



**Congress of the United States**  
**House of Representatives**  
**Washington, DC 20515**

July 7, 2020

The Honorable Sanford Bishop  
Chairman  
Subcommittee on Agriculture, Rural  
Development, FDA and Related Agencies  
House Committee on Appropriations  
Washington, DC 20515

The Honorable Jeff Fortenberry  
Ranking Member  
Subcommittee on Agriculture, Rural  
Development, FDA and Related Agencies  
House Committee on Appropriations  
Washington, DC 20515

Dear Chairman Bishop and Ranking Member Fortenberry,

We urge you to support language in the Fiscal Year 2021 Agriculture Appropriations bill that will help address a nutrition problem for our students and ensure stability for our school meal programs in the upcoming school year.

As explained by the American Academy of Pediatrics, “Dairy products play an important role in the diet of children... In fact, milk is the leading food source of three of the four nutrients of public health concern (calcium, vitamin D, and potassium) in the diet of American children 2-18 years.”<sup>1</sup> However, according to the Department of Health and Human Services and Department of Agriculture, American children and adolescents over four years old are not consuming enough dairy to meet the Dietary Guidelines for Americans (DGAs) recommendations.<sup>2</sup> What’s more, there is a widely recognized decline in the amount of milk kids are drinking in schools, which coincides with a 2012 regulatory change which barred low-fat (1%) flavored milk from school lunches, breakfasts, and other school food options.<sup>3</sup>

This is a nutrition problem for our children, as milk is the number one source of nine essential nutrients in student diets, *when they drink it*. To stem the decline in consumption, a commonsense, healthy, and workable solution that has received widespread bipartisan support is allowing low-fat flavored milk as an option for school meal programs. This milk option is nutrient-dense, low in fat, and typically contains less sugar than the cap recommended by the National Academies of Sciences, Engineering, and Medicine for flavored milk.<sup>4</sup> Key to this solution is the fact that kids will choose to drink this nutritious option, with low-fat flavored

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<sup>1</sup> American Academy of Pediatrics. Public comments on *Docket No. FDA-2018-N-3522*. January 23, 2019.

<sup>2</sup> U.S. Department of Health and Human Services and U.S. Department of Agriculture. *2015-2020 Dietary Guidelines for Americans*. 8th Edition. December 2015.

<sup>3</sup> Food and Nutrition Service, U.S. Department of Agriculture. *School Nutrition and Meal Cost Study Final Report Volume 4: Student Participation, Satisfaction, Plate Waste, and Dietary Intakes*. April 2019.

<sup>4</sup> Institute of Medicine. *Nutrition Standards for Foods in Schools: Leading the Way Toward Healthier Youth*. Washington, D.C.: The National Academies Press. 2007.

being the most commonly-consumed milk variety prior to the 2012 removal.<sup>5</sup> Additionally, low- and non-fat flavored dairy has been named as a way to increase vital nutrient intake by the American Heart Association,<sup>6</sup> American Academy of Pediatrics,<sup>7</sup> and DGAs.<sup>8</sup>

We were pleased that low-fat flavored milk was re-secured as an option in school meal programs in December 2018 under a USDA final rule, which also addressed sodium and whole grain requirements. When submitting comments on the rule, the Academy of Nutrition and Dietetics reported, “Flavored milk has been shown to be an effective tool in encouraging milk consumption by school-aged children; studies have demonstrated that school-aged children who drink flavored milk meet more of their nutrient needs, do not consume more added sugar, fat, or calories, and are similar in weight to non-milk drinkers.”<sup>9</sup> Along similar lines, the School Nutrition Association (SNA) supported the dairy portion of the rule in its comments.<sup>10</sup>

Last year, the sodium and whole grain portions of the 2018 rulemaking were challenged in court. In April 2020, the U.S. District Court for the District of Maryland, Southern Division found that the rule violated the Administrative Procedure Act due to the sodium and whole grain provisions, *but not the dairy provisions*, which neither the lawsuit nor the court ruling addressed. However, the Court vacated and remanded the entire final rule to USDA for further proceedings.

This outcome has cast a wave of uncertainty over our school meals programs for the coming academic year. Most school districts have already completed the procurement of school milk for next year, and while a broad meal pattern waiver is currently in place due to COVID-19, the fate of this and other waivers is very unclear at this point. Thus, we are greatly concerned about the potential for schools to be unable to offer low-fat flavored milk at any point during the upcoming school year, given the volatile situation they now face.

Therefore, while work remains on longer-term solutions, we urge the inclusion of language in the Fiscal Year 2021 Agriculture Appropriations bill to allow low-fat flavored milk consistent with the DGAs to continue to be an option for school meal programs. This will provide our students with the nutrient-dense, low-fat flavored milk option they will actually drink and our schools with the stability they need during an increasingly unstable time.

Thank you for considering our request to help our students get the nutrients they need. We regret the late nature of this request, but the Court ruling did not occur until the Appropriations submission process was completed, so we hope you will understand our urgency in raising this matter with you.

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<sup>5</sup> USDA Food and Nutrition Service. 82 FR 56703. November 20, 2017.

<sup>6</sup> American Heart Association. *Added Sugars and Cardiovascular Disease Risk in Children: A Scientific Statement From the American Heart Association*. May 2017.

<sup>7</sup> American Academy of Pediatrics Council on School Health and Committee on Nutrition. *Snacks, Sweetened Beverages, Added Sugars, and Schools*. March 2015.

<sup>8</sup> 2015-2020 Dietary Guidelines for Americans, p49.<sup>9</sup> Academy of Nutrition and Dietetics. Public Comments on *Docket No. FNS-2017-0021*. January 29, 2019.

<sup>9</sup> Academy of Nutrition and Dietetics. Public Comments on *Docket No. FNS-2017-0021*. January 29, 2019.

<sup>10</sup> School Nutrition Association. Public Comments on *Docket No. FNS-2017-0021*. January 19, 2019.

Sincerely,

  
JOE COURTNEY  
Member of Congress



/s/ Anthony Brindisi  
Member of Congress

/s/ Angie Craig  
Member of Congress

/s/ TJ Cox  
Member of Congress

/s/ Jim Costa  
Member of Congress

/s/ James Comer  
Member of Congress

/s/ Antonio Delgado  
Member of Congress

/s/ Glenn Grothman  
Member of Congress

/s/ Jahana Hayes  
Member of Congress

/s/ Josh Harder  
Member of Congress

/s/ Chrissy Houlihan  
Member of Congress

/s/ John Joyce  
Member of Congress

/s/ Fred Keller  
Member of Congress

/s/ Ron Kind  
Member of Congress

/s/ Ann McLane Kuster  
Member of Congress

/s/ Dan Meuser  
Member of Congress

/s/ Tom O'Halleran  
Member of Congress

/s/ Colin C. Peterson  
Member of Congress

/s/ Guy Reschenthaler  
Member of Congress

/s/ David Scott  
Member of Congress

/s/ Kurt Schrader  
Member of Congress

/s/ Elissa Slotkin  
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/s/ Lloyd Smucker  
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/s/ Abigail D. Spanberger  
Member of Congress

/s/ Paul D. Tonko  
Member of Congress

/s/ Elise M. Stefanik  
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/s/ Peter Welch  
Member of Congress