

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 dis-

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 socioeconomic 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 (vii); 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 de-

scribed 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 (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.

(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 (vii) 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) respectively, 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 sec-

tion. 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 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;

<sup>1</sup> So in original. Probably should be "reduced price".

(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 noneligible 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

Section 704(b)(2) of Pub. L. 104-193 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

Section 204(b) of Pub. L. 96-499 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 administration 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.