

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

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

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

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

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

“(c) PLAN AND RECOMMENDATIONS.—

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

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

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

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

#### SCHOOL LUNCH STUDIES

Pub. L. 101-624, title XVII, §1779, Nov. 28, 1990, 104 Stat. 3816, directed Secretary of Agriculture to determine the quantity of bonus commodities lost, by State, since the 1987-88 school year, the amount that school food service authorities charged students for non-free or reduced price meals, and the trends in school participation and student participation, by State and for the United States, and directed Secretary also to determine the cost to produce school lunches and breakfasts, including indirect and local administrative costs, the reasons why schools choose not to participate in the

National school lunch program, the State costs incurred to administer the school programs, and the reasons why children eligible for free or reduced price meals do not apply for benefits or participate, with Secretary to submit to Congress a final report on results of the studies not later than Oct. 1, 1993.

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

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

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

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

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

#### Editorial Notes

##### 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.

##### CODIFICATION

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

##### AMENDMENTS

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

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

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

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

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

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

#### Statutory Notes and Related Subsidiaries

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

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

#### § 1753. Apportionments to States

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

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

(A) the number of lunches (consisting of a combination of foods which meet the minimum nutritional requirements prescribed by the Secretary under section 1758(a) of this title) served during such fiscal year in schools in such State which participate in the school lunch program under this chapter under agreements with such State educational agency; by

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

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

(3) ADDITIONAL REIMBURSEMENT.—

(A) REGULATIONS.—

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

(ii) INTERIM OR FINAL REGULATIONS.—

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

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

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

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

(C) ADDITIONAL REIMBURSEMENT.—

(i) IN GENERAL.—Each lunch served in school food authorities determined to be eligible under subparagraph (D) shall receive an additional 6 cents, adjusted in accordance with section 1759a(a)(3) of this title, to the national lunch average payment for each lunch served.

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

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

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

(F) ADMINISTRATIVE COSTS.—

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

(ii) PROVISION OF FUNDS.—The Secretary shall provide funds described in clause (i) to