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December 22, 2020

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

RE: Proposed Rule: *Child Nutrition Programs: Restoration of Milk, Whole Grains, and Sodium Flexibilities* (RIN 0584-AE81)

Dear Secretary Perdue:

As Members of the House Committee on Education and Labor, we write to urge you to rescind the proposed rule titled *Child Nutrition Programs: Restoration of Milk, Whole Grains, and Sodium Flexibilities*, which is nearly identical to the vacated 2018 final rule of the same title<sup>1</sup> (2018 final rule). We urge you to uphold your responsibility to ensure that federal school nutrition standards are consistent with the current Dietary Guidelines for Americans (DGAs).

Nearly 30 million children participated in the National School Lunch Program (NSLP) in fiscal year 2019.<sup>2</sup> Research has shown that approximately half of children's daily dietary intake comes from school breakfast and lunch<sup>3</sup> and that nutrition plays a key role in the health and academic outcomes of children.<sup>4</sup> Under the *Healthy, Hunger-Free Kids Act*, it is the responsibility of the

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

<sup>2</sup> 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>.

<sup>3</sup> 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).

<sup>4</sup> 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).

Department to ensure that the foods children are served in school are nutritious and in close alignment with the DGAs.<sup>5</sup>

The vacated 2018 final rule, which this proposed rule would resurrect, weakened school meal nutrition standards for the NSLP and the School Breakfast Program (SBP) and failed to meet the congressionally intended statutory standard of alignment with the DGAs. The 2018 final 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-rich<sup>6</sup>), and allowed flavored low-fat milk. These changes to sodium and whole grain standards contradict the recommendations of the DGAs to follow the Institute of Medicine's<sup>7</sup> recommendations for sodium by age group and to ensure that at least half of grains are whole grains.<sup>8</sup> The DGAs are designed to inform nutrition standards in federal programs, and are based on a rigorous evidence-based analysis process that takes into account the totality of current nutrition science.

Notably, 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 *School Nutrition and Meal Cost Study Final Report*, the nutritional quality of school meals had improved significantly since implementation of the updated nutrition standards under the 2012 final rule.<sup>9</sup> 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."<sup>10</sup> Despite improvements under the 2012 final rule, the DGAs have since been updated, and they are expected to be updated again by the end of 2020. Therefore, we also urge the Department to extend this comment period by 60 days so that any new rulemaking can take the most up-to-date DGAs into account.

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.<sup>11</sup> These waivers must also be used in

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<sup>5</sup> 42 U.S.C. § 1753.

<sup>6</sup> Whole-grain rich is defined as 50 percent or more whole grain. Therefore, the 2018 final rule requires only 25 percent of grains to be whole grains, compared to the DGA recommendation to make at least half of grains whole grains.

<sup>7</sup> The Institute of Medicine has since been renamed the National Academies of Sciences, Engineering, and Medicine (NASEM).

<sup>8</sup> 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](https://health.gov/sites/default/files/2019-09/2015-2020_Dietary_Guidelines.pdf).

<sup>9</sup> 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>.

<sup>10</sup> 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>.

<sup>11</sup> Pub. L. No. 116-127.

alignment with the law, which requires that they be issued only in instances of documented food system disruptions.<sup>12</sup> These waivers 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. We must ensure that school meals remain nutritious, particularly through the pandemic and economic downturn, as they may be the only healthy meals children receive each day.

For the above reasons, we urge the Department to rescind this proposed rule, and instead to develop school nutrition standards that uphold the statutory requirement for nutrition standards to be consistent with the goals of the most up-to-date DGAs.

Sincerely,



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**ROBERT C. "BOBBY" SCOTT**  
Chairman



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**SUSAN A. DAVIS**  
Member of Congress



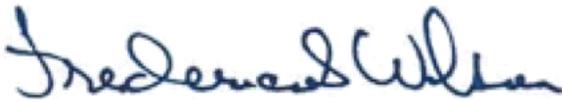
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**RAÚL M. GRIJALVA**  
Member of Congress



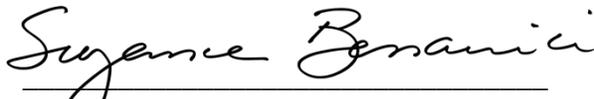
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**GREGORIO KILILI CAMACHO SABLÁN**  
Member of Congress



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**FREDERICA S. WILSON**  
Member of Congress



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**SUZANNE BONAMICI**  
Member of Congress



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**MARK TAKANO**  
Member of Congress



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**ALMA S. ADAMS, Ph.D.**  
Member of Congress

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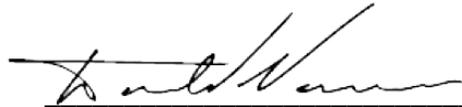
<sup>12</sup> 42 U.S.C. §1760 (March 18, 2020, amendment National School Lunch Program Requirement Waivers Addressing COVID-19 (c)).



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**MARK DESAULNIER**

Member of Congress



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**DONALD NORCROSS**

Member of Congress



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**PRAMILA JAYAPAL**

Member of Congress



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**JOSEPH D. MORELLE**

Member of Congress



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**KIM SCHRIER, M.D.**

Member of Congress



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**JAHANA HAYES**

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**ANDY LEVIN**

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**DAVID TRONE**

Member of Congress



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**SUSIE LEE**

Member of Congress