting, awarding, monitoring, evaluating, and disseminating the results of each demonstration project under this section.

**(3) Limitations****(A) Duration**

No project may be funded under this section for more than 5 years.

**(B) Performance basis**

Funds provided under this section shall be made available to each Governor on an annual basis, with the amount of funds provided for each year contingent on the satisfactory implementation of the project plan and progress towards the performance goals defined in the project year plan.

**(C) Altering nutrition assistance program requirements**

No project that makes use of, alters, or coordinates with the supplemental nutrition assistance program may be funded under this section unless the project is fully consistent with the project requirements described in section 17(b)(1)(B) of the Food and Nutrition Act of 2008 (7 U.S.C. 2026(b)(1)(B)).

**(D) Other benefits**

Funds made available under this section may not be used for any project in a manner that is inconsistent with—

- (i) this chapter;
- (ii) the Child Nutrition Act of 1966 (42 U.S.C. 1771 et seq.);
- (iii) the Food and Nutrition Act of 2008 (7 U.S.C. 2011 et seq.); or
- (iv) the Emergency Food Assistance Act of 1983 (7 U.S.C. 7501 et seq.).

(June 4, 1946, ch. 281, §24, as added Pub. L. 111-296, title I, §142, Dec. 13, 2010, 124 Stat. 3210.)

## REFERENCES IN TEXT

The Food and Nutrition Act of 2008, referred to in subsecs. (a)(2) and (g)(3)(D)(iii), is Pub. L. 88-525, Aug. 31, 1964, 78 Stat. 703, which is classified generally to chapter 51 (§2011 et seq.) of Title 7, Agriculture. For complete classification of this Act to the Code, see Short Title note set out under section 2011 of Title 7 and Tables.

The Child Nutrition Act of 1966, referred to in subsecs. (c)(2) and (g)(3)(D)(ii), is Pub. L. 89-642, Oct. 11, 1966, 80 Stat. 885, which is classified generally to chapter 13A (§1771 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1771 of this title and Tables.

The Emergency Food Assistance Act of 1983, referred to in subsec. (g)(3)(D)(iv), is title II of Pub. L. 98-8, Mar. 24, 1983, 97 Stat. 35, which is classified principally to chapter 102 (§7501 et seq.) of Title 7, Agriculture. For complete classification of this Act to the Code, see Short Title note set out under section 7501 of Title 7 and Tables.

## PRIOR PROVISIONS

A prior section 1769e, act June 4, 1946, ch. 281, §24, as added Nov. 10, 1989, Pub. L. 101-147, title I, §112, 103 Stat. 890, related to nutrition guidance for child nutrition programs, prior to repeal by Pub. L. 104-193, title VII, §712, Aug. 22, 1996, 110 Stat. 2301.

## EFFECTIVE DATE

Section effective Oct. 1, 2010, except as otherwise specifically provided, see section 445 of Pub. L. 111-296, set out as an Effective Date of 2010 Amendment note under section 1751 of this title.

**§ 1769f. Duties of Secretary relating to non-procurement debarment****(a) Purposes**

The purposes of this section are to promote the prevention and deterrence of instances of fraud, bid rigging, and other anticompetitive activities encountered in the procurement of products for child nutrition programs by—

- (1) establishing guidelines and a timetable for the Secretary to initiate debarment proceedings, as well as establishing mandatory debarment periods; and
- (2) providing training, technical advice, and guidance in identifying and preventing the activities.

**(b) Definitions**

As used in this section:

**(1) Child nutrition program**

The term “child nutrition program” means—

- (A) the school lunch program established under this chapter;
- (B) the summer food service program for children established under section 1761 of this title;
- (C) the child and adult care food program established under section 1766 of this title;
- (D) the special milk program established under section 1772 of this title;
- (E) the school breakfast program established under section 1773 of this title; and
- (F) the special supplemental nutrition program for women, infants, and children authorized under section 1786 of this title.

**(2) Contractor**

The term “contractor” means a person that contracts with a State, an agency of a State, or a local agency to provide goods or services in relation to the participation of a local agency in a child nutrition program.

**(3) Local agency**

The term “local agency” means a school, school food authority, child care center, sponsoring organization, or other entity authorized to operate a child nutrition program at the local level.

**(4) Nonprocurement debarment**

The term “nonprocurement debarment” means an action to bar a person from programs and activities involving Federal financial and nonfinancial assistance, but not including Federal procurement programs and activities.

**(5) Person**

The term “person” means any individual, corporation, partnership, association, cooperative, or other legal entity, however organized.

**(c) Assistance to identify and prevent fraud and anticompetitive activities**

The Secretary shall—

- (1) in cooperation with any other appropriate individual, organization, or agency, provide advice, training, technical assistance, and guidance (which may include awareness training, training films, and troubleshooting ad-

vice) to representatives of States and local agencies regarding means of identifying and preventing fraud and anticompetitive activities relating to the provision of goods or services in conjunction with the participation of a local agency in a child nutrition program; and

(2) provide information to, and fully cooperate with, the Attorney General and State attorneys general regarding investigations of fraud and anticompetitive activities relating to the provision of goods or services in conjunction with the participation of a local agency in a child nutrition program.

**(d) Nonprocurement debarment**

**(1) In general**

Except as provided in paragraph (3) and subsection (e) of this section, not later than 180 days after notification of the occurrence of a cause for debarment described in paragraph (2), the Secretary shall initiate nonprocurement debarment proceedings against the contractor who has committed the cause for debarment.

**(2) Causes for debarment**

Actions requiring initiation of nonprocurement debarment pursuant to paragraph (1) shall include a situation in which a contractor is found guilty in any criminal proceeding, or found liable in any civil or administrative proceeding, in connection with the supplying, providing, or selling of goods or services to any local agency in connection with a child nutrition program, of—

- (A) an anticompetitive activity, including bid-rigging, price-fixing, the allocation of customers between competitors, or other violation of Federal or State antitrust laws;
- (B) fraud, bribery, theft, forgery, or embezzlement;
- (C) knowingly receiving stolen property;
- (D) making a false claim or statement; or
- (E) any other obstruction of justice.

**(3) Exception**

If the Secretary determines that a decision on initiating nonprocurement debarment proceedings cannot be made within 180 days after notification of the occurrence of a cause for debarment described in paragraph (2) because of the need to further investigate matters relating to the possible debarment, the Secretary may have such additional time as the Secretary considers necessary to make a decision, but not to exceed an additional 180 days.

**(4) Mandatory child nutrition program debarment periods**

**(A) In general**

Subject to the other provisions of this paragraph and notwithstanding any other provision of law except subsection (e) of this section, if, after deciding to initiate nonprocurement debarment proceedings pursuant to paragraph (1), the Secretary decides to debar a contractor, the debarment shall be for a period of not less than 3 years.

**(B) Previous debarment**

If the contractor has been previously debarred pursuant to nonprocurement debar-

ment proceedings initiated pursuant to paragraph (1), and the cause for debarment is described in paragraph (2) based on activities that occurred subsequent to the initial debarment, the debarment shall be for a period of not less than 5 years.

**(C) Scope**

At a minimum, a debarment under this subsection shall serve to bar the contractor for the specified period from contracting to provide goods or services in conjunction with the participation of a local agency in a child nutrition program.

**(D) Reversal, reduction, or exception**

Nothing in this section shall restrict the ability of the Secretary to—

- (i) reverse a debarment decision;
- (ii) reduce the period or scope of a debarment;
- (iii) grant an exception permitting a debarred contractor to participate in a particular contract to provide goods or services; or
- (iv) otherwise settle a debarment action at any time;

in conjunction with the participation of a local agency in a child nutrition program, if the Secretary determines there is good cause for the action, after taking into account factors set forth in paragraphs (1) through (6) of subsection (e) of this section.

**(5) Information**

On request, the Secretary shall present to the Committee on Education and Labor, and the Committee on Agriculture, of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate information regarding the decisions required by this subsection.

**(6) Relationship to other authorities**

A debarment imposed under this section shall not reduce or diminish the authority of a Federal, State, or local government agency or court to penalize, imprison, fine, suspend, debar, or take other adverse action against a person in a civil, criminal, or administrative proceeding.

**(7) Regulations**

The Secretary shall issue such regulations as are necessary to carry out this subsection.

**(e) Mandatory debarment**

Notwithstanding any other provision of this section, the Secretary shall initiate nonprocurement debarment proceedings against the contractor (including any cooperative) who has committed the cause for debarment (as determined under subsection (d)(2) of this section), unless the action—

- (1) is likely to have a significant adverse effect on competition or prices in the relevant market or nationally;
- (2) will interfere with the ability of a local agency to procure a needed product for a child nutrition program;
- (3) is unfair to a person, subsidiary corporation, affiliate, parent company, or local division of a corporation that is not involved in

the improper activity that would otherwise result in the debarment;

(4) is likely to have significant adverse economic impacts on the local economy in a manner that is unfair to innocent parties;

(5) is not justified in light of the penalties already imposed on the contractor for violations relevant to the proposed debarment, including any suspension or debarment arising out of the same matter that is imposed by any Federal or State agency; or

(6) is not in the public interest, or otherwise is not in the interests of justice, as determined by the Secretary.

**(f) Exhaustion of administrative remedies**

Prior to seeking judicial review in a court of competent jurisdiction, a contractor against whom a nonprocurement debarment proceeding has been initiated shall—

(1) exhaust all administrative procedures prescribed by the Secretary; and

(2) receive notice of the final determination of the Secretary.

**(g) Information relating to prevention and control of anticompetitive activities**

On request, the Secretary shall present to the Committee on Education and Labor, and the Committee on Agriculture, of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate information regarding the activities of the Secretary relating to anticompetitive activities, fraud, nonprocurement debarment, and any waiver granted by the Secretary under this section.

(June 4, 1946, ch. 281, §25, as added Pub. L. 103-448, title I, §122(a), Nov. 2, 1994, 108 Stat. 4727; amended Pub. L. 105-336, title I, §107(j)(2)(C)(ii), Oct. 31, 1998, 112 Stat. 3153.)

AMENDMENTS

1998—Subsec. (b)(1)(D) to (G). Pub. L. 105-336 redesignated subpars. (E) to (G) as (D) to (F), respectively, and struck out former subpar. (D) which read as follows: “the homeless children nutrition program established under section 1766b of this title;”.

CHANGE OF NAME

Committee on Education and Labor of House of Representatives changed to Committee on Education and the Workforce of House of Representatives by House Resolution No. 5, One Hundred Twelfth Congress, Jan. 5, 2011.

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105-336 effective July 1, 1999, see section 107(j)(4) of Pub. L. 105-336, set out as a note under section 1761 of this title.

EFFECTIVE DATE

Section effective Oct. 1, 1994, see section 401 of Pub. L. 103-448, set out as an Effective Date of 1994 Amendment note under section 1755 of this title.

Pub. L. 103-448, title I, §122(b), Nov. 2, 1994, 108 Stat. 4730, provided that: “Section 25 of the [Richard B. Russell] National School Lunch Act [42 U.S.C. 1769f] (as added by subsection (a)) shall not apply to a cause for debarment as described in section 25(d)(2) of such Act

that is based on an activity that took place prior to the effective date of section 25 of such Act [Oct. 1, 1994].”

NO REDUCTION IN AUTHORITY OF SECRETARY OF AGRICULTURE TO DEBAR OR SUSPEND A PERSON FROM FEDERAL FINANCIAL AND NONFINANCIAL ASSISTANCE AND BENEFITS

Pub. L. 103-448, title I, §122(c), Nov. 2, 1994, 108 Stat. 4731, provided that: “The authority of the Secretary of Agriculture that exists on the day before the date of enactment of this Act [Nov. 2, 1994] to debar or suspend a person from Federal financial and nonfinancial assistance and benefits under Federal programs and activities shall not be diminished or reduced by subsection (a) [enacting this section] or the amendment made by subsection (a).”

**§ 1769g. Information clearinghouse**

**(a) In general**

The Secretary shall enter into a contract with a nongovernmental organization described in subsection (b) of this section to establish and maintain a clearinghouse to provide information to nongovernmental groups located throughout the United States that assist low-income individuals or communities regarding food assistance, self-help activities to aid individuals in becoming self-reliant, and other activities that empower low-income individuals or communities to improve the lives of low-income individuals and reduce reliance on Federal, State, or local governmental agencies for food or other assistance.

**(b) Nongovernmental organization**

The nongovernmental organization referred to in subsection (a) of this section shall be selected on a competitive basis and shall—

(1) be experienced in the gathering of firsthand information in all the States through on-site visits to grassroots organizations in each State that fight hunger and poverty or that assist individuals in becoming self-reliant;

(2) be experienced in the establishment of a clearinghouse similar to the clearinghouse described in subsection (a) of this section;

(3) agree to contribute in-kind resources towards the establishment and maintenance of the clearinghouse and agree to provide clearinghouse information, free of charge, to the Secretary, States, counties, cities, antihunger groups, and grassroots organizations that assist individuals in becoming self-sufficient and self-reliant;

(4) be sponsored by an organization, or be an organization, that—

(A) has helped combat hunger for at least 10 years;

(B) is committed to reinvesting in the United States; and

(C) is knowledgeable regarding Federal nutrition programs;

(5) be experienced in communicating the purpose of the clearinghouse through the media, including the radio and print media, and be able to provide access to the clearinghouse information through computer or telecommunications technology, as well as through the mails; and

(6) be able to provide examples, advice, and guidance to States, counties, cities, communities, antihunger groups, and local organiza-



tions regarding means of assisting individuals and communities to reduce reliance on government programs, reduce hunger, improve nutrition, and otherwise assist low-income individuals and communities become more self-sufficient.

**(c) Audits**

The Secretary shall establish fair and reasonable auditing procedures regarding the expenditures of funds to carry out this section.

**(d) Funding**

Out of any moneys in the Treasury not otherwise appropriated, the Secretary of the Treasury shall pay to the Secretary to provide to the organization selected under this section, to establish and maintain the information clearinghouse, \$200,000 for each of fiscal years 1995 and 1996, \$150,000 for fiscal year 1997, \$100,000 for fiscal year 1998, \$166,000 for each of fiscal years 1999 through 2004, and \$250,000 for each of fiscal years 2010 through 2015. The Secretary shall be entitled to receive the funds and shall accept the funds, without further appropriation.

(June 4, 1946, ch. 281, §26, as added Pub. L. 103-448, title I, §123, Nov. 2, 1994, 108 Stat. 4731; amended Pub. L. 105-336, title I, §§103(c)(2), 112, Oct. 31, 1998, 112 Stat. 3147, 3157; Pub. L. 108-265, title I, §128, June 30, 2004, 118 Stat. 767; Pub. L. 111-80, title VII, §749(f), Oct. 21, 2009, 123 Stat. 2132; Pub. L. 111-296, title IV, §409, Dec. 13, 2010, 124 Stat. 3260.)

AMENDMENTS

2010—Subsec. (d). Pub. L. 111-296 substituted “2010 through 2015” for “2005 through 2010” in first sentence.

2009—Subsec. (d). Pub. L. 111-80 substituted “2010” for “2009”.

2004—Subsec. (d). Pub. L. 108-265, in first sentence, substituted “1998,” for “1998, and” and “through 2004, and \$250,000 for each of fiscal years 2005 through 2009” for “through 2003”.

1998—Subsec. (d). Pub. L. 105-336 substituted “\$100,000 for fiscal year 1998, and \$166,000 for each of fiscal years 1999 through 2003” for “and \$100,000 for fiscal year 1998” in first sentence and inserted “, without further appropriation” before period at end of second sentence.

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111-296 effective Oct. 1, 2010, except as otherwise specifically provided, see section 445 of Pub. L. 111-296, set out as a note under section 1751 of this title.

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105-336 effective Oct. 1, 1998, see section 401 of Pub. L. 105-336, set out as a note under section 1755 of this title.

EFFECTIVE DATE

Section effective Oct. 1, 1994, see section 401 of Pub. L. 103-448, set out as an Effective Date of 1994 Amendment note under section 1755 of this title.

**§ 1769h. Repealed. Pub. L. 111-296, title IV, § 441(a)(14), Dec. 13, 2010, 124 Stat. 3264**

Section, act June 4, 1946, ch. 281, §27, as added Pub. L. 103-448, title I, §124, Nov. 2, 1994, 108 Stat. 4732; amended Pub. L. 105-220, title IV, §414(d), Aug. 7, 1998, 112 Stat. 1242; Pub. L. 105-336, title I, §113, Oct. 31, 1998, 112 Stat. 3157, related to accommodation of the special dietary needs of individuals with disabilities.

EFFECTIVE DATE OF REPEAL

Repeal effective Oct. 1, 2010, except as otherwise specifically provided, see section 445 of Pub. L. 111-296, set

out as an Effective Date of 2010 Amendment note under section 1751 of this title.

**§ 1769i. Program evaluation**

**(a) Performance assessments**

**(1) In general**

Subject to the availability of funds made available under paragraph (3), the Secretary, acting through the Administrator of the Food and Nutrition Service, may conduct annual national performance assessments of the meal programs under this chapter and the Child Nutrition Act of 1966 (42 U.S.C. 1771 et seq.).

**(2) Components**

In conducting an assessment, the Secretary may assess—

(A) the cost of producing meals and meal supplements under the programs described in paragraph (1); and

(B) the nutrient profile of meals, and status of menu planning practices, under the programs.

**(3) Authorization of appropriations**

There is authorized to be appropriated to carry out this subsection \$5,000,000 for fiscal year 2004 and each subsequent fiscal year.

**(b) Certification improvements**

**(1) In general**

Subject to the availability of funds made available under paragraph (5), the Secretary, acting through the Administrator of the Food and Nutrition Service, shall conduct a study of the feasibility of improving the certification process used for the school lunch program established under this chapter.

**(2) Pilot projects**

In carrying out this subsection, the Secretary may conduct pilot projects to improve the certification process used for the school lunch program.

**(3) Components**

In carrying out this subsection, the Secretary shall examine the use of—

(A) other income reporting systems;

(B) an integrated benefit eligibility determination process managed by a single agency;

(C) income or program participation data gathered by State or local agencies; and

(D) other options determined by the Secretary.

**(4) Waivers**

**(A) In general**

Subject to subparagraph (B), the Secretary may waive such provisions of this chapter and the Child Nutrition Act of 1966 (42 U.S.C. 1771 et seq.) as are necessary to carry out this subsection.

**(B) Provisions**

The protections of section 1758(b)(6) of this title shall apply to any study or pilot project carried out under this subsection.

**(5) Authorization of appropriations**

There is authorized to be appropriated to carry out this subsection such sums as are necessary.

**(c) Cooperation with program research and evaluation**

States, State educational agencies, local educational agencies, schools, institutions, facilities, and contractors participating in programs authorized under this chapter and the Child Nutrition Act of 1966 (42 U.S.C. 1771 et seq.) shall cooperate with officials and contractors acting on behalf of the Secretary, in the conduct of evaluations and studies under those Acts.

(June 4, 1946, ch. 281, §28, as added Pub. L. 108-265, title I, §129, June 30, 2004, 118 Stat. 767; amended Pub. L. 111-296, title III, §305, Dec. 13, 2010, 124 Stat. 3243.)

## REFERENCES IN TEXT

The Child Nutrition Act of 1966, referred to in subsecs. (a)(1), (b)(4)(A), and (c), is Pub. L. 89-642, Oct. 11, 1966, 80 Stat. 885, as amended, which is classified generally to chapter 13A (§1771 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1771 of this title and Tables.

Those Acts, referred to in subsec. (c), mean the Richard B. Russell National School Lunch Act, which was in the original “this Act” and was translated to read “this chapter”, and the Child Nutrition Act of 1966. See above.

## AMENDMENTS

2010—Subsec. (c). Pub. L. 111-296 added subsec. (c).

## EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111-296 effective Oct. 1, 2010, except as otherwise specifically provided, see section 445 of Pub. L. 111-296, set out as a note under section 1751 of this title.

**§ 1769j. Ensuring safety of school meals****(a) Food and Nutrition Service**

Not later than 1 year after December 13, 2010, the Secretary, acting through the Administrator of the Food and Nutrition Service, shall—

(1) in consultation with the Administrator of the Agricultural Marketing Service and the Administrator of the Farm Service Agency, develop guidelines to determine the circumstances under which it is appropriate for the Secretary to institute an administrative hold on suspect foods purchased by the Secretary that are being used in school meal programs under this chapter and the Child Nutrition Act of 1966 (42 U.S.C. 1771 et seq.);

(2) work with States to explore ways for the States to increase the timeliness of notification of food recalls to schools and school food authorities;

(3) improve the timeliness and completeness of direct communication between the Food and Nutrition Service and States about holds and recalls, such as through the commodity alert system of the Food and Nutrition Service; and

(4) establish a timeframe to improve the commodity hold and recall procedures of the Department of Agriculture to address the role of processors and determine the involvement of distributors with processed products that may contain recalled ingredients, to facilitate the provision of more timely and complete information to schools.

**(b) Food Safety and Inspection Service**

Not later than 1 year after December 13, 2010, the Secretary, acting through the Administrator of the Food Safety and Inspection Service, shall revise the procedures of the Food Safety and Inspection Service to ensure that schools are included in effectiveness checks.

(June 4, 1946, ch. 281, §29, as added Pub. L. 111-296, title III, §308, Dec. 13, 2010, 124 Stat. 3246.)

## REFERENCES IN TEXT

The Child Nutrition Act of 1966, referred to in subsec. (a)(1), is Pub. L. 89-642, Oct. 11, 1966, 80 Stat. 885, which is classified generally to chapter 13A (§1771 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1771 of this title and Tables.

## EFFECTIVE DATE

Section effective Oct. 1, 2010, except as otherwise specifically provided, see section 445 of Pub. L. 111-296, set out as an Effective Date of 2010 Amendment note under section 1751 of this title.

**CHAPTER 13A—CHILD NUTRITION**

Sec.	
1771.	Congressional declaration of purpose.
1772.	Special program to encourage the consumption of fluid milk by children; authorization of appropriations; eligibility for special milk program; minimum rate of reimbursement; ineligibility of commodity only schools.
1773.	School breakfast program.
1774.	Disbursement directly to schools or institutions.
1775.	Certification to Secretary of the Treasury of amounts to be paid to States.
1776.	State administrative expenses.
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1777.	Use in school breakfast program of food designated as being in abundance or food donated by the Secretary of Agriculture.
1778.	Nonprofit programs.
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1781.	Preschool programs.
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1784.	Definitions.
1785.	Accounts and records; availability for inspection; authority to settle, adjust, or waive claims.
1786.	Special supplemental nutrition program for women, infants, and children.
1787.	Repealed.
1788.	Team nutrition network.
1789.	Department of Defense overseas dependents' schools.
1790.	Breastfeeding promotion program.
1791.	Bill Emerson Good Samaritan Food Donation Act.
1792.	Promoting Federal food donation.
1793.	Grants for expansion of school breakfast programs.

**§ 1771. Congressional declaration of purpose**

In recognition of the demonstrated relationship between food and good nutrition and the capacity of children to develop and learn, based on the years of cumulative successful experience under the national school lunch program with