September 7, 2016

The Honorable Thad Cochran
Chairman
Committee on Appropriations
United States Senate
Washington, D.C. 20510

The Honorable Jerry Moran
Chairman
Subcommittee on Agriculture, Rural Development, Food and Drug Administration, and Related Agencies
Committee on Appropriations
United States Senate
Washington, D.C. 20510

The Honorable Barbara Mikulski
Vice Chairwoman
Committee on Appropriations
United States Senate
Washington, D.C. 20510

The Honorable Jeff Merkley
Ranking Member
Subcommittee on Agriculture, Rural Development, Food and Drug Administration, and Related Agencies
Committee on Appropriations
United States Senate
Washington, D.C. 20510
Dear Chairman Cochran, Vice Chairwoman Mikulski, Chairman Moran, and Ranking Member Merkley:

As you consider the continuing resolution, we urge you to reject any effort to include policy riders that would weaken FDA’s authority to regulate tobacco products. We are grateful that the Senate Appropriations Committee’s Agriculture, Rural Development, Food and Drug Administration, and Related Agencies appropriations bill did not include any tobacco-related riders, but unfortunately, the House Appropriations Committee’s bill included two riders we strongly oppose.

In May, FDA took an important step to protect children and public health by issuing a final rule that will enable the agency to begin to oversee cigars, e-cigarettes, and other tobacco products that had been outside of FDA’s authority. The final rule became effective on August 8th and we urge that Congress not step in now to provide special protections for tobacco companies. The need for FDA oversight of these products could not be clearer. There has been an alarming increase in youth use of electronic cigarettes with 16 percent of high school students currently using e-cigarettes. In addition, high school boys now smoke cigars at a slightly higher rate than cigarettes – 14 percent for cigars and 11.8 percent for cigarettes. The final rule will enable FDA, for the first time, to oversee the manufacturing, marketing, and sale of these products, providing the agency with new tools to address the problem of three million middle and high school students using e-cigarettes and 1.4 million using cigars.

However, the House bill includes two provisions that would weaken this final rule and restrict FDA’s ability to oversee these products. One provision would block FDA from using funds to “implement, administer, or enforce” this final rule unless the rule excludes “large and premium cigars” from FDA oversight. FDA specifically examined whether premium cigars should be excluded from FDA oversight and concluded that there was no appropriate public health justification for doing so. FDA’s scientific review found that all cigars pose serious negative health risks, including about 9,000 premature deaths a year, and that all cigars are potentially addictive. We are also concerned that the rider defines “large and premium cigars” so broadly that it creates a loophole that invites tobacco companies to modify their products to qualify for this exemption – a loophole that tobacco companies will surely exploit to exempt some cheap, machine-made, flavored cigars that appeal to youth.

The second House provision would change the so-called “grandfather date” in order to exempt e-cigarettes, cigars, and other tobacco products now on the market from an important FDA product review requirement. It would change current law so that manufacturers of these products are no longer required to provide information to the FDA and undergo a scientific review of the risks to public health of new tobacco products, which are defined as products introduced to the market after February 15, 2007. Changing this date would significantly weaken FDA’s ability to take prompt action to protect children from thousands of fruit- and candy-flavored e-cigarettes and cigars, including products in flavors such as cotton candy, gummy bear and fruit punch that clearly appeal to kids.

We urge you to allow FDA’s final rule on e-cigarettes and cigars to continue to be implemented and reject any effort to include the House tobacco policy riders in the CR.

Sincerely,