

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[ua]ry 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 National 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 activi-

ties 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 maximum 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 subsections (a) and (b), respectively, substituted “in subsection (a) of this section” for “in the preceding sentence” in subsection (b), designated third sentence as subsection (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 subsection (d) and substituted “Use of funds paid to States” for “Such food costs”, and designated seventh to ninth sentences as subsections (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 subsection (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 commod-