

**Congress of the United States**  
Washington, DC 20510

October 13, 2022

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

Dear Secretary Vilsack:

We were pleased to see soy milk recognized as nutritionally equivalent to dairy milk in the 2020 release of the Dietary Guidelines for Americans. The next step is to make that product available to kids in schools who need an alternative to cow's milk. This is especially important because large numbers of minority children particularly Black, Latino, Native American, and Asian-American, are lactose intolerant. These children experience a number of adverse health effects simply because, in practice, dairy is the only type of milk offered in schools.

The rates of lactose intolerance in BIPOC communities are startlingly high, with 65 percent of Latino students, 75 percent of Black students, and 90 percent of Asian students unable to digest dairy milk without detrimental effects.<sup>1</sup> Many kids may not make the connection between consumption of the product and their feelings of discomfort and even illness. Currently, kids who suffer adverse reactions from cow's milk must produce a doctor's note if they choose not to accept traditional milk with their lunch, this is in part due to Congress' onerous "milk note" requirement.<sup>2</sup> This requirement is an issue of equity as it places an unfair burden squarely on minority children.

Lactose-intolerance causes a range of health effects, from stomach pains to severe bloating to gas and diarrhea to even exacerbated asthma symptoms.<sup>3</sup> This makes learning more difficult for kids, and that should be unacceptable to us all.

While USDA has referenced the benefits of lactose-free milk to address the needs of lactose intolerant children, some still emphasize that consuming lactose-free milk may cause an allergic reaction, resulting in symptoms like digestive distress, hives, vomiting, difficulty breathing and anaphylaxis for those with a dairy allergy.<sup>4</sup> However, a 20-year study was released

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<sup>1</sup> <https://www.childrenshospital.org/conditions-and-treatments/conditions//lactose-intolerance>

<sup>2</sup> 42 U.S.C. § 1758(a)(2)(A)(iii).

<sup>3</sup> <https://www.hopkinsmedicine.org/health/conditions-and-diseases/lactose-intolerance>

<sup>4</sup> <https://www.healthline.com/nutrition/lactose-free-milk#downside>

2021 showing that dairy has now surpassed soy, wheat, and nuts as the top food allergy and leading cause of anaphylaxis in children under 16.<sup>5</sup>

Our inattention to the health effects of lactose-intolerance and dairy allergies combined with the near-exclusive offering of dairy to minority students is a textbook example of dietary racism. There would be reprisals if the United States were to put a product on the trays of White kids that caused potentially widespread adverse reactions. The USDA and other federal actors, including Congress, should take immediate remedial action.

We write today to ask that the Equity Commission at USDA assess this circumstance. We also voice our concerns about an insufficient Civil Rights Impact Analysis (CRIA) of the milk program, required by Departmental Regulation 4300-004. While the 2008 Final Rule promulgated by the Food and Nutrition Service (FNS) to implement the milk substitute provisions of the school lunch program claims that the program was reviewed in accordance with the Departmental Regulation, there is a telling absence of any meaningful civil rights analysis; FNS simply concludes that the clearly inequitable and discriminatory milk system currently in place “does not affect the participation of protected individuals” in the school lunch program.<sup>6</sup> That cursory finding falls far short of the type of in-depth analysis required under 4300-004.<sup>7</sup>

Given the high rates of lactose intolerance among BIPOC populations, it is abundantly clear that the current milk substitute system that USDA employs is delivering detrimental impacts on BIPOC school children. These many children who cannot safely or comfortably consume dairy are being forced to accept containers of cow’s milk on their lunch trays by schools who fear losing funding because USDA only reimburses them for beverages at the “milk rate.” This approach not only leaves school children lacking nutritional sustenance but fills lunchroom garbage bins with unopened containers of milk and a lost opportunity to provide kids the nutritional lift that is the basis of the National School Lunch Program. A USDA report in 2019 calculated the value of unopened, discarded milk at \$300 million annually, money that would be better spent by providing for our youth.

America needs to embrace its diversity at the lunch counter. We’d like to work with you to address this matter in a comprehensive manner, addressing all the ways that we can work together to ensure the health and nutritional needs of all of our nation’s school children. We also believe an awareness campaign about lactose intolerance and maldigesting is essential, so that kids can more readily make food choices that will improve their health, wellness, and school performance.

Sincerely,

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<sup>5</sup> Food anaphylaxis in the United Kingdom: analysis of national data, 1998-20. Available at <https://www.bmj.com/content/372/bmj.n251>

<sup>6</sup> Federal Register Volume 73, Number 178 (Friday, September 12, 2008)

<sup>7</sup> See, for example, the CRIA for the Federal Milk Marketing Order Reform located at <https://www.ams.usda.gov/sites/default/files/media/FOR%20Civil%20Rights%20Impact%20Analysis.pdf>



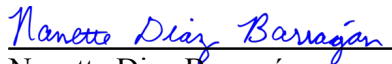
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Troy Carter  
Member of Congress



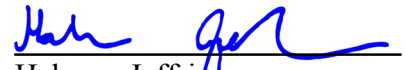
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Ted W. Lieu  
Member of Congress



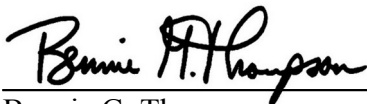
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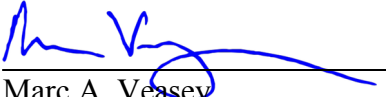
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Nikema Williams  
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Seth Moulton  
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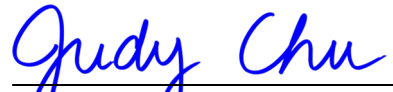
Eleanor Holmes Norton  
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Jamaal Bowman, Ed.D.  
Member of Congress



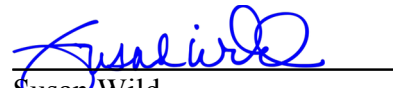
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Member of Congress



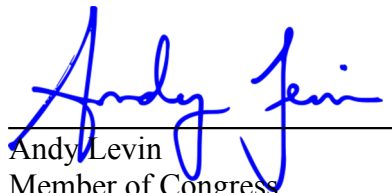
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and Labor



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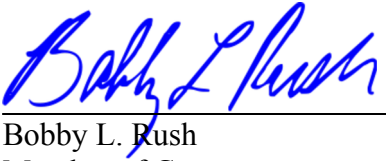
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Member of Congress



Marie Newman  
Member of Congress



Bonnie Watson Coleman  
Member of Congress

A handwritten signature in blue ink, reading "Bobby L. Rush". The signature is fluid and cursive, with the first name "Bobby" being more prominent. A horizontal line is drawn across the signature.

Bobby L. Rush  
Member of Congress