

COMPTROLLER GENERAL OF THE UNITED STATES
WASHINGTON, D.C. 20548



B-111810

MAR 8 1974

The Honorable Carl D. Perkins
Chairman, Committee on Education
and Labor
House of Representatives

Dear Mr. Chairman:

This is in response to your letter of February 8, 1974, asking our opinion as to the necessity of a draft amendment proposed by the Department of Agriculture (the Department) to the National School Lunch Act (Act), as amended, Pub. L. 79-396, 42 U.S.C. 1751, et seq., approved June 4, 1946. The draft bill would amend section 3 of the Act to provide permanent appropriation authority for the Special Assistance Program authorized by section 11 of the Act which the Department feels was deleted by Pub. L. 93-150, approved November 7, 1973, the most recent amendments to the Act.

Section 11 (42 U.S.C. 1759a) was added to the Act by section 6 of Pub. L. 87-823 approved October 15, 1962, to authorize the provision of special financial assistance for the purchase of school lunches for the children of low income families. Subsection (a) of section 11 authorized appropriations of "such sums as may be necessary" specifically for this program for each succeeding fiscal year. Since section 11 contained its own appropriation authority, the 1962 amendments excluded section 11 from the general appropriation authority in section 3 of the Act, applicable to the other programs of the Act.

Another new section - section 13 (42 U.S.C. 1761), which provides a special food service program for children - was added to the Act by section 3 of Pub. L. 90-302 approved May 8, 1968. It too contains separate appropriation authority and so the same exclusion from the general appropriation authority was written into section 3 of the Act for the section 13 program.

Section 3(a) of Pub. L. 93-150, revised section 11 of the Act by changing the method for computing the sums to be allocated to the States for the special assistance program but clearly intended the program itself to continue. The special appropriation authority, contained in the old subsection 11(a) was omitted from revised section 11(a) but the exclusion of section 11 from the general appropriation authority in section 3 was retained.

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As a result, therefore, the present section 11 contains a carefully devised formula for allocating funds to State educational agencies for the provision of free or below cost lunches to needy children but with no substantive authority to appropriate funds for that purpose. There is nothing in the legislative history to indicate that this result was anything more than an inadvertent oversight in drafting the new language of section 11.

The Department apparently decided not to seek the restoration of separate appropriation authorization for section 11. Instead, it is proposing to remove the exclusion of section 11 from the general appropriation authorization of the Act, while retaining the exclusion for section 13 whose separate appropriation authorization language was not disturbed.

In view of the specific exclusion of section 11 in the general appropriation authorization and specific authorization in section 13, we think it would be desirable to either delete the reference to section 11 in the general authorization or to include a specific authorization in section 11. However, we are not aware of any requirement for specific appropriation authorization language. We believe that the enactment of general legislation which obviously contemplates Federal financing without any specific reference to appropriation authorization is, in itself, sufficient authorization for appropriations to carry out the general legislation. The amended section 11 which obviously contemplated continued Federal financing, in our opinion, constitutes sufficient appropriation authorization. The failure through oversight to delete the reference to section 11 in the general authorization in section 3 of the Act, when section 11 was revised, clearly does not indicate any congressional intent not to authorize appropriations.

We express no opinion, however, as to whether a proposed appropriation would be proper under the rules of the House of Representatives which is a matter not within our jurisdiction.

Sincerely yours,

R. F. KELLER

Deputy Comptroller General
of the United States