

quired 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.

(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 non-profit 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 title IX 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 1758 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 “non-profit” 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