

tion 4 of the [Richard B. Russell] National School Lunch Act [this section] and provide an average rate of reimbursement of 6 cents per meal within each State. In determining the amount of funds needed and the requirements of the various States therefor, the Secretary shall consult with the National Advisory Council on Child Nutrition and interested parties. Funds expended under the foregoing provisions of this resolution shall be reimbursed out of any supplemental appropriation hereafter enacted [on and after Nov. 5, 1971] for the purpose of carrying out section 4 [this section] and section 11 of the [Richard B. Russell] National School Lunch Act [section 1759a of this title], and such reimbursements shall be deposited into the fund established pursuant to section 32 of the Act of August 24, 1935 [section 612c of Title 7, Agriculture], to be available for the purposes of said section 32 [section 612c of Title 7]."

#### APPORTIONMENT OF ADDITIONAL FUNDS TO STATES

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

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

### § 1754. Nutrition promotion

#### (a) In general

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

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

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

- (1) ½ cent; by
- (2) the number of lunches reimbursed through food service programs under this chapter during the second preceding fiscal year in schools, institutions, and service institutions that participate in the food service programs.

#### (c) Payments to States

##### (1) Allocation

Subject to paragraph (2), from the amount of funds available under subsection (g) for a fiscal year, the Secretary shall allocate to each

State agency an amount equal to the greater of—

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

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

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

#### (2) Reductions

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

#### (d) Use of payments

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

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

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

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

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

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

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

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

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

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

#### (e) Documentation

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

#### (f) Reallocation

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

**(g) Authorization of appropriations**

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

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

## REFERENCES IN TEXT

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

## PRIOR PROVISIONS

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

## EFFECTIVE DATE

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

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

“(b) SPECIAL EFFECTIVE DATES.—

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

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

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

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

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

**§ 1755. Direct expenditures for agricultural commodities and other foods****(a) Administrative expenses; nutritional education; pilot projects; cash-in-lieu of commodities study; refusal of commodities and receipt of other commodities available to the State in lieu of the refused commodities**

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

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

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

(3) not to exceed 1 per centum of the funds provided for carrying out the programs under this chapter and the programs under the Child Nutrition Act of 1966 [42 U.S.C. 1771 et seq.], other than section 3 [42 U.S.C. 1772], which per centum is hereby made available to the Secretary to supplement the nutritional benefits of these programs through grants to States and other means for nutritional training and education for workers, cooperators, and participants in these programs, for pilot projects and the cash-in-lieu of commodities study required to be carried out under section 1769 of this title, and for necessary surveys and studies of requirements for food service programs in furtherance of the purposes expressed in section 1751 of this title, and section 2 of the Child Nutrition Act of 1966 [42 U.S.C. 1771],

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