



COMMITTEE ON
EDUCATION AND LABOR
U.S. HOUSE OF REPRESENTATIVES
2176 RAYBURN HOUSE OFFICE BUILDING
WASHINGTON, DC 20515-6100

MAJORITY MEMBERS:

ROBERT C. "BOBBY" SCOTT, VIRGINIA,
Chairman

SUSAN A. DAVIS, CALIFORNIA
RAUL M. GRIJALVA, ARIZONA
JOE COURTNEY, CONNECTICUT
MARCIA L. FUDGE, OHIO
GREGORIO KILLI CAMACHO SABLAN,
NORTHERN MARIANA ISLANDS
FREDERICA S. WILSON, FLORIDA
SUZANNE BONAMICI, OREGON
MARK TAKANO, CALIFORNIA
ALMA S. ADAMS, NORTH CAROLINA
MARK DESAULNIER, CALIFORNIA
DONALD NORCROSS, NEW JERSEY
PRAMILA JAYAPAL, WASHINGTON
JOSEPH D. MORELLE, NEW YORK
SUSAN WILD, PENNSYLVANIA
JOSH HARDER, CALIFORNIA
LUCY MCBATH, GEORGIA
KIM SCHRIER, WASHINGTON
LAUREN UNDERWOOD, ILLINOIS
JAHANA HAYES, CONNECTICUT
DONNA E. SHALALA, FLORIDA
ANDY LEVIN, MICHIGAN
ILHAN OMAR, MINNESOTA
DAVID J. TRONE, MARYLAND
HALEY M. STEVENS, MICHIGAN
SUSIE LEE, NEVADA
LORI TRAHAN, MASSACHUSETTS
JOAQUIN CASTRO, TEXAS

MINORITY MEMBERS:

VIRGINIA FOXX, NORTH CAROLINA,
Ranking Member

DAVID P. ROE, TENNESSEE
GLENN THOMPSON, PENNSYLVANIA
TIM WALBERG, MICHIGAN
BRETT GUTHRIE, KENTUCKY
BRADLEY BYRNE, ALABAMA
GLENN GROTHMAN, WISCONSIN
ELISE W. STEFANIK, NEW YORK
RICK W. ALLEN, GEORGIA
LLOYD SMUCKER, PENNSYLVANIA
JIM BANKS, INDIANA
MARK WALKER, NORTH CAROLINA
JAMES COMER, KENTUCKY
BEN CLINE, VIRGINIA
RUSS FULCHER, IDAHO
RON WRIGHT, TEXAS
DANIEL MEUSER, PENNSYLVANIA
DUSTY JOHNSON, SOUTH DAKOTA
FRED KELLER, PENNSYLVANIA
GREGORY F. MURPHY, NORTH CAROLINA
JEFFERSON VAN DREW, NEW JERSEY

July 30, 2020

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

Dear Secretary Perdue:

As Chairman of the House Committee on Education and Labor, I write to share my concerns about the Department of Agriculture's (Department) decision to exclude important requirements in its recent extension of the nationwide waiver to allow meal pattern flexibility in the child nutrition programs. While I acknowledge the need for targeted and temporary flexibility to assist program operators during this time, it is imperative that the Department adhere to the requirements outlined in the *Families First Coronavirus Response Act*¹ (FFCRA). In particular, in accordance with Section 2202(c) of the FFCRA, the Department must ensure that program operators demonstrate that there is a "supply disruption with respect to foods served under their qualified program due to COVID-19"² in order to allow meal pattern flexibility.

On June 25, 2020, the Department issued a memo on the fourth extension to the nationwide waiver to allow meal pattern flexibility in the child nutrition programs. According to the memo, "when reviewing requests from local Program operators, the state agency should consider requests that are targeted and justified *based on plans to support access to nutritious meals while*

¹ 29 U.S.C. §2601 (March 18, 2020, amendment 'This Act . . . may be cited as the Families First Coronavirus Response Act.') (internal quotations omitted).

² 42 U.S.C. §1760 (March 18, 2020, amendment National School Lunch Program Requirement Waivers Addressing COVID-19 (c)).

*minimizing potential exposure to COVID-19 during SY 2020-2021.*³ However, in four prior memos from the Department on extensions of the nationwide waiver for meal pattern flexibility, the Department stated that “when reviewing requests from local program operators, the state agency should consider requests that are targeted and justified *based upon disruptions to the availability of food products resulting from unprecedented impacts of COVID-19.*”⁴ In these previous memos, the Department properly includes the requirement for schools to demonstrate undue hardship in obtaining food products in order to receive a waiver. However, the erasure of the requirement in the most recent memo makes it appear as if the Department is discontinuing its commitment to ensure that the law is followed and that children receive meals that are in line with federal nutrition standards.

Healthy school meals are critical to ensure the food, security, and health of our nation’s children during this time, and the authority under the FFCRA allows waivers to nutrition standards only under prescribed circumstances. According to new research from the Harvard University T.H. Chan School of Public Health, the updated meal pattern requirements from the *Healthy Hunger-Free Kids Act of 2010* have resulted in a 47 percent reduction in obesity prevalence among low-income children.⁵ Initial research on food insecurity during the pandemic has showed a catastrophic increase among children, with nearly 35 percent of households with children experiencing food insecurity in April 2020 compared to 7 percent in 2018.⁶ It is important during these unprecedented times that we do everything possible so children have access to nutritious, high-quality food.

For the above reasons, I ask the Department to respond to the following requests:

1. Please provide a detailed explanation for amending the language in the memo issued on June 25, 2020, to no longer require that operators demonstrate supply disruptions due to COVID-19 in order to receive meal pattern waiver approval.

³ U.S. Dep’t of Agric., *Nationwide Waiver to Allow Meal Pattern Flexibility in the Child Nutrition Programs – EXTENSION #4* (June 25, 2020), <https://www.fns.usda.gov/cn/nationwide-waiver-meal-pattern-flexibility-extension-4> (see the link to the Nationwide Waiver to Allow Meal Pattern Flexibility in the Child Nutrition Programs – EXTENSION #4 under the Attachment section) (emphasis added).

⁴ U.S. Dep’t of Agric., *Nationwide Waiver to Allow Meal Pattern Flexibility in the Child Nutrition Programs* (March 25, 2020), <https://www.fns.usda.gov/cn/covid-19-meal-pattern-flexibility-waiver> (see the link to the Nationwide Waiver to Allow Meal Pattern Flexibility in the Child Nutrition Programs under the Resources section); U.S. Dep’t of Agric., *Nationwide Waiver to Allow Meal Pattern Flexibility in the Child Nutrition Programs – EXTENSION #2* (April 21, 2020), <https://www.fns.usda.gov/cn/nationwide-waiver-allow-meal-pattern-flexibility-extension>; U.S. Dep’t of Agric., *Nationwide Waiver to Allow Meal Pattern Flexibility in the Child Nutrition Programs – EXTENSION #1* (May 14, 2020), <https://www.fns.usda.gov/cn/nationwide-waiver-allow-meal-pattern-flexibility-extension-2>; U.S. Dep’t of Agric., *Nationwide Waiver to Allow Meal Pattern Flexibility in the Child Nutrition Programs – EXTENSION 3* (June 8, 2020), <https://www.fns.usda.gov/cn/nationwide-waiver-allow-meal-pattern-flexibility-extension-3> (emphasis added).

⁵ Erika L. Kenney et al., *Impact of The Healthy, Hunger-Free Kids Act on Obesity Trends*, 7 Health Affairs 1122, 1122–29 (2020).

⁶ Alisha Coleman-Jensen et al., *Household Food Security in the United States in 2018* 12 (2019), <https://www.ers.usda.gov/webdocs/publications/94849/err-270.pdf?v=7050.2.12>.

The Honorable Sonny Perdue

July 30, 2020

Page 3

2. Please provide all Department communications and documentation related to the amended language in the June memo, including communications with state, local, and non-governmental entities.
3. Please outline the steps the Department is taking to ensure that program operators are experiencing supply chain disruptions, pursuant to the requirements in Section 2202(c) of the FFCRA, before approving a waiver of meal pattern requirements.
4. Please describe in detail how the Department will ensure transparency and compliance with the law in the meal pattern waiver approval process, including whether the Department will make public the waivers that it issues.

Please provide the Department's response to these requests as soon as possible, but no later than August 13, 2020. If you have any questions, please contact Alison Hard at Alison.Hard@mail.house.gov and Janice Nsor at Janice.Nsor@mail.house.gov. Please direct all official correspondence to the Committee's Chief Clerk, Tylease Alli, at Tylease.Alli@mail.house.gov.

Thank you for your attention to this matter, and we look forward to your response.

Sincerely,



ROBERT C. "BOBBY" SCOTT

Chairman