

Congress of the United States
Washington, DC 20515

May 17, 2022

President Joseph R. Biden
The White House
1600 Pennsylvania Ave NW
Washington, DC 20500

President Biden:

We write to you to express our concern over consolidation in the baby formula market and the impact of market monopolization on rising costs and regional shortages of this critical food supplement. We urge the White House and the relevant Federal agencies to use all available tools to restore competition and increase resiliency to secure this vital supply chain.

Across the country, parents are struggling to find adequate, reliable sources of baby formula. In particular, families with children who require specialty formulas due to allergies or disabilities find it nearly impossible to locate these products.¹ The problem is so pronounced that the nationwide out-of-stock rate for baby formula has hit 43%—up from between 2-8% in the first half of 2021—and is continuing to climb.² Shortages exacerbated by global supply chain disruptions and inflation have resulted in the average cost of the most popular baby formula brands rising 18% in the last year.³ Resale prices in the secondary market are often marked up at extraordinary rates, with online sellers on eBay and Craigslist listing products for double or triple their retail prices.⁴ Price hikes and supply shortages have left parents at a loss for how to feed their children. In some instances, parents are taking dangerous measures, such as rationing supplies or brewing their own baby formula.⁵

¹ Kyle Swenson & Jenna Portnoy, *U.S. Baby Formula Shortage Leaves Parents Scrambling*, WASH. POST (May 12, 2022), <https://www.washingtonpost.com/dc-md-va/2022/05/11/formula-shortage-parents-inflation/>.

² *Nation-wide Out-of-Stock Is Now at 43% for the Week Ending May 8th*, DATASEMBLY: NEWS ROOM (May 10, 2022), <https://datasembly.com/news/out-of-stock-rate-in-april-2022-copy/>.

³ Megan Cerullo, *The Nationwide Baby Formula Shortage Is Getting Worse*, CBS NEWS: MONEYWATCH (May 10, 2022), <https://www.cbsnews.com/news/baby-formula-shortage-rationing-national-crisis/>.

⁴ Edgar Sandoval, Amanda Morris, & Madeleine Ngo, *A Baby Formula Shortage Leaves Desperate Parents Searching for Food*, N.Y. TIMES (May 10, 2022), <https://www.nytimes.com/2022/05/10/us/baby-formula-shortage.html>.

⁵ Catherine Pearson, *Why Doctors Don't Recommend Homemade Baby Formula*, N.Y. TIMES (May 11, 2022), <https://www.nytimes.com/2022/05/11/well/homemade-baby-formula.html>.

Increased supplier concentration in the baby formula market is central to the shortages now facing American families. Just two companies—Abbott and Reckitt—control 80% of domestic baby formula production.⁶ This highly concentrated market is incredibly brittle, rendering it unable to absorb supply shocks that a healthy, resilient market can easily weather.⁷

Take for example, the February bacterial outbreak at one of Abbott’s baby formula production facilities, which resulted in the recall of Abbott’s popular baby formula product, Similac, and a still-ongoing shutdown of the facility.⁸ This shutdown is widely seen as one of the main drivers of the current shortage.⁹ The baby formula market simply lacks the flexibility it needs to respond to this crisis and fill the supply gap left by the shutdown of a single company’s plant. We’ve seen similar stories play out in other concentrated food markets, such as meat and corn.¹⁰ In an age of supply chain shortages, pandemics, and inflation, it’s imperative that supply lines for essential products like baby formula are secure and resilient.

We urge you to combat the growing concentration of the baby formula market, intervene to lower costs for American families, and shore up the formula supply chain. Specifically, we request that the White House and relevant Federal agencies:

- Use the Defense Production Act of 1950 to ramp up production of baby formula, focusing on partnering with smaller regional suppliers to build up their production capacity;
- Designate baby formula as a scarce product under the Defense Production Act and investigate and prosecute hoarding and price gouging of baby formula under the Act or other relevant laws;
- Monitor and prosecute reports of “scam formula” flooding the market;
- Study concentration in the baby formula market, in particular by scrutinizing past mergers, investigating anticompetitive conduct, and looking into vertical market integration that may add to supply chain fragility;

⁶ *Major U.S. Retailers Limit Infant Formula Purchases on Shortage*, REUTERS (May 10, 2022), <https://www.reuters.com/business/healthcare-pharmaceuticals/baby-formula-shortage-forces-cvs-health-limit-purchases-2022-05-10/>; see also *Baby Formula*, OPEN MKTS. INST.: AMERICA’S CONCENTRATION CRISIS, <http://concentrationcrisis.openmarketsinstitute.org/industry/baby-formula/> (last visited May 16, 2022) (identifying, as of 2018, the next two largest suppliers as Perrigo and Nestle).

⁷ *How to Fix Supply Chains? Break the Chain*, OPEN MKTS. INST.: BLOGS (Feb. 25, 2021), <https://www.openmarketsinstitute.org/publications/how-to-fix-supply-chains-break-the-chain>.

⁸ Joseph Pisani, *Why Is There a Baby-Formula Shortage? What to Know and What’s Being Done About It*, WALL ST. J. (May 12, 2022), <https://www.wsj.com/articles/why-baby-formula-shortage-11652188230>.

⁹ Bryan Pietsch, Grace Moon, & Taylor Telford, *U.S. Baby Formula Shortage Is Worrying Parents. Here’s What to Know*, WASH. POST (May 11, 2022), <https://www.washingtonpost.com/business/2022/05/11/baby-formula-shortage-similac-alimentum-elecare-fda/>.

¹⁰ *See generally Reviving Competition, Part 5: Addressing the Effects of Economic Concentration on America’s Food Supply: Hearing Before the Subcomm. on Antitrust, Com., & Admin. L. of the H. Comm. on the Judiciary*, 117th Cong. (2022), <https://judiciary.house.gov/calendar/eventsingle.aspx?EventID=4824>.

- Determine whether the Special Supplemental Nutrition Program for Women, Infants, and Children (WIC) can make changes to its baby formula procurement program to purchase from a more diverse array of partners and bolster competitors of the largest baby formula producers; and,
- Determine whether, at least in the short term, it is possible to increase production and importation of formula from abroad.

We believe that, without corrective action, the baby formula market will consolidate further and recurring periods of spiking prices will become the norm. Intervention by the Administration is essential to protect the health and prosperity of American families.

Thank you for your prompt attention to this matter, and we look forward to your response.

Sincerely,

Mary Gay Scanlon
Member of Congress

Jerrold Nadler
Member of Congress

David Cicilline
Member of Congress

Emanuel Cleaver, II
Member of Congress

Peter Welch
Member of Congress

Bonnie Watson Coleman
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Eric Swalwell
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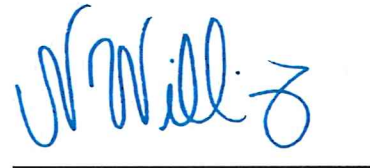
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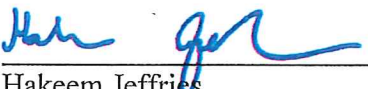
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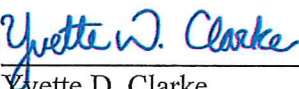
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Ayanna Pressley
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Steve Cohen
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Lucille Roybal-Allard
Member of Congress



Ro Khanna
Member of Congress



Zoe Lofgren
Member of Congress

Cc: the Honorable Lina M. Khan, Chair, Federal Trade Commission
the Honorable Robert M. Califf, Commissioner, Food and Drug Administration
the Honorable Thomas J. Vilsack, Secretary, United States Department of Agriculture
the Honorable Merrick Garland, Attorney General, Department of Justice