Congress of the United States

Washington, DC 20515

May 21, 2024

Commissioner Robert Califf
U.S. Food and Drug Administration
10903 New Hampshire Avenue
Silver Spring, MD 20993

Deputy Commissioner Jim Jones
U.S. Food and Drug Administration
10903 New Hampshire Avenue
Silver Spring, MD 20993

Dear Commissioner Califf and Deputy Commissioner Jones,

In December 2022, Members of Congress wrote to the U.S. Food and Drug Administration (FDA) urging the agency to prioritize the development of a mandatory front-of-package nutrition labeling system aimed at addressing overconsumption of salt, sugar, and saturated fat from our packaged food supply.[1] We commend the FDA on the progress it has made towards this goal by conducting focus groups, experimental research, and hosting a virtual public meeting[2] on November 16, 2023 that was attended by more than a dozen public health and consumer organizations expressing support for FDA's efforts. However, a handful of food industry stakeholders employed anti-regulatory industry talking points that discourage the agency from developing a strong, mandatory policy at the meeting. We write to respond to these talking points.

1. The Consumer Brands Association argued that FDA's front-of-package nutrition labels should focus not only on nutrients to limit, but on positive nutrients like fiber. We disagree. Companies already can and do make claims about positive nutrients on product labeling: a study conducted by FDA in 2010 found that 53% of foods in U.S. grocery stores had nutrient content claims and another 13% had implied nutrient content claims.[3] There is no need for FDA to mandate positive claims that companies already make for marketing purposes.
2. The Sugar Association argued that focusing only on nutrients to limit is a departure from the Dietary Guidelines for Americans' focus on dietary patterns. We disagree. The dietary guidelines focus on the importance of following a healthy dietary pattern consisting of nutrient-dense forms of foods and beverages across all food groups, which are forms with the least amounts of added sugars, saturated fat, and sodium.[4] Therefore, disclosing high levels of these three nutrients, coupled with the Dietary Guidelines for Americans, will enable consumers to quickly and easily identify foods that can help them build healthy eating patterns.
3. The Food Industry Association (FMI) asserted that Facts Up Front is the best-suited front-of-package labeling scheme, and that other FDA proposals go beyond factual disclosure with subjective characterization. We disagree. The interpretive information in FDA's proposals provides context to help consumers understand how a food fits into their total daily diet. Facts Up Front only includes interpretive information that is already available on the Nutrition Facts label (i.e., the percent Daily Value). We know that the average consumer has difficulty understanding how the percent Daily Value

[1] "Congressional Letter to FDA on Front of Package Labeling", December 2022, https://www.blumenthal.senate.gov/newsroom/press/release/blumenthal-and-delauro-lead-call-for-fda-to-establish-a-front-of-package-nutrition-labeling-system

[2] "Front-of-Package Nutrition Labeling Virtual Public Meeting", Reagan Udall Foundation, November 2023, https://reaganudall.org/news-and-events/events/front-package-labeling

[3] "Food Labeling: FDA Needs to Reassess Its Approach to Protecting Consumers from False or Misleading Claims", GAO, January 2011, https://www.gao.gov/assets/gao-11-102.pdf

[4] U.S. Department of Agriculture. (n.d.). *Dietary Guidelines for Americans 2020-2025*. https://www.dietaryguidelines.gov/sites/default/files/2021-03/Dietary_Guidelines_for_Americans-2020-2025.pdf

on nutrition labels fits in to their daily intake of sodium, added sugars, and saturated fat.[5] Additional interpretive information is needed for these consumers to understand the disclosure. Certain foods with "High In[6]" labels based on the percent Daily Value of nutrients of concern would provide that much-needed interpretive element and would be factual and objective. FDA can and should adopt a mandatory front-of-package label that provides consumers the information and context they need to make the best decision for themselves, and only "High in" labels meet those criteria.

4. The International Dairy Foods Association (IDFA) argued that FDA's front-of-package nutrition labels should not caution consumers against eating particular foods. We agree, but do not believe that any of FDA's front-of-pack schemes designed for research purposes are intended to do so. Rather, labels that convey when foods are high in sodium, added sugars, or saturated fat are simply informative and will assist consumers in making more informed food selections.

In addition to these points, we note that many advocates at the November meeting called on FDA to adopt a front-of-package labeling system that is mandatory and includes calories. We agree with these requests.

As you develop regulations, we urge you to move expeditiously and prioritize public health over private industry interests. The Department of Health and Human Service's Fall 2023 Unified Agenda of Regulatory Actions stated that FDA would issue a notice of proposed rulemaking on front-of-package nutrition labeling in December 2023, but the Spring 2023 Unified Agenda published in December delays the proposed rulemaking to June 2024. We urge FDA not to further delay its timeline and to issue a proposed rule by June 1, 2024.

We appreciate your dedication to advancing and protecting public health, and we look forward to your response.

Sincerely,

Jan Schakowsky
Member of Congress

Rosa L. DeLauro
Member of Congress

[5] Center for the Science and the Public Interest. (2023, March 27). *Comment on the FDA's Notice Regarding Quantitative Research on Front of Package Labeling*. https://www.cspinet.org/sites/default/files/2023-03/Comment%20on%20FDA%20Quantitative%20Research%20on%20FOPNL_3.20.23_Final.pdf

[6] "High In" labels characterize foods based on the widely-accepted definition of "high" as "20 percent or more of the Reference Daily Intake (RDI) or the Daily Reference Value (DRV) per Reference Amounts Customarily Consumed (RACC)," codified 30 years ago in federal regulations, as seen in 21 CFR 101.54, https://www.ecfr.gov/current/title-21/chapter-I/subchapter-B/part-101/subpart-D/section-101.54.

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