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August 7, 2024

The Honorable Tom Vilsack
Secretary
U.S. Department of Agriculture
1400 Independence Avenue, SW
Washington, DC 20250

RE: Establishing the Summer EBT Program and Rural Non-Congregate Option in the
Summer Meal Programs (RIN 0584-AE96)

Dear Secretary Vilsack:

As Ranking Member of the House Committee on Education and the Workforce, I write to offer my comments regarding the interim final rule (IFR) entitled *Establishing the Summer EBT Program and Rural Non-Congregate Option in the Summer Meal Programs* published in the Federal Register on December 29, 2023.¹ I greatly appreciate the U.S. Department of Agriculture's (USDA or the Department) efforts and celebrate this important step in fighting summer hunger.

In order to implement the law, the rule would require states to operate the Summer-EBT program using a streamlined certification process, which allows for the automatic issuance of benefits to certain eligible children.² Most children eligible for Summer-EBT benefits will receive benefits through this streamlined certification process and therefore will not have to fill out a Summer-EBT application.³ These eligible children include children who have been certified as eligible for free or reduced-price meals either through a school meal application or categorical eligibility as well as children who attend a special provision school, such as a Community Eligibility Provision (CEP) school, and who are certified as eligible for free or reduced-price school meals. Additionally, this includes school-age children who are not enrolled in a school participating in

¹ Establishing the Summer EBT Program and Rural Non-Congregate Option in the Summer Meal Programs, 88 Fed. Reg. 90230, 90230-90402 (Dec. 29, 2023).

² Establishing the Summer EBT Program and Rural Non-Congregate Option in the Summer Meal Programs, *supra* note 01, at 90368.

³ Establishing the Summer EBT Program and Rural Non-Congregate Option in the Summer Meal Programs, *supra* note 01, at 90368.

the National School Lunch Program (NSLP) or the School Breakfast Program (SBP) but are categorically eligible for free or reduced-price meals.⁴ Eligible children who are not streamlined certified can still receive benefits through a Summer-EBT application.⁵

According to the IFR, streamlined certification will allow states and Indian Tribal Organizations (ITOs) to issue benefits to eligible children using already available data at the local education agency (LEA), state, or ITO level. However, the IFR separates children who are “school-aged” from non-“school aged” students, and it defines “school-aged” as being of “the compulsory age of school attendance” of each individual state or ITO for school enrollment, unnecessarily resulting in a limited use of direct certification to identify students outside of those age ranges. Under the IFR, children either above or below the compulsory age of school attendance will need to be matched with school records. Where school records are of high-quality and shared in a timely manner with the state agency, this additional step is likely to be fairly straightforward. However, one of the critical lessons learned from the Pandemic Electronic Benefits Transfer (P-EBT) program is the imperfect nature of school-level data. During the pandemic, “much of the eligibility and benefit determination process [for Pandemic EBT] was labor intensive and often reliant on dozens of spreadsheets sent by individual districts or schools in non-standardized formats.”⁶ Incorrect data on student addresses and names held by schools, as compared to federal and state administrative records, increased the burden on states and schools to match records.⁷

Understanding the rationale behind the automatic issuance of benefits without the need to match eligible children of school age with school records, we are concerned by the limitations of the proposed definition of “school-aged” and the potential additional administrative burden for states and ITOs. Relying on compulsory age of attendance means that children younger or older than the compulsory age who attend an NSLP or SBP school will need to be matched with school records. Students as young as five or as old as seven may be of the “compulsory” age of attendance across states, and as a result eligible children outside of that age range may be more administratively burdensome for states.⁸ Similarly, “compulsory” attendance may end as early as 16 or as late as 18.⁹ In turn, many students are attending school who are not of the compulsory age of attendance. In states such as Alaska, Idaho, Montana, North Carolina, North Dakota, and Wyoming—where the compulsory age range of attendance is seven to 16 years—five- and six-year-olds would not be considered “school aged” despite the reality that 93.0

⁴ *A Guide to Summer EBT Eligibility*, Food Rsch. & Action Ctr. (Oct. 2023), <https://frac.org/wp-content/uploads/Summer-EBT-Eligibility-Guide-October-2023.pdf>.

⁵ *Ibid.*

⁶ Waxman et al., *Documenting Pandemic EBT for the 2020-21 School Year*, Urban Institute (Oct. 2021), https://www.urban.org/sites/default/files/publication/104949/documenting-pandemic-ebt-for-the-2020-21-school-year_1.pdf.

⁷ *Ibid.*

⁸ State Education Practices (SEP), *Table 1.2 Compulsory School Attendance Laws, Minimum and Maximum Age Limits for Required Free Education, by State: 2017*, Nat'l Ctr for Educ Stat. (2017), https://nces.ed.gov/programs/statereform/tab1_2-2020.asp.

⁹ *Ibid.*

percent of five- and six-year-olds nationally are in school.¹⁰ Students in those states would be required to be matched with school records, even though those respective states' own policies require five- and six-year-olds be offered free education.¹¹ The same issue arises for high school students. According to the latest data, 92.8 percent of 16- and 17-year-olds are enrolled in school, and yet a subset of students of those ages would need to be matched with school records in roughly half of states under this interpretation.¹²

The Department has acknowledged that the compulsory age of school children may not be the only method of identifying school-aged children. The Department has said that it welcomes public feedback on additional approaches to defining the age range for children who can be streamlined certified using state or ITO level data without requiring a match with school records. Understanding that the federal government has historically allowed states to determine compulsory attendance policies, alternative state-level measures should—at minimum—be allowed to be used by states to minimize unnecessary administrative burden for states and ITOs. Alternative state measures should include the range of ages for which free education must be offered by the state and the range of ages nationally for which the vast majority of school-eligible children are enrolled in school (e.g., ages at which a certain percentage of the population is enrolled in school). Use of one or multiple of these alternative measures could be left to states, which have both a vested interest in both minimizing administrative burden and ensuring program integrity.

Importantly, the Summer-EBT Program includes a focus on combatting fraud through the statute's expungement requirements. According to statute, the expungement timeline cannot exceed four months, which puts the program on a substantially more aggressive timeline for identifying administrative inconsistencies (i.e. recent change in address or use of aliases) compared to other school year or year-round nutrition programs.¹³ Such administrative inconsistencies include students' changes in address, among other administrative hurdles to benefits distribution. Given the brevity of this timeline, allowing the Secretary to exercise discretion to begin the expungement clock at the later of the date of issuance or date of most recent redemption of the benefit—instead of requiring expungement 122 days after issuance (when benefits may be delayed in reaching intended recipients)—would provide meaningful additional time for schools and beneficiaries. This approach would mirror other nutrition programs, such as the Supplemental Nutrition Assistance Program (SNAP), where expungement only occurs nine months after issuance and nine months after an EBT card was last used, so

¹⁰ State Education Practices (SEP), *Table 1.2 Compulsory School Attendance Laws, Minimum and Maximum Age Limits for Required Free Education, by State: 2017*, Nat'l Ctr for Educ Stat. (2017), https://nces.ed.gov/programs/statereform/tab1_2-2020.asp; Digest of Education Statistics, *Table 102.10 Percentage of the Population 3 to 34 Years Old Enrolled in School by Sex, Race/Ethnicity, and Age Group: Selected Years, 1980 through 2022*, Nat'l Ctr for Educ Stat. (2023), https://nces.ed.gov/programs/digest/d23/tables/dt23_103.10.asp.

¹¹ State Education Practices, *supra* note 8.

¹² Digest of Education Statistics, *Table 102.10 Percentage of the Population 3 to 34 Years Old Enrolled in School by Sex, Race/Ethnicity, and Age Group: Selected Years, 1980 through 2022*, Nat'l Ctr for Educ Stat. (2023), https://nces.ed.gov/programs/digest/d23/tables/dt23_103.10.asp; State Education Practices (SEP), *Table 1.2 Compulsory School Attendance Laws, Minimum and Maximum Age Limits for Required Free Education, by State: 2017*, Nat'l Ctr for Educ Stat. (2017), https://nces.ed.gov/programs/statereform/tab1_2-2020.asp.

¹³ Consolidated Appropriations Act, 2023, Pub. L. No. 117-328, 136 Stat. 4459 (2022).

The Honorable Tom Vilsack

August 7, 2024

Page 4

functionally nine months after the later of the date of issuance or the last date of account activity.¹⁴ A similar model (using four months instead of nine) could be considered for Summer-EBT, while still complying with the statute's requirement that agencies provide a process for children who are enrolled through streamlined certification to opt-out of participation. Benefits issued to families not wishing to participate in the program could also be automatically expunged if they have not used the benefit for an initial redemption at 122 days after issuance.

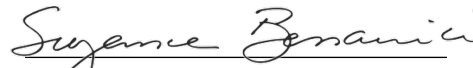
Finally, the IFR requires states to assume liability for benefits in situations of skimming or otherwise stolen benefits by using state funds to replace benefits. As there is nothing statutorily preventing the Department from replacing these skimmed benefits, I urge the Department to reassess its position on skimmed benefits and allow for these benefits to be replaced using federal funds.

I appreciate that the Department has welcomed feedback on the interim final rule, specifically on the additional approaches to defining the age range for children who can be streamlined certified using state or ITO level data without requiring a match with school records. While I recognize the challenges of deploying any new program for the Department, states, and schools, I urge the Department to consider all available options to support the smooth implementation of this important program and maximize participation while ensuring program integrity.

Sincerely,



ROBERT C. "BOBBY" SCOTT
Ranking Member
Committee on Education and the Workforce



SUZANNE BONAMICI
Ranking Member
Subcommittee on Early Childhood,
Elementary and Secondary Education

¹⁴ 7 C.F.R. § 274 (2010).