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# 42 U.S. Code § 1759a

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## Special assistance funds

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### **(a) Formula for computation of payments; computation for lunches to eligible children in schools funding service to ineligible children from non-Federal sources; special assistance factors; annual adjustments**

- (1)
- (A) Except as provided in section 1759 of this title, in each fiscal year each State educational agency shall receive special assistance payments in an amount equal to the sum of the product obtained by multiplying the number of lunches (consisting of a combination of foods which meet the minimum nutritional requirements prescribed by the Secretary pursuant to section 1758(a) of this title) served free to children eligible for such lunches in schools within that State during such fiscal year by the special assistance factor for free lunches prescribed by the Secretary for such fiscal year and the product obtained by multiplying the number of lunches served at a reduced price to children eligible for such reduced price lunches in schools within that State during such fiscal year by the special assistance factor for reduced price lunches prescribed by the Secretary for such fiscal year.
- (B) Except as provided in subparagraph (C), (D), (E), or (F), in the case of any school which determines that at least 80 percent of the children in attendance during a school year (hereinafter in this sentence referred to as the “first school year”) are eligible for free lunches or reduced price lunches, special assistance payments shall be paid to the State educational agency with respect to that school, if that school so requests for the school year following the first school year, on the basis of the number of free lunches or reduced price lunches, as the case may be, that are served by that school during the school year for which the request is made, to those children who were determined to be so eligible in the first school year and the number of free lunches and reduced price lunches served during that year to other children determined for that year to be eligible for such lunches.
- (C)
- (i) Except as provided in subparagraph (D), in the case of any school or school district that—
- (I) elects to serve all children in the school or school district free lunches under the school lunch program during any period of 4 successive school years, or in the case of a school or school district that serves both lunches and breakfasts, elects to serve all children in the school or school district free lunches and free breakfasts under the school lunch program and the school breakfast program established under section 4 of the Child Nutrition Act of 1966 (42 U.S.C. 1773) during any period of 4 successive school years; and
- (II) pays, from sources other than Federal funds, for the costs of serving the lunches or breakfasts that are in excess of the value of assistance received under this chapter and the Child Nutrition Act of 1966 (42 U.S.C. 1771 et seq.) with respect to the number of lunches or breakfasts served during the period;
- special assistance payments shall be paid to the State educational agency with respect to the school or school district during the period on the basis of the number of lunches or breakfasts determined under
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clause (ii) or (iii).

(ii) For purposes of making special assistance payments under clause (i), except as provided in clause (iii), the number of lunches or breakfasts served by a school or school district to children who are eligible for free lunches or breakfasts or reduced price lunches or breakfasts during each school year of the 4-school-year period shall be considered to be equal to the number of lunches or breakfasts served by the school or school district to children eligible for free lunches or breakfasts or reduced price lunches or breakfasts during the first school year of the period.

(iii) For purposes of computing the amount of the payments, a school or school district may elect to determine on a more frequent basis the number of children who are eligible for free or reduced price lunches or breakfasts who are served lunches or breakfasts during the 4-school-year period.

(D)

(i) In the case of any school or school district that is receiving special assistance payments under this paragraph for a 4-school-year period described in subparagraph (C), the State may grant, at the end of the 4-school-year period, an extension of the period for an additional 4 school years, if the State determines, through available socioeconomic data approved by the Secretary, that the income level of the population of the school or school district has remained stable.

(ii) A school or school district described in clause (i) may reapply to the State at the end of the 4-school-year period, and at the end of each 4-school-year period thereafter for which the school or school district receives special assistance payments under this paragraph, for the purpose of continuing to receive the payments for a subsequent 4-school-year period.

(iii) If the Secretary determines after considering the best available socioeconomic data that the income level of families of children enrolled in a school or school district has not remained stable, the Secretary may require the submission of applications for free and reduced price lunches, or for free and reduced price lunches and breakfasts, in the first school year of any 4-school-year period for which the school or school district receives special assistance payments under this paragraph, for the purpose of calculating the special assistance payments.

(iv) For the purpose of updating information and reimbursement levels, a school or school district described in clause (i) that carries out a school lunch or school breakfast program may at any time require submission of applications for free and reduced price lunches or for free and reduced price lunches and breakfasts.

(E)

(i) In the case of any school or school district that—

(I) elects to serve all children in the school or school district free lunches under the school lunch program during any period of 4 successive school years, or in the case of a school or school district that serves both lunches and breakfasts, elects to serve all children in the school or school district free lunches and free breakfasts under the school lunch program and the school breakfast program during any period of 4 successive school years; and

(II) pays, from sources other than Federal funds, for the costs of serving the lunches or breakfasts that are in excess of the value of assistance received under this chapter and the Child Nutrition Act of 1966 (42 U.S.C. 1771 et seq.) with respect to the number of lunches or breakfasts served during the period;

total Federal cash reimbursements and total commodity assistance shall be provided to the State educational agency with respect to the school or school district at a level that is equal to the total Federal cash reimbursements and total commodity assistance received by the school or school district in the last school year for which the school or school district accepted applications under the school lunch or school

breakfast program, adjusted annually for inflation in accordance with paragraph (3)(B) and for changes in enrollment, to carry out the school lunch or school breakfast program.

(ii) A school or school district described in clause (i) may reapply to the State at the end of the 4-school-year period described in clause (i), and at the end of each 4-school-year period thereafter for which the school or school district receives reimbursements and assistance under this subparagraph, for the purpose of continuing to receive the reimbursements and assistance for a subsequent 4-school-year period. The State may approve an application under this clause if the State determines, through available socioeconomic data approved by the Secretary, that the income level of the population of the school or school district has remained consistent with the income level of the population of the school or school district in the last school year for which the school or school district accepted the applications described in clause (i).

**(F) Universal meal service in high poverty areas. —**

**(i) Definition of identified students. —**

The term “identified students” means students certified based on documentation of benefit receipt or categorical eligibility as described in section 245.6a(c)(2) of title 7, Code of Federal Regulations (or successor regulations).

**(ii) Election of special assistance payments. —**

**(I) In general. —** A local educational agency may, for all schools in the district or on behalf of certain schools in the district, elect to receive special assistance payments under this subparagraph in lieu of special assistance payments otherwise made available under this paragraph based on applications for free and reduced price lunches if—

(aa) during a period of 4 successive school years, the local educational agency elects to serve all children in the applicable schools free lunches and breakfasts under the school lunch program under this chapter and the school breakfast program established under section 4 of the Child Nutrition Act of 1966 (42 U.S.C. 1773);

(bb) the local educational agency pays, from sources other than Federal funds, the costs of serving the lunches or breakfasts that are in excess of the value of assistance received under this chapter and the Child Nutrition Act of 1966 (42 U.S.C. 1771 et seq.);

(cc) the local educational agency is not a residential child care institution (as that term is used in section 210.2 of title 7, Code of Federal Regulations (or successor regulations)); and

(dd) during the school year prior to the first year of the period for which the local educational agency elects to receive special assistance payments under this subparagraph, the local educational agency or school had a percentage of enrolled students who were identified students that meets or exceeds the threshold described in clause (viii).

**(II) Election to stop receiving payments. —**

A local educational agency may, for all schools in the district or on behalf of certain schools in the district, elect to stop receiving special assistance payments under this subparagraph for the following school year by notifying the State agency not later than June 30 of the current school year of the intention to stop receiving special assistance payments under this subparagraph.

**(iii) First year of option. —**

**(I) Special assistance payment. —** For each month of the first school year of the 4-year period during which a school or local educational agency elects to receive payments under this subparagraph, special assistance payments at the rate for free meals shall be made under this subparagraph for a percentage of

all reimbursable meals served in an amount equal to the product obtained by multiplying—

(aa) the multiplier described in clause (vii); by

(bb) the percentage of identified students at the school or local educational agency as of April 1 of the prior school year, up to a maximum of 100 percent.

**(II) Payment for other meals. —**

The percentage of meals served that is not described in subclause (I) shall be reimbursed at the rate provided under section 1753 of this title.

**(iv) Second, third, or fourth year of option. —**

**(I) Special assistance payment. —** For each month of the second, third, or fourth school year of the 4-year period during which a school or local educational agency elects to receive payments under this subparagraph, special assistance payments at the rate for free meals shall be made under this subparagraph for a percentage of all reimbursable meals served in an amount equal to the product obtained by multiplying—

(aa) the multiplier described in clause (vii); by

(bb) the higher of the percentage of identified students at the school or local educational agency as of April 1 of the prior school year or the percentage of identified students at the school or local educational agency as of April 1 of the school year prior to the first year that the school or local educational agency elected to receive special assistance payments under this subparagraph, up to a maximum of 100 percent.

**(II) Payment for other meals. —**

The percentage of meals served that is not described in subclause (I) shall be reimbursed at the rate provided under section 1753 of this title.

**(v) Grace year. —**

**(I) In general. —**

If, not later than April 1 of the fourth year of a 4-year period described in clause (ii)(I), a school or local educational agency has a percentage of enrolled students who are identified students that meets or exceeds a percentage that is 10 percentage points lower than the threshold described in clause (viii), the school or local educational agency may elect to receive special assistance payments under subclause (II) for an additional grace year.

**(II) Special assistance payment. —** For each month of a grace year, special assistance payments at the rate for free meals shall be made under this subparagraph for a percentage of all reimbursable meals served in an amount equal to the product obtained by multiplying—

(aa) the multiplier described in clause (vii); by

(bb) the percentage of identified students at the school or local educational agency as of April 1 of the prior school year, up to a maximum of 100 percent.

**(III) Payment for other meals. —**

The percentage of meals served that is not described in subclause (II) shall be reimbursed at the rate provided under section 1753 of this title.

**(vi) Applications. —**

A school or local educational agency that receives special assistance payments under this subparagraph may not be required to collect applications for free and reduced price lunches.

(vii)**Multiplier.**—

(I)**Phase-in.**—

For each school year beginning on or before July 1, 2013, the multiplier shall be 1.6.

(II)**Full implementation.**— For each school year beginning on or after July 1, 2014, the Secretary may use, as determined by the Secretary—

(aa) a multiplier between 1.3 and 1.6; and

(bb) subject to item (aa), a different multiplier for different schools or local educational agencies.

(viii)**Threshold.**—

(I)**Phase-in.**—

For each school year beginning on or before July 1, 2013, the threshold shall be 40 percent.

(II)**Full implementation.**—

For each school year beginning on or after July 1, 2014, the Secretary may use a threshold that is less than 40 percent.

(ix)**Phase-in.**—

(I)**In general.**—

In selecting States for participation during the phase-in period, the Secretary shall select States with an adequate number and variety of schools and local educational agencies that could benefit from the option under this subparagraph, as determined by the Secretary.

(II)**Limitation.**— The Secretary may not approve additional schools and local educational agencies to receive special assistance payments under this subparagraph after the Secretary has approved schools and local educational agencies in—

(aa) for the school year beginning on July 1, 2011, 3 States; and

(bb) for each of the school years beginning July 1, 2012 and July 1, 2013, an additional 4 States per school year.

(x)**Election of option.**—

(I)**In general.**—

For each school year beginning on or after July 1, 2014, any local educational agency eligible to make the election described in clause (ii) for all schools in the district or on behalf of certain schools in the district may elect to receive special assistance payments under clause (iii) for the next school year if, not later than June 30 of the current school year, the local educational agency submits to the State agency the percentage of identified students at the school or local educational agency.

(II)**State agency notification.**— Not later than May 1 of each school year beginning on or after July 1, 2011, each State agency with schools or local educational agencies that may be eligible to elect to receive special assistance payments under this subparagraph shall notify—

(aa) each local educational agency that meets or exceeds the threshold described in clause (viii) that the local educational agency is eligible to elect to receive special assistance payments under clause (iii) for the next 4 school years, of the blended reimbursement rate the local educational agency would receive under clause (iii), and of the procedures for the local educational agency to make the election;

(bb) each local educational agency that receives special assistance payments under clause (iii) of the blended reimbursement rate the local educational agency would receive under clause (iv);

(cc) each local educational agency in the fourth year of electing to receive special assistance payments

under this subparagraph that meets or exceeds a percentage that is 10 percentage points lower than the threshold described in clause (viii) and that receives special assistance payments under clause (iv), that the local educational agency may continue to receive such payments for the next school year, of the blended reimbursement rate the local educational agency would receive under clause (v), and of the procedures for the local educational agency to make the election; and

(dd) each local educational agency that meets or exceeds a percentage that is 10 percentage points lower than the threshold described in clause (viii) that the local educational agency may be eligible to elect to receive special assistance payments under clause (iii) if the threshold described in clause (viii) is met by April 1 of the school year or if the threshold is met for a subsequent school year.

**(III)Public notification of local educational agencies.—**

Not later than May 1 of each school year beginning on or after July 1, 2011, each State agency with 1 or more schools or local educational agencies eligible to elect to receive special assistance payments under clause (iii) shall submit to the Secretary, and the Secretary shall publish, lists of the local educational agencies receiving notices under subclause (II).

**(IV)Public notification of schools.—** Not later than May 1 of each school year beginning on or after July 1, 2011, each local educational agency in a State with 1 or more schools eligible to elect to receive special assistance payments under clause (iii) shall submit to the State agency, and the State agency shall publish—

(aa) a list of the schools that meet or exceed the threshold described in clause (viii);

(bb) a list of the schools that meet or exceed a percentage that is 10 percentage points lower than the threshold described in clause (viii) and that are in the fourth year of receiving special assistance payments under clause (iv); and

(cc) a list of the schools that meet or exceed a percentage that is 10 percentage points lower than the threshold described in clause (viii).

**(xi)Implementation.—**

**(I)Guidance.—**

Not later than 90 days after December 13, 2010, the Secretary shall issue guidance to implement this subparagraph.

**(II)Regulations.—**

Not later than December 31, 2013, the Secretary shall promulgate regulations that establish procedures for State agencies, local educational agencies, and schools to meet the requirements of this subparagraph, including exercising the option described in this subparagraph.

**(III)Publication.—** If the Secretary uses the authority provided in clause (vii)(II)(bb) to use a different multiplier for different schools or local educational agencies, for each school year beginning on or after July 1, 2014, not later than April 1, 2014, the Secretary shall publish on the website of the Secretary a table that indicates—

(aa) each local educational agency that may elect to receive special assistance payments under clause (ii);

(bb) the blended reimbursement rate that each local educational agency would receive; and

(cc) an explanation of the methodology used to calculate the multiplier or threshold for each school or local educational agency.

**(xii)Report.—** Not later than December 31, 2013, the Secretary shall publish a report that describes—

- (I) an estimate of the number of schools and local educational agencies eligible to elect to receive special assistance payments under this subparagraph that do not elect to receive the payments;
- (II) for schools and local educational agencies described in subclause (I)—
  - (aa) barriers to participation in the special assistance option under this subparagraph, as described by the nonparticipating schools and local educational agencies; and
  - (bb) changes to the special assistance option under this subparagraph that would make eligible schools and local educational agencies more likely to elect to receive special assistance payments;
- (III) for schools and local educational agencies that elect to receive special assistance payments under this subparagraph—
  - (aa) the number of schools and local educational agencies;
  - (bb) an estimate of the percentage of identified students and the percentage of enrolled students who were certified to receive free or reduced price meals in the school year prior to the election to receive special assistance payments under this subparagraph, and a description of how the ratio between those percentages compares to 1.6;
  - (cc) an estimate of the number and share of schools and local educational agencies in which more than 80 percent of students are certified for free or reduced price meals that elect to receive special assistance payments under that clause; and
  - (dd) whether any of the schools or local educational agencies stopped electing to receive special assistance payments under this subparagraph;
- (IV) the impact of electing to receive special assistance payments under this subparagraph on—
  - (aa) program integrity;
  - (bb) whether a breakfast program is offered;
  - (cc) the type of breakfast program offered;
  - (dd) the nutritional quality of school meals; and
  - (ee) program participation; and
- (V) the multiplier and threshold, as described in clauses (vii) and (viii) respectively, that the Secretary will use for each school year beginning on or after July 1, 2014 and the rationale for any change in the multiplier or threshold.

**(xiii) Funding.—**

**(I) In general.—**

On October 1, 2010, out of any funds in the Treasury not otherwise appropriated, the Secretary of the Treasury shall transfer to the Secretary to carry out clause (xii) \$5,000,000, to remain available until September 30, 2014.

**(II) Receipt and acceptance.—**

The Secretary shall be entitled to receive, shall accept, and shall use to carry out clause (xii) the funds transferred under subclause (I), without further appropriation.

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