

Summary of Share Our Strength Priorities and Relevant Provisions of the Consolidated Appropriations Act of 2023

On December 29, 2022, the [Consolidated Appropriations Act of 2023 \(H.R. 2617\)](#) was signed by the President and became law. This omnibus appropriations bill (sometimes simply known as the omnibus or omni) funds the government for the remainder of Fiscal Year 2023, through September 30, 2023. In addition to setting funding levels across federal programs, this bill also included several significant policy changes, including:

- Permanently allowing [non-congregate summer meal service](#) in certain situations,
- Establishing a permanent, nationwide [Summer EBT](#) benefit, and
- Addressing stolen or [“skimmed” SNAP benefits](#).

To help pay for a permanent non-congregate summer meals option and Summer EBT benefit, the bill does unfortunately curtail two temporary pandemic supports: it reduces Pandemic EBT benefits for summer 2023 and [ends SNAP emergency allotments](#) after February 2023.

The summary below includes more details on these provisions.

Additionally, the [Senate Appropriations Committee’s explanatory statement](#), which accompanies the official text of the Consolidated Appropriations Act to provide additional detail and intent, includes several recommendations and directives related to nutrition assistance programs. For example, it directs the U.S. Department of Agriculture (USDA) to reimburse school meals served in Hawaii and the U.S. territories at the same level as Alaska until the USDA completes an ongoing study of school nutrition costs. It also encourages USDA to do more to streamline the Summer Food Service Program (SFSP) and Child and Adult Care Food Program (CACFP). These directives are not legally binding, but agencies historically abide by them.

Non-Congregate Summer Meal Service

The summer meals programs – the Summer Food Service Program (SFSP) and National School Lunch Program’s Seamless Summer Option (SSO) – have traditionally required “congregate” meal service in which participants receive and consume each meal on site in a group setting. In contrast, “non-congregate” meal service allows children to take meals off-site, which may entail service models like multi-meal pick-up or meal delivery.

This legislation provides a **permanent, nationwide option for non-congregate meal service in rural areas without congregate service beginning this year in summer 2023.**

Summary

• Federal and State Administration

- For summer 2023:
 - Allows USDA and states to follow the models developed for non-congregate demonstration projects and
 - Grants states until April 1, 2023 to submit a plan for USDA approval.
- Requires USDA to issue regulations within one year of enactment (i.e. by December 29, 2023) according to the parameters described below in order to implement non-congregate service for summer 2024 and beyond.
 - The regulations may be interim final regulations that can be released on a more expedited timeline than traditional rulemaking.
 - The regulations must incorporate best practices and lessons learned from the non-congregate demonstration projects and ensure integrity.
- For summer 2024 and beyond, gives states the option to participate and requires participating states to:
 - Notify USDA of their intent to administer the non-congregate option by January 1 each year.
 - Submit a management and administration plan by February 15.

• Location and Child Eligibility Requirements

- Restricts non-congregate service to rural areas with no congregate service.
 - “Rural” is to be defined by the USDA.
 - States are directed to identify areas with no congregate meal service that could benefit the most from non-congregate meals.
 - The law explicitly allows states to identify areas that are not area eligible (see next bullet) as long as there are eligible children there.
 - USDA is directed to ensure that states develop a process for identifying service gaps and barriers in reaching eligible children under both congregate and non-congregate models.
 - States’ annual plans must include a plan to identify and target eligible areas as well as provide reasonable opportunity to access meals across all areas of the state.
- In locations meeting the above requirements, limits non-congregate meals to children who:
 - Are in areas that meet the regulatory requirements for SFSP area eligibility (i.e. fifty percent or more of students are eligible for free or reduced-price school meals according to school or census data). Individual free or reduced-price meal eligibility determinations are **not** required for children in these areas.
 - Are determined eligible for free or reduced-price meals, if they are not in area eligible locations.

• Sponsor Eligibility

- States are directed to encourage participating sponsors to provide non-congregate meals as appropriate in identified areas.

- **Meal Requirements**

- Requires all non-congregate meals to meet usual summer meal pattern requirements.
- Requires all non-congregate meals to meet applicable state and local health, safety and sanitation standards.
- Allows operators to provide meals for up to 10 calendar days at a time, subject to the usual daily per child limits of open congregate sites (typically one breakfast and one lunch per child per day).

Areas to Be Determined

- The law does not define what it means to have “no congregate service,” so much depends on how USDA issues regulations and guidance to states and how states make this determination.
- The law specifies a *priority* for the state agency to encourage existing sponsors to provide non-congregate service but does not lay out any additional restrictions or requirements.

Background

- The summer meals programs (SFSP and SSO) have historically required all participating sites to serve meals in a congregate setting – all meals must be served and consumed on site. This has long presented a challenge because children are not together in a group setting over the summer break like they are during the school year. Many children, especially those in low-income families, are at home for much of the time during summer vacation. Transportation, weather, and area eligibility are additional barriers. Because of these issues, summer meals typically reach just a small fraction of the students who receive free or reduced-price meals during the school year: in 2019, it was just one out of every seven.
- Non-congregate service was piloted by USDA in response to the Agricultural Appropriations Act of 2010, in which Congress authorized [demonstration projects](#) to develop and test methods of providing access to food for low-income children during the summer.
 - Meal delivery in rural areas was part of the Enhanced Summer Food Service Program (eSFSP) demonstration projects run from 2010-2013.
 - Meals-to-You, started in 2019, is another non-congregate meal service pilot for rural communities operated under this demonstration authority.
 - This authority was also used to authorize waivers for outdoor sites affected by excessive heat to serve non-congregate meals.
- [Evaluation](#) of non-congregate meal delivery showed a reduction in food insecurity, though the demonstration project was small-scale and did not have a comparison group.
- During the COVID-19 pandemic, non-congregate service was permitted through waiver authority in order to safely provide meals. The option for non-congregate service continued from 2020 through summer 2022, albeit with [late notice](#) of the extension of waiver authority and then the non-congregate waiver for summer 2022. Through the combination of pandemic waivers (non-congregate, meal service time, parent meal pick-up, and area eligibility, among others), the [number of meals served was significantly higher in 2020 and 2021](#) compared to 2019.
- Share Our Strength has long advocated for a non-congregate option for summer meals to help address barriers to providing summer meals, especially in rural and hard-to-reach communities.

Summer Electronic Benefit Transfer (EBT)

Summer EBT (SEBT) provides a grocery benefit during the summer months to families with children eligible for free or reduced-price school meals. Funds that can be used to purchase food are provided on a debit-style EBT card.

This legislation turns Summer EBT from a small-scale pilot that requires an annual appropriation into a **permanent, nationwide program** that serves **all children eligible for free or reduced-price school meals** in all states, territories, and covered Indian Tribal Organizations (ITOs) **starting in summer 2024**.

Pandemic EBT will remain available for summer 2023 in states that receive plan approval from USDA, but benefit levels will be reduced to no more than \$120 for the full covered summer period (or roughly \$40 per child per month, the same as the SEBT benefit amount for summer 2024). Benefits may be higher in Alaska, Hawaii and the territories proportional to the adjustments for school meal reimbursement rates. States are no longer required to receive approval for a school year 2022-2023 PEBT plan in order to receive approval for summer 2023. The omnibus also explicitly prohibits states from distributing summer 2023 PEBT benefits to students enrolled in schools that do not participate in NSLP or SBP as of the end of the 2022-2023 school year.

Summary

• Federal and State Administration

- Requires USDA to issue regulations within one year of enactment (i.e. by December 29, 2023), which may be interim final regulations that can be released on a more expedited timeline than traditional rulemaking.
 - The regulations must incorporate best practices and lessons learned from the Summer EBT demonstration project and Pandemic EBT.
 - The regulations must ensure timely and fair service for applicants and benefit recipients as well as establish quality assurance and integrity procedures.
- Gives states the option to participate and requires participating states to:
 - Notify USDA of their intent to administer Summer EBT by January 1 each year.
 - Submit a management and administration plan by February 15.
- Authorizes USDA to pay states and ITOs **half** of their administrative expenses, including the administrative expenses of local educational agencies and other agencies involved in operating Summer EBT.
- Prohibits states from distributing PEBT and SEBT benefits for the same period and, beginning in 2024, prohibits USDA and states from distributing SEBT benefits under demonstration project authority.
- Subjects SEBT to certain SNAP and WIC rules relating to fraud prevention and penalties for retailers, vendors, and individuals as well as administrative and judicial review of retailers' applications to be authorized SNAP retailers.

• Benefit Amounts

- Sets a benefit level of \$40 per child per month for summer 2024.
- Annually adjusts benefit levels for inflation each summer after in the same way that SNAP benefits are adjusted for inflation.
- Allows USDA to set higher benefit levels in Alaska, Hawaii and other U.S. territories proportional to the adjustments made to school meal reimbursement rates.

- **Eligibility and Enrollment**

- Requires states to:
 - Automatically enroll without further application students who are determined to be eligible for free or reduced-price meals during the preceding school year, whether through application, direct certification or identification (e.g. identified as experiencing homelessness).
 - Make an application available for students who are not automatically enrolled but may be eligible for free or reduced-price lunches under NSLP rules.
 - This would include students enrolled in schools participating in the Community Eligibility Provision (CEP) who are not identified or directly certified for free or reduced-price meals.
 - Unlike Pandemic EBT, Summer EBT will **not** be automatically available to all students enrolled in CEP schools.
 - Allow eligible and automatically enrolled households to opt out of benefits and establish procedures for doing so.

- **Benefit Redemption**

- Directs states to allow Summer EBT purchases at authorized SNAP retailers and follow SNAP guidelines for food purchases.
 - This applies to all states, even those that implemented the Summer EBT pilot following WIC guidelines.
- Allows covered ITOs, which do not have the authority to administer SNAP but may administer WIC, to implement Summer EBT following WIC guidelines.

- **Benefit Issuance**

- Allows states flexibility in establishing other electronic payment methods besides EBT cards or, in states that do not issue other nutrition assistance program benefits electronically, employing other methods already in use.
- Requires states to incorporate, to the maximum extent practicable, industry standard tools to track or prevent theft, card cloning, or fraud.
- Limits benefits to the summer months with appropriate issuance and expungement timelines to be set by USDA.
 - Unused or unclaimed benefits must be expunged, or removed from EBT cards, in four months or less from issuance.
 - USDA must establish alternate rules for distributing Summer EBT benefits to students who attend year-round or continuous calendar schools.
- Allows states to issue the same benefit amount statewide based on a standardized summer break period rather than calculate benefits based on individual school calendar.

Notes and Areas to Be Determined

- The \$40 per month benefit level reflects the \$30 per month benefit level tested in 2013 adjusted for inflation and rounded up.

- The definition of an eligible child includes an option based strictly on application that does not specify age or school enrollment. Regulations and further guidance will need to clarify eligibility beyond students enrolled in schools participating in NSLP or SBP who are directly certified, identified as eligible, or certified through application as eligible for free or reduced-price meals.
- The law does not dictate how states must structure, make available, and promote the application for those who are not automatically enrolled.
- The amendments to PEBT prohibit states from distributing summer 2023 benefits to children who were not enrolled in a school participating in SBP NSLP as of the end of the school year, even though states are required to identify and offer benefits to students who disenrolled from public schools since the start of the pandemic.
- There is no legislative requirement for states to offer support services like a website, hotline, etc.

Background

- Summer EBT was one of several [demonstration projects](#) implemented by USDA in response to the Agricultural Appropriations Act of 2010, in which Congress authorized pilots to develop and test methods of providing access to food for low-income children during the summer.
- It was first implemented on a small scale in five states in summer 2011, some following a “WIC model” in which recipients could redeem the Summer EBT benefits for packages of WIC-allowable foods at authorized WIC retailers, and others following a “SNAP model” in which recipients redeemed Summer EBT benefits according to SNAP rules at SNAP retailers.
- In 2012, Summer EBT was expanded to a total of 10 states and Indian Tribal Organizations (ITOs) and to cover additional children, half operating under the SNAP model and half under the WIC model.
- The number of states and ITOs participating each summer since 2013 has fluctuated depending on available funding and FNS decision-making. A total of 14 states and ITOs have piloted SEBT since 2011.
- Summer EBT was proven to be effective through the [evaluation](#) commissioned by USDA, reducing very low food insecurity among children at both the \$30 and \$60 per child per month benefit levels.
- Pandemic EBT (PEBT) has similarities to Summer EBT. PEBT provides a grocery benefit equal to the reimbursement rate for free school breakfast, lunch and snack per day when, for five or more consecutive days due to COVID-19, a school is closed or operating at reduced attendance or hours, or when a student is absent. It was implemented in 2020 and later extended to cover summer vacation as well. Thus, Pandemic EBT took the place of Summer EBT pilots in summer 2021 and 2022. As currently authorized, Pandemic EBT may continue through the summer following any school year in which there is a federal public health emergency due to COVID-19. Because the federal public health emergency designation was in place as of the start of the 2022-2023 school year, Pandemic EBT will be available in states that have an approved plan for summer 2023. However, PEBT benefits will be reduced to no more than \$120 for the summer.
- Because of its effectiveness, Share Our Strength has long advocated for Summer EBT to become a permanent, nationwide program through the Child Nutrition Reauthorization process. Share Our Strength has also advocated for increased funding for Summer EBT pilots during the annual appropriations process.

Supplemental Nutrition Assistance Program (SNAP) Skimming

In recent months, SNAP Electronic Benefit Transfer (EBT) card users have increasingly become victims of card skimming. Skimming happens when illegal devices that steal card data and PIN numbers are placed on retail swipe card readers. The card can then be cloned, and using the PIN number, the individual's account can be drained of SNAP funds. Until the omnibus passed, federal law prohibited use of federal funds to reimburse SNAP participants' stolen benefits. Victims were left with no way to be reimbursed their SNAP benefits unless a state chose to reimburse participants with state funds.

This legislation addresses skimming in two major ways. First, it has language directing the USDA to issue guidance to states about theft prevention, including effective security options for EBT card technology. By December 2023, states are expected to implement these security features.

Second, addressing the immediate needs of SNAP participants, the omnibus appropriated federal funds to replace stolen SNAP benefits. Replacement amounts are limited to whichever is less: the entire amount stolen or two months of benefit allotments. This replacement is also limited to twice per year per household, and it only applies to benefits stolen between October 1, 2022, and September 30, 2024.

It is now up to the state agencies to create and implement the procedures to verify claims of theft and to manage the reimbursement process.

SNAP Emergency Allotments

During the federal Public Health Emergency (PHE), states have had the option to provide more SNAP benefits – Emergency Allotments (EAs) – as long as the state continues to have an emergency declaration in place. (The state emergency does not need to be a COVID-19 public health emergency specifically.)

Normally, SNAP benefits are calculated on a sliding scale: households with lower incomes receive more SNAP dollars each month. The exact amount allotted is calculated on a case-by-case basis, based on a formula that considers household size and net income (after subtracting certain allowable deductions like childcare costs).

During the federal PHE, households received the maximum amount allotted for their household size, regardless of their net income. Initially, the EAs did not provide additional benefits to households already receiving the maximum benefit amount, which are the households with the lowest net incomes. However, after April 2021, households already receiving the maximum benefit and households receiving less than \$95 in EA benefits started receiving a total of \$95 per month in additional SNAP benefits.

[Seventeen states](#) have already phased out EAs as they have ended their state public health emergencies. The last EA distribution in South Carolina is January 2023. The remaining states and the District of Columbia have continued EAs.

Previous guidance gave states a one-month phase out of EAs after the federal PHE ends, and there was a commitment to give governors at least 60 days' notice of the intended end of the federal PHE. At the time that the omnibus passed, the federal PHE was in effect until January 11, 2023, and the administration had not yet provided notice that it would expire. That indicates that the PHE would remain in effect until at least mid-April 2023 since it is renewed for 90 days at a time.

However, language included in the omnibus ends the EAs in February 2023. In March 2023, SNAP benefit allotments will revert to amounts based on the pre-pandemic formula in all states, regardless of federal or state emergency declaration status. States that have been continuing to issue EAs will need to communicate the upcoming end of the EAs several months earlier than anticipated since previous guidance and norms would have continued EAs until at least May 2023.