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May 11, 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 and Chair of the House Subcommittee on Civil Rights and Human Services, we write to urge the Department of Agriculture (Department) to not reinstate the now-vacated 2018 final rule on school meal nutrition standards¹ as the Department indicated on a recent webinar with school nutrition professionals.² We urge you to give due deference to the court's decision and respect the rulemaking process as required by the Administrative Procedure Act³ as well as uphold your responsibility to ensure that federal school nutrition standards are consistent with the Dietary Guidelines for Americans (DGAs). Following the ruling of the United States District Court for the District of Maryland on April 13, 2020, to vacate the final rule, *Child Nutrition Programs: Flexibilities for Milk, Whole Grains, and Sodium Requirements*,⁴ (2018 final rule) the Department must ensure that any future rulemaking upholds the statutory requirement for nutrition standards to be consistent with the goals of the DGAs.⁵

¹ Child Nutrition Programs: Flexibilities for Milk, Whole Grains, and Sodium Requirements, 7 C.F.R. § 210, 215, 220, 226 (2018).

² See *COVID-19 Series: USDA Update*, <https://www.pathlms.com/sna/courses/18166/webinars/8810> (last visited May 5, 2020) (live webinar held on Apr. 22, 2020, 2:00 PM) (there is no known recording of this event, however, USDA staff indicated that they are working to provide a solution that will keep in place the nutrition standards based on the 2018 final rule).

³ 5 U.S.C. 551.

⁴ *Id.* at 1.

⁵ 42 U.S.C. § 1753.

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Nearly 30 million children participated in the National School Lunch Program (NSLP) in fiscal year 2019.⁶ Research has shown that approximately half of children's daily dietary intake comes from school breakfast and lunch,⁷ and that nutrition plays a key role in the health and academic outcomes of children.⁸ It is the responsibility of the Department to ensure that the foods children are served in school are nutritious and in alignment with the DGAs as prescribed by law.⁹

The now-vacated 2018 final rule weakened sodium, whole grain, and milk nutrition standards for the NSLP and the School Breakfast Program (SBP) and failed to meet the statutory standard of alignment with the DGAs. The rule delayed the second sodium-reduction targets by seven years (from school year 2017-2018 to school year 2024-2025) and eliminated the third sodium-reduction targets, halved the whole grain-rich requirement (from 100 percent to 50 percent whole grain-rich¹⁰), and permitted low-fat flavored milk. These changes contradict the recommendations of the DGAs to follow the Institute of Medicine's¹¹ recommendations for sodium by age group, to ensure that at least half of grains are whole grains, and to consume less than 10 percent of daily calories as added sugars.¹²

It is important to note that prior to the implementation of the 2018 final rule, schools were largely complying with the nutrition standards under the 2012 final rule, which were aligned with the 2010-2015 DGAs. In fact, according to the Department's findings, the nutritional quality of school meals improved significantly since implementation of the updated nutrition standards under the 2012 final rule.¹³ This same report also shows that plate waste did not increase as a result of the 2012 nutrition standards, and that findings on plate waste for school year 2014-2015 "are generally comparable to findings from studies that examined plate waste prior to implementation of the updated nutrition standards."¹⁴ Despite improvements under the 2012 final rule, the DGAs have since been updated, so the Department must ensure that any new rulemaking take the most recent DGAs into account.

⁶ U.S. Department of Agriculture Food and Nutrition Service, National School Lunch Program: Participation and Lunches Served 1 (2020), <https://fns-prod.azureedge.net/sites/default/files/resource-files/slsummar-4.pdf>.

⁷ Karen Weber Cullen & Tzu-An Chen, *The Contribution of the USDA School Breakfast and Lunch Program Meals to Student Daily Dietary Intake*, 5 Preventive Medicine Reports 82, 82-84 (2017).

⁸ H. Taras, *Nutrition and Student Performance at School*, 75 Journal of School Health 199, 199-213 (2005); D. MacLellan et al., *Food Intake and Academic Performance Among Adolescents*, 69 Canadian Journal of Dietetic Practice and Research 141, 141-44 (2008).

⁹ 42 U.S.C. § 1753.

¹⁰ Whole-grain rich is defined as 50 percent or more whole grain. Therefore, the 2018 final rule allows for only 25 percent of grains to be whole, compared to the DGA recommendation to make at least half of grains whole grains.

¹¹ The Institute of Medicine has since been renamed the National Academies of Sciences, Engineering, and Medicine (NASEM).

¹² U.S. Department of Health and Human Services & U.S. Department of Agriculture, Dietary Guidelines 2015-2020 Eighth Edition 15 (2015), https://health.gov/sites/default/files/2019-09/2015-2020_Dietary_Guidelines.pdf.

¹³ U.S. Department of Agriculture Food and Nutrition Service, School Nutrition and Meal Cost Study Final Report Volume 2: Nutritional Characteristics of School Meals (Summary) 1 (2019), <https://fns-prod.azureedge.net/sites/default/files/resource-files/SNMCS-Volume2-Summary.pdf>.

¹⁴ U.S. Department of Agriculture Food and Nutrition Service, School Nutrition and Meal Cost Study Volume 4: Student Participation, Satisfaction, Plate Waste, and Dietary Intakes xxxiii (2019), <https://fns-prod.azureedge.net/sites/default/files/resource-files/SNMCS-Volume4.pdf>.

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During the current COVID-19 pandemic, school food authorities are facing unprecedented challenges serving children. In the *Families First Coronavirus Response Act*, Congress provided the Department with flexibility to waive nutrition standards as appropriate to accommodate disruptions in the nation's food system during this time.¹⁵ This flexibility should provide schools with the flexibility they need to continue serving students while the Department fulfills its statutory responsibility to ensure that long-term nutrition standards comply with the DGAs.

For the above reasons, we urge the Department to not reinstate the now-vacated 2018 final rule, but rather develop school nutrition standards that uphold the statutory requirement for nutrition standards to be consistent with the goals of the current DGAs. We also request that the Department provide its plans for school nutrition standards in the interim.

Please provide the Department's current plans for school nutrition standards as soon as possible, but no later than May 25, 2020. If you have any questions, please contact Alison Hard at Alison.Hard@mail.house.gov. Please direct all official correspondence to the Committee's Chief Clerk 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
Chair
Committee on Education and Labor



SUZANNE BONAMICI
Chair
Subcommittee on Civil Rights and Human
Services

¹⁵ Pub. L. No. 116-127.