

October 2, 2012

Thomas J. Vilsack
Secretary
U.S. Department of Agriculture
212A Whitten Building
1400 Independence Avenue, SW
Washington, DC 20250

Dear Secretary Vilsack,

As you know, for the 2011-2012 school year, the USDA began implementing updated requirements for the National School Lunch Program (NSLP) and other federal nutrition programs, as directed by the Healthy, Hunger-Free Kids Act of 2010.

I applaud the USDA for its work to improve the nutrition of the meals in our nation's schools. Childhood obesity is a significant health problem with serious repercussions for our nation's future, and proper nutrition is essential to addressing this problem. Federally-funded school meal programs should provide children with the healthiest, most nutritious meals possible.

To that end, many of the updated NSLP requirements are commendable changes. Certain aspects of the requirements, however, are fundamentally flawed and are not having the intended effect of promoting healthy nutrition. The most problematic requirements are the calorie ranges, which limit students in grades K-5 to 650 calories, grades 6-8 to 700 calories, and grades 9-12 to 850 calories.

The Healthy, Hunger-Free Kids Act of 2010 directed the Secretary of USDA to update NSLP requirements "based on recommendations made by the Food and Nutrition Board of the National Research Council of the National Academy of Sciences," and to "establish standards that are consistent with the most recent Dietary Guidelines for Americans."

I understand the USDA adopted the calorie ranges proposed in a report produced by a committee of the Nutrition Board, "School Meals: Building Blocks for Healthy Children," which modeled its recommendations after the 2005 *Dietary Guidelines for Americans* and other sources.

Chapter 2 of the report describes the process the committee used to arrive at the calorie ranges and other standards. The committee first established three age-grade groupings: Elementary School (Grades K-5/Age 5-10), Middle School (Grades 6-8/Age 11-13), and High School (Grades 9-12/Age 14-18). The committee stated these divisions were "practical yet

developmentally appropriate” groupings for use in developing meal requirements, noting that many schools use similar groupings. The committee then determined the median height, weight, activity level, and daily energy requirements for both genders of each age from 5-18 years for U.S. children. These simplistic median-value calculations were the basis for the calorie ranges assigned to each age-grade grouping.

The report contained no analysis of the number of children whose nutrition needs would be adequately met using these median values. Children of the same age vary dramatically in size and in level of activity; some children are essentially sedentary while others participate in physically demanding athletic programs. Male high school athletes, for example, often require 5,000 calories a day, or about 1,700 at lunch. An 850 calorie lunch provides only half the nutrition required by these students. In addition, certain children rely on school meals for most of their daily nutrition.

As a result, simple median values are not adequate to capture these widely varying levels of nutritional need. In fact, the Nutrition Board committee acknowledged this shortcoming the following statement:

The committee recognizes that some children with limited access to food or with substantially higher calorie needs might benefit from school meals that provide significantly more calories (and nutrients). It believes, however, that this situation does not provide the basis for an increase in the maximum calorie levels for school meals. Instead, school food authorities and community organizations have additional mechanisms to help ensure that children have access to sufficient food during the day.¹

The report provided no supporting evidence for its assertion that adequate mechanisms are already in place to make up for the nutritional deficiencies of the meal program. It is also essential to note the committee clearly stated more research was needed to assess its recommendations. The following selection is from Chapter 10 (emphasis added):

The committee asked several questions for which **scientific answers were unavailable**. This lack of information led to uncertainty about the potential effectiveness of some of the recommendations for Meal Requirements for school meals.

Recommendation 8: The committee recommends that agencies of USDA, of other federal departments, and relevant foundations fund research studies on topics related to the implementation of the new Meal Requirements, children’s acceptance of and participation in school meals, and children’s health...²

The first recommended research topic is as follows:

¹ Virginia A. Stallings, et al., School Meals: Building Blocks for Healthy Children (Washington, DC: The National Academies Press, 2010) 72.

² *Id.* at 205.

1. To what extent do the revised calorie standards for school meals provide adequate calories for all without providing excessive calories for some? For example, the recommended minimum and maximum calorie levels were set based on the average for males and females. **Does this cause “hunger” issues with males or athletes (male and female) or both, especially among older students for whom the range of caloric needs is higher?** Studies are needed that measure energy intakes relative to energy needs at the individual level, as well as satiety, across **different strata of family food security and incomes.**³

On September 13, 2012, my staff asked Callie Varner, Senior Legislative Analyst with the Office of Congressional Relations, whether USDA has conducted the research on this question as recommended by the report. To date, we have not received a reply.

The feedback my office has received indicates the USDA did not adequately research this question. My office has received hundreds of communications from state education officials, school officials, parents, teachers, and students raising serious concerns about the regulations. The following concerns arose repeatedly in these communications:

- The calorie limits are causing significant hunger issues, including among children who eat their entire plate.
- Students are having trouble concentrating in class due to distractions from hunger.
- The meals are especially not providing athletes with adequate calories. The size of the meals is dramatically lower than what is required for athletes, resulting in sickness, weakness, and poor performance.
- Students with special nutritional needs, such as higher salt requirements, are not being adequately served.
- Most children with the money to do so are now buying junk food on a regular basis from convenience stores, fast food restaurants, and vending machines, or are purchasing unhealthy a la carte options from schools.
- Children who lack their own money are going hungry. Low-income students who rely on the school as their main source of food are not receiving adequate nutrition.

I understand from news reports that similar objections are being raised by stakeholders throughout the country. These are not trivial concerns. The calorie limits are causing significant harm to the health of children. Numerous students are either receiving inadequate nutrition or are being encouraged to practice unhealthy eating habits. The requirements are also harming children’s education by causing distraction in class. Clearly, the committee’s assertion was incorrect that adequate mechanisms are already in place to correct the deficiencies of the new requirements.

Regarding low-income families specifically, the Healthy, Hunger-Free Kids Act requires participating schools to consider the nutrition needs of food-insecure children. Section 441 requires that lunches and breakfasts “consider the nutrient needs of children who may be at risk

³ *Id.*

for inadequate food intake and food insecurity.” Like the committee, the USDA has argued that other resources are available for food-insecure children. The statute, however, requires that schools structure their breakfasts and lunches to accommodate the actual nutrient needs of children as they currently exist—not the nutrient needs that might exist if other programs were implemented. The new meal requirements are prohibiting schools from using their breakfasts and lunches to accommodate these needs, as required by law.

I welcome more extensive study and discussion of how best to accommodate individual needs. However, the concerns outlined above are extremely urgent and must be resolved promptly. The USDA should take immediate action to address these problems until a more comprehensive solution has been developed. In light of current circumstances, I recommend that USDA do the following:

1) Suspend the maximum calorie limits.

The USDA has legal authority to delay implementation of the calorie limits. Sec. 201 of the Healthy, Hunger-Free Kids Act authorizes the Secretary to “establish in the interim or final regulations a date by which all school food authorities participating in the school lunch program authorized under this Act and the school breakfast program...are required to comply with the meal pattern and nutrition standards established in the interim or final regulations.”

As you know, USDA is postponing the date for compliance with the new school breakfast requirements until the next school year. Certain aspects of the school lunch requirements, such as the sodium restrictions, are also being delayed. USDA should likewise delay the date for compliance with the calorie limits until a viable alternative plan has been developed.

2) Suspend the meat/meat alternate and bread maximums.

Joanie Hildenbrand, Executive Director of Child Nutrition Programs at the Oklahoma Department of Education, has stated that the limits on bread and meat/meat alternates must also be removed to make the requirements workable. If these limits are kept in place while the calorie limits are removed, it will not be financially possible for schools to purchase adequate fruits and vegetables to provide the necessary level of nutrition to students. The USDA may wish to consider increasing these limits rather than eliminating them. It will take time, however, for the USDA to develop a nutritionally appropriate and financially viable plan to increase the limits. In the interim, the limits should be removed immediately until such a plan has been developed.

3) Permit cafeterias that serve more than one grade grouping to use a single system.

The committee report states the most common grade spans are grades K-5, 6-8, and 9-12. However, there are still numerous schools that use a variety of different groupings, such as K-6 or 7-12. According to Joanie Hildenbrand, the Food and Nutrition Service (FNS) Southwest Regional Office has provided no workable guidance on how these schools are to comply with the

new age groupings. Ms. Hildenbrand gave the following account of her office's attempts to seek guidance on this issue:

Oklahoma has numerous school sites that have different age/grade groups than [the USDA groupings]. When we have asked how to handle a 7-12 school site, where all students come into the cafeteria together, USDA says, "...just handle it." One comment from them was, "Teach the 7-8 graders to take a smaller portion and the 9-12 students to take a larger portion."....Obviously whoever came up with that answer has never seen a school try to serve 350 kids within an hour.⁴

This guidance is unacceptable. A member of my staff communicated this concern directly to USDA representatives Callie Varner, Cindy Long, and Duke Storen at a briefing on the NSLP on September 13, 2012. According to Ms. Hildebrand, her office has received no contact from the Southwest Regional Office on this issue since that time.

Until workable guidance is developed, USDA must immediately allow cafeterias that serve irregular grade groupings to choose which of the three plans best meets their needs, and to operate under that plan.

To reiterate, USDA should take these three actions immediately. As discussed above, the methodology used to develop the new requirements was seriously flawed, and the recommended research to verify the effectiveness of the standards appears to be incomplete. The overwhelming level of negative feedback from staff, parents, and students makes clear the committee's process did not succeed in producing a nutritionally appropriate plan for the nation's schoolchildren.

I look forward to reviewing the agency's work in developing more appropriate requirements. I must emphasize, however, it is not acceptable to continue enforcing the existing flawed standards while the USDA considers the development of new ones. The requirements are causing immediate, substantial harm to the health and education of the nation's children. The burden of responsibility lies with the USDA to suspend the flawed standards until it has developed appropriate requirements. The nation's schools cannot be held responsible for complying with unworkable requirements while the USDA undertakes this process.

Please respond to this communication promptly informing me how the USDA intends to proceed with these recommendations.

Sincerely,



Tom A. Coburn, M.D.
United States Senator

⁴ E-mail Correspondence with staff, September 6, 2012.