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March 9, 2023

MEMORANDUM

TO: Summer Food Service Program Sponsors

FROM: Aimee F. Beam, MS, RD 
Education Associate, Nutrition Programs

RE: **2023 Operational Memo #5**
SP 06-2023, CACFP 05-2023, SFSP 02-2023: Consolidated Appropriations Act, 2023: Effect on Child Nutrition Programs

On March 3, 2023, the United States Department of Agriculture (USDA) Food and Nutrition Service (FNS) released the following memorandum: SP 06-2023, CACFP 05-2023, SFSP 02-2023, Consolidated Appropriations Act, 2023: Effect on Child Nutrition Programs.

This memorandum provides guidance regarding several topics related to the Summer Food Service Program (SFSP). The topics include prohibition of the use of chicken from China, establishment of a non-congregate meal service option in the SFSP, establishment of a permanent Summer Electronic Benefit Transfer (EBT) Program, and changes to Pandemic EBT.

The memorandum is attached for your review.

Please contact us with any questions at (302) 857-3356.

Attachment: SP 06-2023, CACFP 05-2023, SFSP 02-2023: Consolidated Appropriations Act, 2023: Effect on Child Nutrition Programs

cc: Nutrition Team



Food and Nutrition Service

Braddock Metro Center

1320 Braddock Place Alexandria VA 22314

DATE: March 3, 2023

MEMO CODE: SP 06-2023, CACFP 05-2023, SFSP 02-2023

SUBJECT: Consolidated Appropriations Act, 2023: Effect on Child Nutrition Programs

TO: Regional Directors
Special Nutrition Programs
All Regions

State Directors
Child Nutrition Programs
All States

Issuing Agency/Office:	Food and Nutrition Service/Child Nutrition Programs
Title of Document:	Consolidated Appropriations Act, 2023: Effect on Child Nutrition Programs
Document ID:	
Z-RIN:	
Date of Issuance:	March 3, 2023
Replaces:	N/A
Summary:	This memorandum provides clarification on how the Consolidated Appropriations Act, 2023, P.L. 117-328, impacts the Child Nutrition Programs.

This memorandum provides notice to Child Nutrition Program (CNP) operators regarding Sections 740, 751, 752, and 777 of Division A and Sections 502 and 503 of Division HH of the Consolidated Appropriations Act, 2023 (Public Law 117-328) (the Appropriations Act), enacted on December 29, 2022.

This memorandum applies to State agencies administering, and local organizations operating, the Federal CNPs discussed below.

Crediting of Starchy Vegetables

In Section 740, of Division A of the Appropriations Act, Congress provides that school food authorities (SFAs) participating in the School Breakfast Program (SBP) may credit any vegetable offered, including potatoes and other starchy vegetables, in place of fruit without including vegetables from other subgroups in the weekly menus. This legislative flexibility is effective for school years (SYs) 2022-2023 and 2023-2024, providing additional flexibility for SFAs in planning breakfast menus. SFAs are not required to make any menu changes.

Prohibition on the Use of Chicken from China

In Section 751, of Division A of the Appropriations Act, Congress provides that funds made available by the Appropriations Act cannot be used to procure raw or processed poultry products imported into the United States from the People’s Republic of China for use in any CNP. Consistent with the terms of the Appropriations Act, this memorandum provides notice to CNP operators that Program funds may not be used to procure raw or processed poultry products from the People’s Republic of China. This legislation extends the existing prohibition through September 30, 2023.

Compliance with Paid Lunch Equity Requirements

Under Section 752, of Division A of the Appropriations Act, for SY 2023-2024, only SFAs that had a negative balance in the nonprofit school food service account as of June 30, 2022, shall be required to establish a price for paid lunches served through the National School Lunch Program (NSLP) in accordance with section 12(p) of the Richard B. Russell National School Lunch Act (NSLA) (42 U.S.C. 1760(p)). Consistent with the terms of the Appropriations Act, this memorandum provides notice that any SFA with a positive or zero balance in its nonprofit school food service account as of June 30, 2022, is exempt from paid lunch equity pricing requirements found at 7 CFR 210.14(e) for SY 2023-2024. The Food and Nutrition Service (FNS) will be providing additional guidance for SFAs that are required to comply with the paid lunch equity provision during SY 2023-2024.

Renaming of the Farm to School Program

Under Section 777, of Division A of the Appropriations Act, Congress changes the name of the USDA Farm to School Program, authorized in Section 18(g) of the Richard B. Russell National School Lunch Act, 42 USC 1769(g), to the “Patrick Leahy Farm to School Program”. This change is effective immediately and requires no action by CNP operators.

Establishment of a Noncongregate Meal Service Option in the SFSP

Under Section 502, of Division HH of the Appropriations Act, Congress amends Section 13 of the NSLA, 42 USC 1761, to establish a noncongregate meal service option in the Summer Food Service Program (SFSP) for rural areas. This option will be available beginning in summer 2023. FNS will issue guidance with implementation models that States may use in summer 2023. Interim final regulations implementing this option must be issued by December 29, 2023.

Establishment of a Permanent Summer EBT Program

Under Section 502, of Division HH of the Appropriations Act, Congress establishes a permanent Summer Electronic Benefits Transfer for Children Program (Summer EBT) beginning in summer 2024. Summer EBT will provide EBT benefits on an ongoing basis to low-income children during the summer months to ensure continued access to meals and snacks when school is not in session.

State agencies may operate Summer EBT, including territories that operate the Nutrition Assistance Program (NAP). Additionally, Indian Tribal Organizations (ITOs) that operate WIC programs may also operate Summer EBT. Benefits issued by an ITO may only be used to purchase supplemental foods from vendors that have been approved for participation in the Special Supplemental Nutrition Program for Women, Infants, and Children (WIC). States that participate in the Summer EBT Program must automatically enroll, without further application from households, each child who is directly certified, able to be directly certified, is an identified student at a provision school, or is otherwise determined by an SFA school food authority to be eligible to receive free or reduced - price meals in the instructional year immediately preceding the summer or during the Summer EBT operational period. Additionally, States must make an application available for children who do not meet the criteria above and make eligibility determinations using the eligibility criteria for free or reduced price lunches under the NSLA.

For 2024, benefits are an amount equal to \$40 per month per eligible child during the summer operational period, or proportionately higher consistent with adjustments authorized in the NSLA for Alaska, Hawaii, Guam, American Samoa, Puerto Rico, the United States Virgin Islands of the United States, and the Commonwealth of the Northern Mariana Islands; beginning in 2025, the benefits will be adjusted to reflect changes in the Thrifty Food Plan (TFP). Summer EBT benefits may only be issued for the summer months, except in the case of children who attend school on a continuous calendar. The Appropriations Act directs USDA to publish interim final regulations by December 29, 2023.

Changes to Pandemic EBT

Under Section 502, of Division HH of the Appropriations Act, States no longer have to provide Pandemic EBT (P-EBT) benefits during the school year in order to submit a P-EBT plan for the covered summer period. Prior to this change, USDA could not approve a state's P-EBT summer plan unless the state had an approved school year plan in place for children in schools or children in childcare. Although USDA encourages states to submit P-EBT plans for the school year, states may now submit a plan for the summer alone. Additionally, Summer P-EBT eligibility is now limited to children who attended NSLP-participating schools at the end of the school year immediately preceding the summer.

Section 503 of Division HH specifies that the P-EBT summer benefit for 2023 shall not exceed \$120 per eligible child, with benefit levels adjusted for Alaska, Hawaii, Puerto Rico, American Samoa, and the Commonwealth of the Northern Mariana Islands.

FNS appreciates the exceptional effort of State agencies and local Program operators working to meet the nutritional needs of children. State agencies are reminded to distribute this memorandum to Program operators immediately. Program operators should direct any questions concerning this guidance to their State agency. State agencies with questions should contact the appropriate FNS Regional Office.

Original Signed

Tina Namian
Director
School Meals Policy Division