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September 2, 2020

The Honorable Sonny Perdue  
Secretary  
United States Department of Agriculture  
1400 Independence Avenue, SW  
Washington, D.C. 20250

Dear Secretary Perdue:

We are writing regarding your implementation of the Pandemic EBT program (P-EBT) as authorized by the *Families First Coronavirus Response Act* (FFCRA).<sup>1</sup> Specifically, we are concerned that the Department of Agriculture's (Department) recent state guidance on issuing P-EBT this fall is misleading and includes requirements that will result in limited access to the program.

The Department's state guidance, which was provided to the House Committee on Education and Labor's (Committee) majority staff on August 24, 2020, indicates that children in schools that delay the start of their instructional year due to the COVID-19 pandemic will not be eligible for P-EBT during the time period between the traditional start of the school year and the delayed start time due to the pandemic.<sup>2</sup> This is contrary to the statutory requirement that any child who would otherwise be eligible for a free or reduced price school meal if not for the closure of their school due to the COVID-19 pandemic for five or more days be eligible for P-EBT in participating states.<sup>3</sup> In other words, a delayed start to the instructional school year as a result of the COVID-19 pandemic should clearly be considered a COVID-19 related school closure.

Additionally, the Department's state guidance states that P-EBT is available to schools that are entirely virtual without meal service. This implies that P-EBT is not available to schools that are entirely virtual *with* meal service. In an email to Committee majority staff on August 25, 2020, your staff clarified that children in schools offering entirely virtual instruction and meal service

<sup>1</sup> 29 U.S.C. § 2601.

<sup>2</sup> U.S. Department of Agriculture, *Pandemic EBT for School Year 2020-2021 through September 30*.

<sup>3</sup> 7 U.S.C. § 2011 (Assistance for Households During School Closures).

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would be eligible for P-EBT, but the Department has yet to issue a clarification of the state guidance to reflect this information.<sup>4</sup>

With as many as 17 million children not getting enough to eat this summer, it is critical for the Department to do everything it can to ensure access to P-EBT.<sup>5</sup> Therefore, we ask that you take the following immediate actions:

1. Provide an explanation of the Department's rationale for not making children eligible for P-EBT benefits during the time period between the traditional start of the instructional school year and the delayed start date as a result of the COVID-19 pandemic.
2. Provide all legal analyses related to the Department's state guidance that P-EBT would not be available during the time period between the traditional school start date and the delayed start date due to the COVID-19 pandemic.
3. Correct and reissue the state guidance to reflect that children in schools offering entirely virtual instruction and meal service *are* eligible for P-EBT in participating states.

Please provide the requested documents and information by September 16, 2020. For any questions, please reach out to Eyang Garrison at [Eyang.Garrison@mail.house.gov](mailto:Eyang.Garrison@mail.house.gov) with Congresswoman Fudge and Alison Hard at [Alison.Hard@mail.house.gov](mailto:Alison.Hard@mail.house.gov) with the House Committee on Education and Labor. Please direct all official correspondence to the Committee's Clerk/Staff Assistant, Mariah Mowbray, at [Mariah.Mowbray@mail.house.gov](mailto:Mariah.Mowbray@mail.house.gov).

Thank you for your attention to this urgent matter.

Sincerely,



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**ROBERT C. "BOBBY" SCOTT**  
Chairman



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**MARCIA L. FUDGE**  
Member of Congress

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<sup>4</sup> Email from Yasmin Rey, Congressional and Policy Advisor, Office of Congressional Relations, U.S. Department of Agriculture, to Alison Hard, Professional Staff, House Committee on Education and Labor, (Aug 31, 2020 10:15 AM) (on file with the Committee).

<sup>5</sup> Center on Budget and Policy Priorities, *Tracking the COVID-19 Recession's Effects on Food, Housing, and Employment Hardships*, <https://www.cbpp.org/research/poverty-and-inequality/tracking-the-covid-19-recessions-effects-on-food-housing-and>, (last visited August 27, 2020).