

Congress of the United States
Washington, DC 20510

August 26, 2020

The Honorable Sonny Perdue
Secretary
United States Department of Agriculture
1400 Independence Avenue S.W.
Washington, DC 20250

Dear Secretary Perdue:

We are writing to express our grave concern over your refusal to extend all school meal waivers through the 2020-2021 school year. We urge you to reverse this decision and use the authority Congress provided you under the Families First Coronavirus Response Act (FFCRA) to extend these waivers.

In a letter to us dated August 20, 2020, you stated that extending these waivers would go beyond the scope of the U.S. Department of Agriculture's (Department) authority. This is incorrect. Congress provided the Department clear authority to issue all of these waivers under FFCRA. The Department clearly agreed it has had authority to implement these waivers, as it has been approving them up until this point. The statutory authority and timelines have not been limited in any way since passage of FFCRA. The Department's authority on all waivers remains in effect. This is a fact that was also confirmed by your own staff. On July 20, 2020, bipartisan congressional staff from the House Committee on Education and Labor and the Senate Committee on Agriculture, Nutrition, and Forestry spoke with Department staff on the phone regarding the school meal waivers. On the call, congressional staff asked whether the Department believed that it had the authority to extend all of the waivers through the end of the 2020-2021 school year. Your staff responded affirmatively that the Department does have the authority to extend all of the waivers through the end of the 2020-2021 school year.

Furthermore, the Department has already used its authority under FFCRA to extend other school meal waivers for the duration of the 2020-2021 school year, including the non-congregate meal service waiver, the meal pattern waiver, and the parent/guardian pickup waiver. These actions indicate that the Department agrees that these authorities under FFCRA can be applied to the 2020-2021 school year as long as the waiver is issued prior to the sunset date of September 30, 2020 prescribed in section 2202(e). Similarly, in your August 20, 2020, letter you expressed concern about whether the Department has budgetary authority to extend waivers even though the Department already cited authority in its area eligibility waiver. However, section 2102 of FFCRA explicitly provides the Department with the authority to issue waivers that increase costs to the federal government, and the authority under this section does not sunset.

The Department's refusal to extend all school meal waivers is inconsistent and baffling during this national crisis, especially considering that as many as 17 million children did not get enough

to eat this summer and there are no signs of the situation improving once the summer is over. By passing the FFCRA authorities into law, Congress clearly gave the Department the tools it needs to continue providing the necessary waivers throughout the duration of the pandemic.

We therefore urge you to immediately reverse your decision to not extend all school meal waivers as there is no basis for your claim that the Department lacks the authority to do so. If you fail to do so, please provide the information and documents requested below:

1. Copies of the Department's legal and other analyses that found that the Department does not have the authority to extend the remaining school meal waivers currently in effect for the duration of school year 2020-2021. If there are no such documents, please state so in your response to this letter, provide an explanation of why there is no such document, and provide a detailed explanation of why the Department does not believe it has the authority to extend waivers.
2. Copies of the Department's legal and other analyses that found that the Department had the authority to extend the non-congregate meal service waiver, the meal pattern waiver, and the parent/guardian pickup waiver for the duration of school year 2020-2021. If there are no such documents, please state so in your response to this letter, provide an explanation of why there is no such document, and provide a detailed explanation of how the Department determined that it had the authority to extend those particular waivers.
3. A detailed explanation of why the Department believes that section 2102 of FFCRA, which explicitly provides the Department with authority to issue waivers that increase costs to the federal government, does not address its budgetary needs with regard to school meal waivers during the COVID-19 pandemic. Please include copies of any written analyses or opinions that were part of this decision.
4. A detailed explanation of why the statements regarding authority in your August 20, 2020, letter directly contradict the information that your staff provided to Committee staff on July 20, 2020.

Thank you for your attention to this urgent matter. For any questions, please reach out to Alison Hard at Alison.Hard@mail.house.gov with the House Committee on Education and Labor and Jacqlyn Schneider at Jacqlyn_Schneider@ag.senate.gov with the Senate Committee on Agriculture, Nutrition, and Forestry. Please direct all official correspondence to the Committees' Chief Clerks, Tylease Alli, at Tylease.Alli@mail.house.gov and Jessie Williams at Jessie_Williams@ag.senate.gov.

Sincerely,



Debbie Stabenow
United States Senator



Robert C. "Bobby" Scott
Member of Congress