

An hourglass-shaped graphic with a globe inside. The top bulb is dark blue, and the bottom bulb is light blue. The globe is a darker shade of blue. The hourglass is centered on the page.

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Report RL33299

*Child Nutrition and WIC Legislation in the 108th and 109th
Congresses*

Joe Richardson, Domestic Social Policy Division

July 13, 2006

Abstract. Only one significant law governing child nutrition programs (e.g., school meal programs) and the Special Supplemental Nutrition Program for Women, Infants, and Children (the WIC program) has been (or is likely to be) enacted in the 108th and 109th Congresses - the Child Nutrition and WIC Reauthorization Act of 2004 (P.L. 108-265; signed on June 30, 2004).

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CRS Report for Congress

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Updated July 13, 2006

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Prepared for Members and
Committees of Congress

Child Nutrition and WIC Legislation in the 108th and 109th Congresses

Summary

Child nutrition programs (e.g., school meal programs, summer food service, child care food programs) and the Special Supplemental Nutrition Program for Women, Infants, and Children (the WIC Program) are subject to periodic comprehensive reviews, when appropriations and other authorities expire and have to be reauthorized. They were up for reauthorization review in the 108th Congress, and the only substantial child nutrition-WIC legislation in the 108th Congress, and so far in the 109th Congress, has been the 2004 reauthorization law — the Child Nutrition and WIC Reauthorization Act of 2004, P.L. 108-265, enacted June 30, 2004.

The 2004 law extended virtually all expiring authorities through FY2009 and contained important, but incremental, changes in child nutrition programs and the WIC program; the Congressional Budget Office estimated that it will generate net new spending totaling about \$230 million through FY2009. Its major feature was a set of amendments aimed at improving the integrity and administration of the school meal programs. Significant changes were made in procedures relating to the way children's eligibility for free and reduced-price school meals is certified and verified, and new initiatives to upgrade schools' administration of their meal programs were put in place. However, minimal revisions were made to the school meal programs themselves — for example, expansion of eligibility for homeless, runaway, and migrant children, loosened rules for certain higher school breakfast subsidies — and a major proposal to phase in higher income eligibility limits for free school meals was limited to an *authorization* for a pilot project. Relatively minor amendments also affected the Summer Food Service and Child and Adult Care Food programs — for example, making permanent and expanding coverage of “Lugar” rules facilitating participation by summer program sponsors and making permanent and nationally applicable a rule loosening Child and Adult Care Food program eligibility rules for for-profit child care centers.

Another area of concern addressed by the reauthorization law was nutrition, health, and nutrition education. Here, the biggest initiative was a requirement that all schools participating in school meal programs establish locally designed “wellness policies” to set nutrition, physical activity, and other goals and strategies for meeting them. Coupled with it were (1) *authorizations* for new nutrition education efforts, (2) an expansion of the program offering free fresh fruit and vegetables in selected schools, and (3) significant changes in food safety rules.

Finally, a large number of revisions were made to the law governing the WIC program. The most important among them were amendments aimed at strengthening rules that help contain food costs incurred by the program; these included provisions placing substantial limits on vendors receiving the majority of their revenue from WIC vouchers (so-called “WIC-only” stores).

This report will be updated as events and legislation warrant.

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Child Nutrition and WIC Legislation in the 108th and 109th Congresses

Background

Child nutrition programs and the Special Supplemental Nutrition Program for Women, Infants, and Children (the WIC program) are governed by three basic federal laws:¹

- ***The Richard B. Russell National School Lunch Act.*** This law was originally enacted in 1946 as the National School Lunch Act; it was renamed in 1999. It provides authority for the School Lunch program, the Child and Adult Care Food program, the Summer Food Service program, after-school programs (those run under both the aegis of the School Lunch program and the Child and Adult Care Food program), food commodity support for child nutrition programs, training and technical assistance (including the Food Service Management Institute), compliance, program integrity, and accountability activities, and an information clearinghouse. It also includes a number of general-purpose provisions governing the operation of multiple child nutrition programs (e.g., income eligibility and inflation indexing rules, nutrition requirements for meals, general rules participating schools must follow).
- ***The Child Nutrition Act.*** This law was originally enacted in 1966. It provides authority for the School Breakfast program, the WIC program, the Special Milk program, assistance for state administrative expenses related to child nutrition programs, and nutrition education activities.
- ***Section 32*** of the act of August 24, 1935 (7 U.S.C. 612c). Section 32 authority provides funding for cash child nutrition subsidies (permanent appropriations under Section 32 are transferred to the child nutrition account annually as part of the appropriations process). It also includes additional authority (to that in the Richard B. Russell National School Lunch Act) and funding for the acquisition of food commodities for distribution to child nutrition

¹ In addition to these laws, Congress has used annual appropriations measures and omnibus agriculture legislation to direct the Agriculture Department to take actions affecting child nutrition and WIC programs. These directives typically take the form of requirements related to commodity support for child nutrition efforts — but they also can encompass amendments to the underlying law or changes in program policies.

programs (Section 32 money is used to buy and distribute surplus commodities).²

Prior to the 108th Congress, the most recent *comprehensive* amendments to child nutrition and WIC law were made by the 1998 William F. Goodling Child Nutrition Reauthorization Act (P.L. 105-336).³ And, under the reauthorization schedule, the next wide-ranging review of child nutrition and WIC programs was set for 2003. However, a number of significant laws affecting the child nutrition and WIC programs were enacted in the 106th and 107th Congresses (1999 through 2002). These are covered in the immediate predecessor to this report — CRS Report RL31578, *Child Nutrition and WIC Legislation in the 106th and 107th Congresses*, by Joe Richardson. Information on the programs covered by child nutrition and WIC legislation is contained in CRS Report RL33307, *Child Nutrition and WIC Programs: Background and Recent Funding*, by Joe Richardson.

Only one significant law governing child nutrition programs (e.g., school meal programs) and the WIC program has been (or is likely to be) enacted in the 108th and 109th Congresses — the **Child Nutrition and WIC Reauthorization Act of 2004** (P.L. 108-265; signed on June 30, 2004).

The Child Nutrition and WIC Reauthorization Act of 2004: P.L. 108-265

History

The authorization of appropriations for several child nutrition programs and the WIC program, as well as authority to carry out certain child nutrition activities, were scheduled to expire September 30, 2003, under the terms of the previous reauthorization law (P.L. 105-336).⁴ Anticipating renewal of these authorizations, Congress began consideration of child nutrition/WIC reauthorization legislation in the Spring of 2003. However, primarily because of budget-related concerns as to how much, if any, new funding might be available to be spent on new or expanded initiatives, no action was taken in 2003 (other than hearings and the introduction of bills proposing various individual program changes). Instead, a short-term extension of expiring authorizations (P.L. 108-134) was enacted, pushing most expiration dates to March 31, 2004, and giving Congress time to act.

² For more information, see CRS Report RS20235, *Farm and Food Support under USDA's Section 32 Program*, by Geoffrey S. Becker.

³ For information on this law and other child nutrition and WIC legislation in the 104th and 105th Congresses (1995 through 1998), see CRS Report 96-987, *Child Nutrition Legislation in the 104th Congress*, and CRS Report 97-108, *Child Nutrition Issues in the 105th Congress*, both by Joe Richardson (available on request).

⁴ It should be noted that appropriations for the majority of child nutrition programs (e.g., the school meal programs) are *permanently* authorized.

On March 24, 2004, the House passed an amended version of its child nutrition-WIC reauthorization bill (the Child Nutrition Improvement and Integrity Act; H.R. 3873; H.Rept. 108-445), which included provisions that would have resulted in estimated net new mandatory spending of \$235 million through FY2009. However, with the March 31st deadline approaching (and no definitive Senate action), another stopgap law extending most expiring authorities through June 30, 2004, was enacted — P.L. 108-211.

While there was no formal action in the Senate, the House and Senate committees of jurisdiction (the House Education and the Workforce Committee and the Senate Agriculture, Nutrition, and Forestry Committee), with the Administration's participation, informally discussed a potential final bill through March, April, May, and into June 2004. On May 19, 2004, the Senate Agriculture, Nutrition, and Forestry Committee ordered reported the Child Nutrition and WIC Reauthorization Act of 2004 (S. 2507; S.Rept. 108-279; reported June 7, 2004). This bill, as amended with unanimous consent on the Senate floor, passed the Senate on June 23, 2004. It reflected agreements that had been reached in the House-Senate discussions that had been taking place over the past several months and included many House (and Administration) proposals and perspectives. On June 24, 2004, the House passed it without objection. This final measure encompassed changes in law estimated to result in \$232 million in net new mandatory spending (outlays, slightly more in budget authority) through FY2009 (the end of the reauthorization period). It was enacted as the Child Nutrition and WIC Reauthorization Act of 2004 (P.L. 108-265) on June 30, 2004.

The New Law

Much of the debate over and content of the 2004 reauthorization law was driven by the availability (or lack of availability) of funding for new initiatives or program expansions. Budget reconciliation agreements offered little new mandatory money (a total of about \$230 million through FY2009), and, if House and Senate legislators wanted to fund new initiatives or expansions with mandatory dollars beyond these budget constraints, they effectively were forced to use savings from changes they made *within* child nutrition programs.⁵ In the alternative, they could (and did) *authorize* appropriations for new initiatives/expansions or establish *pilot projects* rather than create or expand entitlement/mandatory programs. The final product encompassed some \$395 million in new *gross* spending through FY2009; however, this was financed with an estimated \$163 million in savings achieved primarily by revisions to the system for certifying and verifying eligibility for free and reduced-price school meals (see immediately below).

Perhaps the biggest issue confronted by Congress was concern over “overcertification” — the degree to which ineligible children are judged eligible for free or reduced-price school meals. Though estimates and perceptions differed as to the extent and seriousness of the problem, overcertification was widely judged a significant issue and provoked accompanying questions as to schools' administrative

⁵ Virtually all child nutrition programs are mandatory entitlements. On the other hand, the WIC program is discretionary.

strength and how to ensure that *eligible* children were not disadvantaged by any legislative solution. As a result, the most important amendments in the 2004 law dealt with program integrity — improvements to rules governing certification and verification of eligibility, new procedures to upgrade administration of school meal programs, and new technical assistance and training.

As to school meal program operations, few changes were made (e.g., expansion of eligibility for homeless, runaway, and migrant children and youth, loosened rules for higher “severe need” school breakfast subsidies). And, a major (and costly) proposal to phase in higher income eligibility limits for free school meals was limited to *authorization* for a small pilot project.

Another major set of issues involved nutrition, health, and nutrition education aspects of child nutrition programs, particularly childhood obesity trends and the role of child nutrition programs and school environments (like physical activities) in dealing with this, the rules governing the offering of milk and milk substitutes, foods sold in competition with school meals, food safety, and the desire of some to substantially increase funding commitments for nutrition education. While a number of federally led options were offered, in the end, the most significant change was a requirement that all schools participating in school meal programs establish locally designed “wellness policies” to tackle obesity- and nutrition/health-related issues (like competitive foods and students’ physical activity), with federal technical assistance and other support. Nutrition education provisions encompassed a series of *authorizations*, but no new funding. In related amendments, the program offering free fresh fruit and vegetables operating in selected schools in a few states was expanded and made permanent, and important changes were made to food safety rules.

Small changes also were made in the Summer Food Service and Child and Adult Care Food programs — for example, making permanent and expanding the coverage of pre-existing “simplified summer program” (so-called “Lugar”) rules that make it easier for summer program sponsors to participate, making permanent and nationally applicable a pre-existing rule loosening eligibility requirements for for-profit child care centers wishing to participate in the Child and Adult Care Food program.

Finally, a large *number* of revisions were made to the WIC program, but the most significant were several aimed at strengthening rules containing food costs incurred by the program. Of these, the most controversial was a new provision placing substantial limits on vendors receiving the majority of their revenue from WIC vouchers (so-called “WIC-only” stores).

The 2004 reauthorization law extended virtually all expiring child nutrition and WIC appropriations authorizations and other authorities through FY2009.⁶ In

⁶ Five authorities were made permanent: (1) a requirement to use Section 32 funds to maintain commodity support for child nutrition programs, (2) simplified summer food programs, (3) certain rules governing the treatment of for-profit child care centers, (4) the fresh fruit and vegetable program, and (5) permission to use Section 32 funds to dispose of (continued...)

addition, it made a wide range of changes to child nutrition and WIC law as described in the following sections.

Program Integrity in School Meal Programs: Certification and Verification of Eligibility.

- ***Role of Local Educational Agencies (LEAs).*** Stipulates that LEAs are effectively responsible for certification and verification of eligibility for free and reduced-price school meals — as opposed to local “school food authorities,” which conduct school meal program day-to-day operations and also were in charge of certification and verification under pre-existing law.
- ***Descriptive Materials and Communications with Families.*** Requires that descriptive materials provided to parents contain notification that (1) participants in certain other income-tested programs may be eligible for free or reduced-price school meals and (2) documentation may be requested for verification of eligibility. Also directs that any communications with families for eligibility determination or verification purposes be in an understandable format in a language that parents can understand (to the extent possible). Grants explicit permission for Internet applications and descriptive materials. Individual applications for each child in a family are, in most cases, barred.
- ***Direct Certification of Eligibility.*** In order to reduce the number of paper applications that need to be reviewed, by relying on verification already conducted in other venues, *requires* that LEAs use direct certification — certification of eligibility for free and reduced-price school meals (without application) by direct communication with appropriate state or local agencies — for any child who is member of a *food stamp* household. This direct certification mandate is phased in, beginning with the largest LEAs, through the 2007-2008 school year. In addition, *permissive* authority is granted to employ direct certification for children in Temporary Assistance for Needy Families (TANF) households, homeless children, children served by programs under the Runaway and Homeless Youth Act, and migrant children. [*Note:* Under pre-

⁶ (...continued)

unsafe foods. One authority (a “management support initiative” in the Child and Adult Care Food program) that expired with FY2003 was reinstated for FY2005 and FY2006. A waiver of a requirement on how schools measure the nutrient content of their meals (use of “weighted averages”) that expired with FY2003 was reinstated, as was authority for an Information Clearinghouse. One expiring authority (authorization of funds for certain training and technical assistance activities) was extended through FY2008. One authority (for a nutrition education and training program) was replaced with a new initiative. And one expiring authority — a small effort funding food and nutrition projects that are integrated with elementary school curricula — was not renewed.

existing law, direct certification was *permitted* for children in food stamp and TANF households.]

- ***Verification of a Sample of Applications.*** For those not directly certified eligible for free or reduced-price school meals, mandates that a sample of approved applications be selected for verification of their eligibility by directly communicating with the family (or direct verification, see below). [*Note:* Prior to verifying with the family, the application must be reviewed by an individual other than the person who approved it.] The required sample size for each LEA varies, but, in most cases, the new law calls for it to be significantly larger than under pre-existing (regulatory) rules.
- ***Direct Verification.*** In conducting eligibility verification of the sample of approved applications, *permits* LEAs to first use direct verification — obtain and use income and program participation information about the applicant family from certain public agencies — before contacting the family. Direct verification is to be evaluated and, if found to be effective in obtaining adequate information and reducing the number of applications that must be verified by contacting families directly, may be made mandatory.
- ***Individual Family Verification.*** For families not directly certified or directly verified, requires LEAs to conduct verification through contact with the family. This includes a written request for information and phone contact if necessary. In the case of families not responding to a verification request, LEAs are required to make at least one additional attempt to obtain information and may use a third party to assist them in these “follow-up” activities. [*Note:* Nonresponse results in disqualification.]
- ***Funding.*** Provides mandatory funding (1) to assist in carrying out direct certification and verification activities and (2) to evaluate direct verification.

Program Integrity in School Meal Programs: Administrative Error Reduction.

- ***Federal Administrative Support.*** Provides mandatory funding to the Agriculture Department to (1) provide training and technical assistance and materials related to improving program integrity and administrative accuracy in school meal programs and (2) assist state agencies in reviewing the administrative practices of local agencies. Requires the development and distribution of materials representative of “best management and administrative practices.”
- ***Additional Administrative Reviews.*** Mandates that state agencies conduct special administrative reviews — beyond those carried out as part of the regular “Coordinated Review Effort” (CRE) compliance and accountability reviews — of local agencies that have

demonstrated a high level of, or a high risk for, administrative error in application, certification, verification, meal counting, and meal claiming procedures. Those local agencies failing to meet performance criteria would be required to develop and carry out corrective action plans (with the state agency's assistance). If they fail to meet the criteria in both initial and follow-up reviews, local agencies could be subject to financial penalties (retention of funds otherwise due them).

- **Training.** Requires state agencies to provide training in administrative practices to local agency administrative personnel. The Agriculture Department may support this training or provide it directly.
- **Funds for Administrative Reviews and Training.** Provides mandatory funding to the Agriculture Department to assist state agencies in carrying out additional administrative reviews and training in administrative practices.
- **Technology.** Requires that state child nutrition plans submitted for state administrative expense funding include information as to how technology and information management systems will be used to improve program integrity. Also requires a study of the use of computer technology to reduce eligibility certification errors and other “waste, fraud, and abuse.” *Authorizes* the Agriculture Department to provide competitive grants to state agencies to award to local agencies to defray the cost of purchasing/upgrading technology and information systems.
- **Compliance and Accountability.** Increases the appropriations authorization for compliance and accountability reviews of local school meal program agencies.⁷

School Meal Programs (School Lunches and Breakfasts).⁸

- **Runaway, Homeless, and Migrant Youth.** Establishes in law (as opposed to administrative guidance) the automatic (categorical) eligibility of homeless children for free school meals. Also makes youth served by grant programs under the Runaway and Homeless Youth Act and migrant children automatically eligible for free school meals.

⁷ Compliance and accountability reviews also are referred to as the “Coordinated Review Effort” (CRE). The amendment increases the authorization from \$3 million to \$6 million a year; however, these reviews have typically been appropriated funds above the \$3 million-a-year authorization.

⁸ Also, see the “Program Integrity” sections of this report.

- ***Duration of Eligibility.*** Mandates that eligibility for free or reduced-price school meals remains valid for one year for most students.
- ***Military Housing Allowances.*** Makes permanent a rule disregarding military housing allowances for those living in “privatized” housing when judging eligibility for free or reduced-price school meals.
- ***“Severe Need” School Breakfast Program Subsidies.*** Removes a requirement that schools document their costs in order to receive higher “severe need” school breakfast subsidies, allowing them to receive the maximum subsidy rather than the lesser of documented costs or the severe need rate.⁹
- ***Pilot Expansion of Eligibility for Free School Meals.*** Authorizes a pilot project in all or parts of 5 states under which the income limit for free school meals would be raised from 130% of the federal poverty income guidelines to 185% of the guidelines (the current limit for reduced-price meals).
- ***Evaluation.*** Authorizes funds for annual national performance assessments of child nutrition meal service programs.
- ***“Best Practices.”*** Authorizes funding for a review of “best practices” in the School Breakfast program so as to assist schools in addressing impediments to the growth of the program.

Nutrition, Health, and Nutrition Education.

- ***Local Wellness Policies.*** Requires local educational agencies participating in school meal programs to establish local “school wellness” policies, as they determine appropriate. These policies would include goals for nutrition education, physical activity, and other school-based activities, nutrition guidelines for *all* foods available on campus during the school day, a plan for measuring implementation of the policy, and involvement of parents, students, school and school meal administrators, and the public. The Agriculture Department is directed to make available information and technical assistance to support this initiative and is given mandatory funding to provide it.
- ***Nutrition Education/Promotion.*** Replaces (unfunded) authority for a nutrition education and training program with *authorization* for grants to states to implement “team nutrition networks” that support nutrition education through a wide variety of means, such as the use

⁹ Schools receive severe-need breakfast subsidies if they served 40%+ of their lunches free or at a reduced price in the second preceding year.

of nutrition education messages, promotion of active lifestyles, pilot projects, model curricula, data gathering, health and physical activity guidelines. *Authorizes* funds to promote improved nutrition through the dissemination and use of nutrition messages and materials developed by the Agriculture Department. *Authorizes* grants to entities with expertise in health education programs for limited-English-proficient individuals to enhance obesity prevention activities. Requires the Agriculture Department to issue recommendations for the increased consumption of foods in school meal programs based on the most recent Dietary Guidelines for Americans. *Authorizes* grants to local educational agencies to create healthy school nutrition environments, promote healthy eating habits, and increase physical activity among elementary and secondary students. In support of nutrition education goals, *authorizes* technical assistance and grants to improve the quality of school meals.

- ***Milk.*** Places into law rules governing the offering of milk and milk substitutes that differ minimally from pre-existing law and regulations. Schools *must* offer fluid milk in a variety of fat contents, *may* offer flavored, unflavored, and lactose-free milk, and *must* provide a milk substitute for students whose “disability” restricts their diet (on written request of a physician). In addition, schools *may* substitute a non-dairy beverage that is nutritionally equivalent to milk for students who cannot consume milk because of a “medical or other special dietary need” (on the written request of a medical authority or parent).
- ***“Weighted Averages.”*** Reinstates a *waiver* of a requirement that schools use “weighted averages” — that measure the nutrient content of meals according to food items actually chosen by students — when doing a nutrient analysis of their school meal programs.
- ***Food Safety.*** Increases the number of required food safety inspections, requires state and federal audits of the inspections, and mandates that school food safety programs comply with any “hazard analysis and critical control point” (HACCP) system established by the Agriculture Department.
- ***Irradiated Foods.*** Requires the Agriculture Department to establish procedures relating to irradiated food products distributed by the Department to school meal programs. They must ensure that irradiated foods are provided only on request, that schools receive information about irradiation technology and its relation to safe food handling, that schools get models for providing information about irradiated foods to parents and students, that irradiated products are appropriately labeled and not commingled with other foods, and that schools are encouraged to offer alternatives.

- **Technology.** Requires state child nutrition plans to contain information as to how they may use their state administrative expense grant for information management systems that monitor the nutrient content of meals and *authorizes* funds for competitive grants to defray the cost of purchasing/upgrading technology and information systems doing this task.

Fresh Fruit and Vegetables, WIC Farmers' Markets, and Locally Produced Food.

- **Free Fresh Fruit and Vegetable Program.** Requires the Agriculture Department to operate a *permanent* fresh fruit and vegetable program under which free fresh fruit and vegetables are made available to students in participating schools. This expands on a pre-existing pilot project available in five states and one Indian reservation and adds three states and two Indian reservations. In both the pilot and the expanded permanent program, the program is available in only a very small number of schools in each state or Indian reservation. Mandatory annual funding is provided for this permanent program.¹⁰
- **WIC Farmers' Market Program.** Reduces the state match to 30% of administrative costs (rather than 30% of total costs), increases the limit on the federal share of benefits from \$20 to \$30 per participant per year, and makes roadside stands eligible to participate at state option. This program provides vouchers to WIC recipients to buy fresh fruit and vegetables at participating farmers' markets.
- **Locally Produced Foods.** *Authorizes* funding for the Agriculture Department to encourage schools to purchase locally produced foods, including grants to defray initial infrastructure costs incurred in carrying out this policy. *Authorizes* the Agriculture Department to provide competitive matching grants and technical assistance for projects that improve access to local foods through "farm-to-cafeteria" activities, procurement from small- and medium-size farms, support for school garden programs, and farm-based nutrition education projects. *Authorizes* the Agriculture Department to provide technical assistance and grants to improve access to local foods in schools.
- **Fruit and Vegetables in the WIC Program.** *Authorizes* the Secretary to award grants to evaluate the feasibility of including fresh, frozen, or canned fruit and vegetables as an addition to food items in regular WIC food packages.

¹⁰ A later law, P.L. 109-97, added and provided new funding for six more states under this program.

Summer Food Service Program.

- ***Simplified Summer Programs (“Lugar” Rules).*** Makes permanent rules that allow summer program sponsors to receive the maximum summer program subsidy rates without providing documentation of costs and expands their application to 6 additional states (beyond 13 states and Puerto Rico covered under pre-existing law).
- ***“Seamless Summer Option.”*** Creates, in law (as opposed to administrative policy), an option that allows schools to administer summer or school vacation food service using the rules (and subsidy rates) of regular school meal programs.
- ***Pilot Projects.*** Establishes and funds four pilot projects — (1) a project that, in rural parts of Pennsylvania, makes it easier for the area to qualify for “open-site” summer program status (in which all participating children are served free meals), (2) grants to increase participation in the summer program through innovative approaches to transportation in rural areas, (3) modification of eligibility criteria for residential summer camps serving low-income children in order to evaluate alternative means of judging camps’ eligibility to participate in the summer program, and (4) a project in California whereby local governments and private nonprofit organizations could receive summer program subsidy rates for up to 2 meals a day during the summer, school breaks, after-school hours, and weekends (as an alternative to after-school nutrition projects, the regular summer program and the seamless summer option noted above).

Child and Adult Care Food Program (CACFP).

- ***For-Profit Day Care Centers.*** Makes permanent (and nationally applicable) a pre-existing rule that allows for-profit day care centers to qualify for CACFP assistance if at least 25% of the children they serve are eligible for free or reduced-price school meals (have family income below 185% of the federal poverty income guidelines).
- ***Emergency Homeless Shelters: Age Limit.*** Allows CACFP subsidies to be paid for free meals/snacks served by emergency homeless shelters to all children not more than *18 years old* and to children with disabilities — up from an age limit of 12 years (15 for children of migrant workers).
- ***Management Support Initiative.*** Reinstates and provides mandatory funding (in FY2005 and FY2006 only) for an initiative offering training and technical assistance to aid state agencies in improving their management and oversight of the CACFP.
- ***Pilot Project.*** In rural areas of Nebraska, lowers the eligibility threshold applied to family day care homes wishing to qualify for

“Tier I” (higher CACFP subsidy rates) status — for fiscal years FY2006 and FY2007.

- **Paperwork Reduction.** Requires the Agriculture Department to examine the feasibility of reducing paperwork associated with CACFP regulations and recordkeeping requirements for state agencies, day care homes and sponsors, and child care centers.

Special Supplemental Nutrition Program for Women, Infants, and Children (the WIC Program).

Eligibility

- **Breastfeeding Women.** Increases the potential eligibility period for breastfeeding women.
- **Physical Presence.** Expands authority for state agencies to waive the requirement that each individual seeking WIC benefits be physically present to determine eligibility to cover certain infants under eight weeks of age.

Benefits¹¹

- **Review of Food Packages.** Requires the Agriculture Department to conduct future periodic scientific reviews of foods included in WIC food packages and change them as necessary. Also requires an update of WIC food packages within 18 months after the most current review (initiated in September 2003) is completed.
- **“Rounding Up.”** Allows state agencies to round up to the next whole can size of infant formula when issuing WIC vouchers in order to ensure that all infants receive the full authorized nutritional benefit specified by regulation.
- **Use of WIC Vouchers.** Requires state agencies to permit WIC recipients to transact their vouchers at *any* authorized store in the state.

Cost Containment Policies

- **“WIC-Only Stores.”** Substantially revises procedures aimed at containing the cost of WIC vouchers by instituting new rules state agencies must follow to control costs charged by vendors whose revenue is derived primarily (50%+) from the sale of WIC food

¹¹ Also, see the section of this report entitled “Fresh Fruit and Vegetables, WIC Farmers’ Markets, and Locally Produced Food.”

items, effectively constraining (or ending) their participation depending on the prices they charge for WIC items.¹²

- ***State Alliances.*** Limits the size of alliances through which state agencies join together to solicit sole-source bids from infant formula manufacturers, in order to bolster competition in the bidding process.
- ***“Primary Contract” Infant Formula.*** Requires state agencies to use the “primary” infant formula they have contracted with manufacturers to supply, with all other infant formulas issued as an alternative.
- ***Uncoupling Milk- and Soy-based Infant Formula Bids.*** Requires that large state agencies/alliances solicit sole-source bids from infant formula manufacturers using procedures under which bids and discounts (rebates) are solicited *separately* for milk-based and soy-based formula.
- ***“Cent-for-Cent” Adjustments.*** Mandates a cent-for-cent decrease in rebates received by states from infant formula manufacturers if there is a decrease in the lowest national wholesale price for a full truckload of a particular formula — just as pre-existing law required cent-for-cent increases when wholesale prices increase.

WIC Vendors¹³

- ***Accelerated Approval.*** Requires that state agencies have procedures for accepting and processing vendor applications outside the agency’s normal time-frame if there will be inadequate access to the WIC program.
- ***Notification of Violations.*** Directs state agencies to notify vendors of an initial violation of WIC rules if they are found to have committed a violation that requires a pattern of occurrences in order to impose a penalty.
- ***List of Infant Formula Providers.*** Requires state agencies to maintain lists of infant formula food wholesalers, distributors, and retailers approved to provide infant formula for the WIC program and mandates that vendors purchase infant formula from those on the state agency’s list.
- ***EBT Costs.*** Bars the imposition of any costs related to electronic benefit transfer (EBT) systems on vendors.

¹² A separate provision generally bars WIC-only stores that provide “incentive items” or other free merchandise to program participants.

¹³ Also see Cost Containment Policies, “WIC-only” stores, above.

Use of Funds and Administration

- ***Earmarked Funding.*** Requires the use of \$64 million a year (or the amount of WIC funding for the prior year that has not been obligated, if less) for program infrastructure, special projects to promote breastfeeding or of regional/national significance, management information systems, and special nutrition education activities (such as breastfeeding peer counselors).
- ***“Spend-forward.”*** Increases the limit on the proportion of the nutrition services and administration component of their WIC grant that state agencies may spend in the following fiscal year — from 1% to 3%.
- ***Universal Product Codes.*** Mandates that the Agriculture Department establish and maintain a national universal product code (UPC) database for states’ use in carrying out the WIC program.

State Administrative Expenses.

- ***Minimum State Grants.*** Increases the minimum state grant for child nutrition program administrative expenses from \$100,000 to \$200,000 (indexed after FY2008).

Technical Assistance and Training.¹⁴

- ***Food Service Management Institute (FSMI).*** Adds four areas in which the FSMI is required to provide technical assistance and training — “hazard analysis and critical point plan” (HACCP) implementation by schools carrying out new food safety requirements, emergency readiness, responding to food recalls, and food bio-security training. Increases mandatory funding for the FSMI.
- ***Technology and School Breakfast Expansion.*** Adds two new potential uses for training and technical assistance funding — (1) aid to states (on a competitive basis) for the purpose of helping schools with large populations of low-income children in meeting the cost of acquiring/upgrading technology and information management systems used for child nutrition programs and (2) assistance to states (on a competitive basis) with low proportions of schools/children participating in the School Breakfast program in meeting costs associated with initiating/expanding the breakfast program.
- ***Procurement Training.*** Authorizes the Agriculture Department to provide technical assistance and training in the procurement of goods and services for child nutrition programs, including help in ensuring

¹⁴ Also, see the “Program Integrity” sections of this report.

compliance with “Buy American” requirements and procuring safe foods (e.g., model specifications).

- **Information Clearinghouse.** Reinstates, extends, and increases the appropriations authorization for a small nongovernmental information clearinghouse that provides information to nongovernmental groups that assist low-income individuals and communities with food assistance and self-help activities to reduce reliance on government agencies.

Commodity Support.

- **Permanent Authority.** Makes permanent two pre-existing commodity support authorities — (1) the requirement that the Agriculture Department use Section 32 and Commodity Credit Corporation funds to maintain annually programmed levels of commodity support for child nutrition programs and (2) permission to use Section 32 funds to remove and dispose of unsafe foods donated to child nutrition programs by the Agriculture Department.

Other Legislated Changes

In addition to the 2004 child nutrition reauthorization (and the two related short-term extensions of expiring authorities noted in the earlier History section), several relatively minor changes to the laws and policies governing child nutrition and WIC programs have been enacted in the 108th and 109th Congresses:

- **P.L. 108-30.** Extended the availability of funds for the project providing fresh fruit and vegetables in schools through the 2003-2004 school year.¹⁵
- **P.L. 108-375.** Included in the FY2005 National Defense Authorization Act was a provision requiring that child nutrition and WIC programs disregard “supplemental subsistence allowances” received by military families when judging eligibility.
- **P.L. 108-447.** Included in the Agriculture Department component of this omnibus FY2005 appropriations measure were two child nutrition/WIC provisions: (1) permission for the Department to reallocate among states unused Child and Adult Care Food Program (CACFP) audit funds and (2) a rule barring approval of any new retailers under the WIC program whose major source of revenue is derived from WIC program vouchers (“WIC-only” stores).

¹⁵ This pilot project preceded the permanent program established in the 2004 child nutrition reauthorization law.

- **P.L. 109-97.** Included in this FY2006 Agriculture Department appropriations law were five child nutrition/WIC provisions: (1) continued permission to reallocate CACFP audit funds, (2) continuation of the rule barring approval of any new WIC-only stores, (3) an amendment speeding up the availability of funds to be used by the Agriculture Department to support development of local school “wellness policies” (to be available immediately instead of July 2006), (4) expansion of simplified summer program (“Lugar”) rules to cover seven more states (allowing sponsors to receive maximum subsidy rates without cost documentation), and (5) provision of \$6 million to expand the program offering free fresh fruit and vegetables in selected schools to six additional states.

Proposed Legislation

Proposals Since the 2004 Reauthorization Law

A number of bills that would directly affect child nutrition programs have been introduced since the enactment of the 2004 Child Nutrition and WIC Reauthorization Act on June 30, 2004, primarily in the 109th Congress.¹⁶ The following listing covers the 109th Congress and includes notes where the same measure was introduced in the 108th Congress (after June 2004). It does not cover legislative proposals made by the Administration in its FY2007 budget submission; for details on those, refer to CRS Report RL33412, *Agriculture and Related Agencies: FY2007 Appropriations*, coordinated by Jim Monke.

- **H.R. 203.** Expands the program providing free fresh fruit and vegetables in selected schools to one additional state (New York), and includes Head Start programs as potential participants.
- **H.R. 204.** Increases the amount of money for CACFP audits from 1% to 1.5% of CACFP total funding.
- **H.R. 844.** Establishes automatic eligibility for free school meals for children of active duty enlisted members of the Armed Forces and National Guard.¹⁷
- **H.R. 1589.** Family and Workplace Balancing Act. Along with changes to programs outside child nutrition programs, establishes a “universal” free breakfast program, directs grants to schools to create

¹⁶ The bills noted here do not include general “anti-hunger” measures and omnibus initiatives introduced in the 108th and 109th Congresses to reduce/prevent childhood obesity and improve schoolchildren’s health. A bill in the 109th Congress that would indirectly affect school meal program operations by authorizing funding for vending machines offering healthy foods in schools (H.R. 2763, the Student Nutrition and Health Act) also is not included.

¹⁷ This bill is the same as H.R. 5229 in the 108th Congress.

“healthy school nutrition environments,” and expands the availability of CACFP subsidies for suppers served through after-school programs to *all* states.¹⁸

- **H.R. 5344.** Summer Food Service Program Improvement Act of 2006. Lowers the threshold that summer program sponsors must meet to gain “open-site” status (where all meals/snacks are served free in projects located in low-income neighborhoods). Extends applicability of “Lugar” rules to all states (see S. 1005, below). Establishes a startup grant program to provide assistance to sponsors wishing to initiate summer food service programs.
- **S. 1005.** Extends applicability of simplified summer program (“Lugar”) rules to *all* states; these rules allow summer sponsors to receive maximum subsidy rates, without cost documentation, in 26 states and Puerto Rico.
- **S. 1556/H.R. 3562.** Authorizes expansion of the program providing free fruit and vegetables in selected schools to *all* states.¹⁹
- **S. 1695.** Hurricane Katrina Food Assistance Relief Act. Establishes specific authority in child nutrition law to modify child nutrition program conditions of operation in the case of natural disasters, and provides extra funding for the WIC program in the wake of Hurricanes Katrina and Rita.
- **S. 2592/H.R. 5167.** Child Nutrition Promotion and School Lunch Protection Act. Requires the Secretary of Agriculture to revise (and effectively expand) the definition of “foods of minimal nutritional value” that may not be offered in competition with school meals. Requires that the expanded definition bar these food items from being offered on school campuses at any time.

Proposals Pending During Consideration of the 2004 Reauthorization Law

In the 108th Congress, a number of bills were introduced to make changes in child nutrition and WIC programs — in addition to the omnibus bills reported by the House Education and the Workforce Committee and the Senate Agriculture, Nutrition, and Forestry Committee (**H.R. 3873** and **S. 2507**), which formed the basis for the final 2004 reauthorization law, and the two bills that became the laws extending child nutrition and WIC authorizations while Congress considered reauthorization (**H.R. 3232** and **S. 2241**). Many of these initiatives (or variations)

¹⁸ These proposals also were put forward in H.R. 3780 in the 108th Congress. CACFP subsidies for suppers are currently offered in seven states.

¹⁹ These provisions are effectively the same as those put forward in H.R. 4800 in the 108th Congress.

were included in the House and Senate committee bills and the final law. They are as follows —

- ***H.R. 1551.*** Safe School Food Act. Adds to food safety requirements for schools participating in school meal programs.
- ***H.R. 2227.*** Obesity Prevention Act. Establishes grants for local school nutrition and physical fitness (“wellness”) projects.
- ***H.R. 2592.*** Healthy America Act. Expands the availability of fruit and vegetables in child nutrition and WIC programs.
- ***H.R. 2626/S. 1755.*** Farm-to-Cafeteria Projects Act. Authorizes grants for farm-to-cafeteria projects.
- ***H.R. 2832.*** Healthy Nutrition for America’s Children Act. Expands the program providing free fresh fruit and vegetables in selected schools nationwide.
- ***H.R. 2987/S. 1392.*** Establishes “healthy school nutrition environment” grants and broadens rules regulating the offering of foods in competition with school meals.
- ***H.R. 3022.*** School Nutrition Antibiotic Safety Act. Bars the Agriculture Department from acquiring chickens that have been fed/administered fluoroquinolone antibiotics for distribution to school meal programs.
- ***H.R. 3120.*** Right to Know School Nutrition Act. Mandates the provision of information about the irradiation of foods used in school meal programs.
- ***H.R. 3250/S. 1367.*** Child Nutrition Improvement Act. Includes provisions to increase milk consumption in schools and support for “healthy school environment” projects.
- ***H.R. 3416.*** Healthy Children Through Better Nutrition Act. Omnibus alternative child nutrition/WIC reauthorization proposal.
- ***H.R. 3869.*** Pride in the Lunch Line Act. Authorizes grants to assist schools in upgrading technology and information systems used in operating school meal programs.
- ***S. 448/H.R. 936.*** Leave No Child Left Behind Act. Among other provisions, expands the CACFP.
- ***S. 995.*** Child Nutrition Initiatives Act. Provides for (1) grants to encourage more nutritious school meals and (2) grants for farm-to-cafeteria projects. Increases child nutrition state administrative expense grants for small states and funding for WIC farmers’

markets. Provides funding for the Nutrition Education and Training (NET) program.

- **S. 996.** Commodity Distribution Act. Increases federally provided commodity support for school meal programs.
- **S. 1007/H.R. 4519.** Better Nutrition for School Children Act. Broadens rules regulating the offering of foods in competition with school meals.
- **S. 1020.** School Breakfast Improvement Act. Increases School Breakfast program subsidies; provides for start-up and expansion grants for breakfast programs; authorizes “universal” free breakfast pilot projects.
- **S. 1021/H.R. 3930.** Summer Food Service Improvement Act. Provides for the expansion of the Summer Food Service program.
- **S. 1022.** Child and Adult Care Food Program Improvement Act. Provides for the expansion of the CACFP.
- **S. 1393.** Expands the program providing free fresh fruit and vegetables in selected schools.
- **S. 1549/H.R. 3441.** Provides for the phase-out of reduced-price school meals by raising the income eligibility test for free school meals.
- **S. 1750/S. 1829.** Better Eating for Better Living Act. Increases school lunch subsidies; requires periodic reviews of school meal nutrition guidelines; modifies rules regulating milk served in schools; provides funding for the Nutrition Education and Training (NET) program.
- **S. 2183.** Early Attention to Nutrition Act. Establishes “Team Nutrition Network” grants to promote the nutritional health of schoolchildren.