

August 22, 2024

Cindy Long  
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RE: Interim Final Rule: Establishing the Summer EBT Program and Rural Non-Congregate Option in the Summer Meal Programs

**Dear Deputy Under Secretary Long,**

The American Public Human Services Association is pleased to share our recommendations on the Summer EBT portion of the recent *Interim Final Rule: Establishing the Summer EBT Program and Rural Non-Congregate Option in the Summer Meal Programs*. APHSA is the bipartisan, national membership association representing state, county, and city human services agencies, including those that administer SNAP. From the SNAP-model demonstration pilots for Summer EBT over 10 years ago, to the multiple iterations of Pandemic EBT implementation, to now the first summer of a national Summer EBT program, APHSA has worked alongside state SNAP agencies and their partners all steps of the way. Beginning in Spring 2024, APHSA and our partners at Share Our Strength created a new, national Community of Practice for individuals leading Summer EBT implementation from their state or territorial SNAP or Child Nutrition agency, or from their Tribe. The CoP currently has members from 41 states and DC, 1 territory, and 5 Tribal Nations. Whether it has been in analyzing the impact of policy changes, talking through key implementation considerations, or creating safe peer-to-peer spaces for agency leaders to understand promising practices, APHSA has garnered key insights into what is needed for Summer EBT to be successfully operated by states in a way that delivers timely, accurate, and needed benefits to families.

The opportunity created by Congress to establish a nationwide, permanent Summer EBT program holds great promise to reduce hunger and poverty across the country over the summer period, which has been a historically challenging time for families. However, past experiences from P-EBT and current experiences for this first year of S-EBT have shown us that standing up a new program is not easy. It requires the formulation and establishment of new partnerships at state and local levels, refinement and creation of new data and technology systems to ensure that families are being accurately served in a timely manner, procurement of new contracts with EBT vendors and others to support ongoing operations and customer service, hiring of new staff at the state and local levels, and development of communication and outreach plans to support understanding of the program at the government, school, and families levels. While the permanent nature of the program allows us a longer horizon to build up to the program that everyone desires, the reality is that participating states

had to work with what was possible to stand up a program in 2024. To build toward success, FNS will need to continue engaging with Summer EBT agencies, school and local partners, advocates, Congress, and more to continue to incorporate lessons learned for the future. Our comments below are focused on key policy needs for the state implementors of this program to have their best chance at success. Our comments highlight specific recommendations around eligibility determinations and data collection; benefits delivery; timelines; and administration and funding.

### **Eligibility Determination & Data Collection**

The mission of Summer EBT is to provide additional support in buying groceries to eligible households over the summer months. In order for the correct households to receive benefits, there needs to be an extraordinary amount of coordination and work done by schools and both SNAP and Child Nutrition agencies to clean and aggregate data sources. The original statute and IFR include helpful provisions that allow state agencies to streamline eligibility determination, including the ability to issue Summer EBT benefits to school-aged children in households receiving SNAP, TANF, FDPIR, and Medicaid (if applicable), as well as to categorically qualify eligible children who have been individually certified for free or reduced-priced meals at their school. Students may also apply for S-EBT benefits if they believe they are eligible but not a part of this streamlined population, and the IFR has shared requirements on what is needed for a complete application and verification requirements for applications. The IFR has also proposed required timelines for eligibility determination and a timeline for appeals on eligibility decisions. The following are our recommendations and responses to these components of the IFR.

- **Create a National Definition of School-Aged Students:** The IFR defines school-aged children as those that are within the compulsory age of attendance in each individual state. This creates an inherent challenge that the age range can differ across the country. While in many states the compulsory age range is 5-18, several states have a much smaller age range such as 7-16. This excludes those younger and older students from being directly certified for Summer EBT with other means-tested data. Although these students may very well still be eligible through their free and reduced-price school meals program, this data is not as reliable as programmatic data held at the state level. Means-tested program data is regularly reviewed, updated, checked for quality, and is already at the fingertips of the state SNAP agency. The data provided by school meal programs has historically been less accurate and up-to-date, thus causing increased instances of returned EBT cards, delays in issuance, and customer service requests. States should be empowered to utilize their means-tested data to the greatest extent possible to reduce any potential burden or hardship to them or their families. Thus, we recommend that the Final Rule establish a standardized, national definition of school-aged children as 5-18 years old, and provide



further flexibility for states to expand this age range with sufficient justification, such as high participation in Universal Pre-K.

- **Allow Continued Use of Alternate Income Forms:** For the Summer of 2024, FNS has provided flexibility to state agencies to use Alternative Income Forms such as household income applications from CEP schools to verify S-EBT eligibility. The use of these forms is especially helpful for states with high numbers of CEP schools or with statewide free school meals because many of these schools do not require individual school meal applications. This flexibility has been greatly appreciated for 2024, and we recommend extending this flexibility for the foreseeable future, or at least through the Summer of 2026 as states continue to build a sustainable S-EBT program.
- **Permit Mailing Address Requirement in Applications:** The IFR proposes that S-EBT applications cannot require a mailing address, and that applications must be considered complete even if they do not include an address. While we understand the precautions of creating additional barriers to access the program, this creates logistical challenges for benefit delivery. APHSA recommends that applications be allowed to require some form of mailing address for card delivery, whether this be their home address, guardian address for the summer months, school address, or another location where they would like their benefits delivered. We also recommend requiring that the name of the school attended be included. Unlike in SNAP, these applications are intended to be used for approval without any additional information or contact, such as an interview or verification, and therefore it is especially important for states to have enough data to process the application completely.
- **Clarify Use and Allowability of Statewide Database and Data Sharing Requirements:** The IFR states that agencies will be required to stand up a statewide database of school meal enrollment by the summer of 2025. The IFR acknowledges that some states may already have a database, but there has been some confusion about what is acceptable as an existing resource versus what would need to be newly created. Additionally, for states with integrated eligibility systems, there is a desire for more specific guidance on what is allowable in terms of sharing data in the system. We recommend that FNS allow states to rely on existing systems as much as possible and lean toward more alignment and integration of data rather than creating new systems that result in siloes.

Furthermore, there is concern about potential FERPA violations that would limit the state's ability to receive and use data from schools and thus maintain the database. To ensure clarity across Child Nutrition and SNAP partners across the country, FNS should release joint guidance with the Department of Education to clarify what is allowable data to share, and what data is subject to FERPA.



- **Consider Providing Additional State Flexibility on Partnering with Schools:** The IFR explicitly says that states cannot delegate to Local Education Agencies to make a Summer EBT application available. However, some states have raised recommendations to remove this requirement to allow states flexibility in determining how to issue and collect applications in a way that works best within their unique state governance structure.
- **Permit Flexibility for Verifications as Needed:** The IFR states that beginning in Summer 2025, states will be required to verify 3% of applications that are received by a certain date. In general, we feel that 3% is a good level that feels challenging but also reasonable for states to complete. However, some states have expressed concerns with having the necessary systems and processes ready to conduct this by 2025. Therefore, we recommend offering waivers to states that may be unable to meet this requirement in 2025.

### **Benefits Delivery**

The S-EBT program offers a new benefit to children over the summer, and it differs from other congregate and non-congregate meal services by offering monetary benefits through an EBT card, similar to the SNAP program. With EBT cards, there are additional considerations for a program such as that people must successfully receive the benefit, and they must know how to use it. Two key pieces of this are to protect and support people who may have their benefits electronically stolen, as has been a rising concern in SNAP in recent years, as well as expungement deadlines around when someone must use their benefits. The following are our recommendations for how best to support customers in relation to their benefit use.

- **Permit Federal Benefit Replacement for Electronically Stolen Benefits:** APHSA is supportive of the IFR determination to allow states to use federal dollars to replace S-EBT benefits for disaster or misfortune; however, we strongly recommend that the Final Rule also allow for the replacement of electronically stolen benefits via skimming. With many S-EBT households potentially using an EBT card for the first time or those with an existing SNAP card who are the victim of skimming, these benefits are stolen due to no fault of their own and should be replaced by the federal government. While state agencies support and encourage the ability to replace these benefits, the majority of them are already struggling to fund their administrative cost match of running an S-EBT program and are not able to fund these replacements themselves.
- **Expand Flexibility for Expungement Period:** The legislation that authorized the S-EBT program stated that benefits must be expunged after four months, which differs from the SNAP expungement timeline of nine months of inactivity. States shared different positions



on how they would like to see a change in the expungement timeline. Many states recommended that the four-month timeline be determined as four months of inactivity of benefit use. Others recommended that the four-month timeline not begin until the first benefit redemption on that card, ensuring that a lack of knowledge or understanding of the availability of the benefits does not arbitrarily cut their timeline short. Finally, some states felt that there should be a consistent date of expungement for everyone in the same state to avoid confusion from household to household. APHSA recommends that FNS consider an interpretation that balances allowing individuals ample time to use their benefits while also minimizing confusion.

### **Required Timelines**

Timely and accurate delivery of benefits is critical to the success of a Summer EBT program. S-EBT is intended to support families in reducing the hunger spike that is regularly experienced over the summer months when students are out of school, and the IFR sets forth expected timelines in an attempt to ensure the timeliness of these benefits. These include that benefits should be delivered 7-14 days before the start of the summer period, and that benefits should be issued within 15 days for those who apply within the summer period. However, the reality is that states and Summer EBT agencies are already working from behind and trying to catch up. The experience of P-EBT consistently showed that states struggled with significant delays in issuing benefits during the summer period. Until the underlying issues that caused this are addressed, and states reach the required rhythm to maintain the program instead of building it, states will need flexibility on their timeliness. In addition to required flexibility in the early years, the Final Rule also needs to accommodate for the ongoing realities of SNAP operations and the quality of school data to understand what is practical for states to pull off for Summer EBT. The following are specific recommendations for what our members believe is feasible.

- **Expand Period of Time for Initial Benefits Delivery:** The IFR proposes that all benefits for those who are streamline certified or have completed a timely application must be issued benefits 7-14 days before the start of the Summer Operating Period (SOP), and within 15 days of application thereafter. APHSA appreciates and understands the desire to issue benefits ahead of the SOP; however, we believe that a 7-14 day window is too short and will cause undue burden onto states, retailers, and EBT processors, as well as increase the risk of targeted fraud during such a short window. For retailers, there is a risk of being overburdened during the week of issuance, which is why most states have longer issuance schedules for SNAP benefits over a month. For EBT processors, this creates a short time crunch for them to issue all benefits, which could result in either large spikes in prices for states to meet those dates, or pushed back issuance – which we have already seen in 2024 - that puts the state out of compliance and creates undue hardship for families. Instead, APHSA recommends widening the issuance window for S-EBT benefits



to between 1-30 days before the start of the SOP to ensure timely access for eligible households while giving states more flexibility in spreading out the benefit delivery.

- **Expand Timeframe for Mid-Summer Benefits Delivery:** The IFR proposes that for students applying to S-EBT, they must have their eligibility determined within 15 operational days of application. While states understand the increased urgency around providing benefits for the summer months, this timeframe has several logistical challenges. First, staffing capacity is strained during the summer, with many state agencies needing to use temporary staff, and school staff are often not working during the summer period and therefore either slow or unable to respond to requests that may be needed to confirm eligibility. In rural areas, mail delays are common, which further extends these needed timelines. We recommend extending both the eligibility determination and noticing requirement from 15 to 30 days, in alignment with SNAP eligibility determinations, to allow states ample time for accurate assessment and processing of applications. We also recommend that for the first three years of the program that states continue to be offered waivers if they are unable to meet the 15 or 30 day requirement.
- **Consider Shortening Timeline for Appeals:** The IFR proposes that Summer EBT applicants may appeal their Summer EBT eligibility determination for up to 90 days after the Summer Operating Period. While some APHSA members believe this is an adequate and fair timeline, many states shared concerns with the length. As these benefits are intended to be issued during the summer months with ideal closeout soon after, many states expressed that up to 90 days after the SOP would extend the required work period of S-EBT far beyond the summer with potential issuance as late as December. Some states shared recommendations that an appeal timeline of 30 days after the denial would be more in line with program intent and align closer to the SOP itself.

### **Administration & Funding**

When establishing a new, permanent program, it is critical that states be set up for success to best ensure a program that works for families and results in reduced hunger as anticipated. While some pieces of administration and funding are legislated and cannot be changed in a Final Rule, such as the 50-50 administrative funding match for state agencies, there are other key components that can better support states in a final rule.

- **Delay Requirement of Corrective Action Plans:** The IFR outlines that states who do not issue benefits within the required timelines will be accountable to submitting a Corrective Action Plan (CAP). As discussed in earlier sections of this response, the current timelines are largely unfeasible for state agencies and will likely continue to be so, at least for the first



few years. When establishing a new program, there are many kinks that will need to be worked out and changes that will need to be made as states work toward best practices. To honor the need for flexibility as the program starts up, we recommend that no states be required to complete a CAP until the summer of 2027, giving most states two or three years to establish themselves.

- **Extend Deadline for Interim Plan Submission:** The IFR requires that states submit an interim Plan of Operations and Management (iPOM) to FNS by August 15<sup>th</sup> of the preceding summer for which the plan period covers. This means that states will be required to submit a new plan while they are in the middle of operating their previous one, which is especially challenging in the early years of the program as states are still building the program and learning what works. The IFR shared that this decision was intended to be supportive of states who wanted to be able to draw down funding at an earlier time. To honor both viewpoints, APHSA recommends that FNS only require that iPOMs be submitted by December 31 of the preceding year but allow them to start being submitted by August 15.
- **Issue S-EBT Benefits through Account Management Agent (AMA):** For 2024, FNS determined that S-EBT administrative funds would be paid through an AMA mechanism, which establishes a line of credit for state agencies and avoids any chance of over-drawing funds. However, S-EBT benefits themselves are being issued through grant funding, meaning that states are given a specific grant amount based on the initial estimate of eligible children. This has resulted in states needing to request additional grant funding if the eligible number of children was higher than they originally estimated. Even with FNS being responsive and granting the additional requests, this has created an additional burden for state agencies who now need to go through the approval and administrative process for requesting funding multiple times per summer period. It also puts states in a challenging position when they must wait to issue benefits until the grant amount has been increased and thus create delays for customers waiting on their benefits or incur debt for the state agency. In the IFR, FNS shared concerns about being able to distinguish S-EBT and SNAP benefits, but we believe this concern would be mitigated by states establishing specific accounting codes for the two separate benefits, which FNS can help lead states by setting up separate codes.
- **Increase Allowable Frequency of Funding Drawdown:** The IFR allows for state agencies to draw down administrative funding quarterly, which is suitable for some states, but others with less flexible budgets remain concerned about funding gaps that their states are unable to cover. Thus, APHSA recommends that states be permitted to draw down



funding as frequently as monthly if desired, offering flexibility to meet operational needs and sustain program efficacy.

- **Enhance Performance Criteria:** The IFR outlines four areas of performance criteria by which to measure the success of S-EBT. We appreciate that FNS has not yet established target metric amounts for the criteria as the program is still in its infancy. Regarding the criteria themselves, state agencies are concerned about the feasibility of accurately tracking who was eligible for S-EBT and did not receive benefits. APHSA would also like to see criteria that are more focused on school participation in sharing timely and accurate data with the state, as that data source is a critical means to being able to issue benefits in a timely and accurate manner.

### **Additional Areas of Support**

In addition to our recommendations above, we also wanted to share appreciation and support for the following components in the IFR.

- **Data Matching Flexibility:** Not mandating means-tested data matching against school data promotes program efficiency and reduces administrative burdens.
- **Separate Funding Requests:** Allowing separate funding requests for Child Nutrition (CN) and SNAP agencies facilitates targeted resource allocation and operational efficiency.
- **Benefit Replacement Flexibility:** Providing flexibility to replace benefits for misfortune or disaster ensures continuity of support for affected households.
- **Claims Processes Flexibility:** Granting states discretion in establishing hearings and claims processes enhances the responsiveness and adaptability of the Summer EBT Program.

We greatly appreciate the work that the FNS team has already taken on to kick off the new Summer EBT program, and we look forward to continuing to partner with FNS to ensure long-term success and participation in the program. To further discuss any of the points in these comments, or for opportunities to further partner with state Summer EBT agencies, please reach out to Chloe Green, Manager for Food and Nutrition Services, at [cgreen@aphsa.org](mailto:cgreen@aphsa.org).

Sincerely,







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