

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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*Child Nutrition and WIC Legislation in the 106th and 107th  
Congresses*

Joe Richardson, Domestic Social Policy Division

December 2, 2002

**Abstract.** In the 106th Congress, seven laws included provisions affecting child nutrition and WIC programs. In the 107th Congress, a number of legislative issues have arisen and, in several cases, been addressed with enacted legislation. This report describes the legislation in both the 106th and 107th Congresses relating to child nutrition and WIC.

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# Report for Congress

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## Child Nutrition and WIC Legislation in the 106<sup>th</sup> and 107<sup>th</sup> Congresses

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# Child Nutrition and WIC Legislation in the 106<sup>th</sup> and 107<sup>th</sup> Congresses

## Summary

Child nutrition programs and the Special Supplemental Nutrition Program for Women, Infants, and Children (the WIC program) are governed by: the Richard B. Russell National School Lunch Act, the Child Nutrition Act, and Section 32 of the Act of August 24, 1935. Reauthorization of appropriations and comprehensive review of these programs was last done in the 1998 William F. Goodling Child Nutrition Reauthorization Act (P.L. 105-336), and the next reauthorization and major review is scheduled for 2003. However, a number of significant changes to child nutrition and WIC law have been enacted since 1998.

In the 106<sup>th</sup> Congress, seven laws included provisions affecting child nutrition and WIC programs: P.L. 106-65, P.L. 106-170, P.L. 106-224, P.L. 106-398, P.L. 106-472, and P.L. 106-554. The most important of these – P.L. 106-224 and P.L. 106-554 – increased commodity support for school lunch programs, incorporated amendments aimed at improving the integrity and management of the Child and Adult Care Food Program (CACFP), expanded/established demonstrations affecting for-profit child care centers in the CACFP and outside-of-school programs, and created a pilot to increase participation in the Summer Food Service program.

In the 107<sup>th</sup> Congress, a number of legislative issues arose: CACFP eligibility of for-profit child care centers, rules for day care homes in the CACFP, CACFP after-school initiatives, commodity support for schools (the level of support and expansion of the presence of fruits and vegetables in school nutrition programs), the purchase of locally produced foods for school meal programs, rules governing the offering of foods in competition with school meals (“competitive foods”), a paperwork reduction initiative for school meal programs, military families’ eligibility for free/reduced-price school meals and WIC assistance, expansion of the Summer Food Service program, School Breakfast program expansion and a “before-school” proposal, and a nutrition and physical activity initiative. A number of these areas were addressed in *enacted* legislation: P.L. 107-76 (the FY2002 Agriculture Department appropriations measure) and P.L. 107-171 (the 2002 “farm bill;” the Farm Security and Rural Investment Act).

In addition: S. 2801 (the Senate Appropriations Committee version of the FY2003 Agriculture Department appropriations measure) touched on several legislative issues, as did S. 940/H.R. 1990; S. 1179 and S. 1246 dealt with commodity support, although the provisions of S. 1246 were overtaken by P.L. 107-171; H.R. 3997 affected rules for locally produced foods (in Puerto Rico) and was incorporated in P.L. 107-171; S. 745 and H.R. 2129 proposed changes in “competitive food” rules; S. 1246 dealt with a paperwork reduction issue, which was separately resolved in P.L. 107-76; H.R. 3082, H.R. 3216, and S. 1973 all dealt with the eligibility of military families, which was separately resolved in P.L. 107-171; S. 2660 included provisions to expand summer programs (also in S. 2801); H.R. 4192 proposed a new “before-school” initiative affecting the School Breakfast program; and S. 2821 incorporated nutrition and physical activity initiatives relating to school nutrition programs.

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# Child Nutrition and WIC Legislation in the 106<sup>th</sup> and 107<sup>th</sup> Congresses

## Background

Child nutrition programs and the Special Supplemental Nutrition Program for Women, Infants, and Children (the WIC program) are governed by three major federal laws<sup>1</sup> –

- ! ***The Richard B. Russell National School Lunch Act.*** This law was originally enacted as the National School Lunch Act of 1946 (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), commodity support for child nutrition programs, training and technical assistance (including the Food Service Management Institute), compliance and accountability activities (i.e., the coordinated review effort), 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).
- ! ***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, and the (unfunded) Nutrition Education and Training program.
- ! ***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 appropriations account annually). It also includes additional (to that in the Richard B. Russell National School Lunch Act) authority and funding for the acquisition and distribution of

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<sup>1</sup> 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 to purchase and distribute food commodities or provide Section 32 funds (noted here) or funding from the Department's Commodity Credit Corporation (CCC).

food commodities for distribution to child nutrition programs (Section 32 money is used to by surplus commodities).<sup>2</sup>

For information about the programs and activities covered by these laws, see CRS Report RL31577, *Child Nutrition and WIC Programs: Background and Funding*. For information about child nutrition and WIC legislation in the 104<sup>th</sup> and 105<sup>th</sup> Congresses (1995 through 1998), see CRS Report 96-987, *Child Nutrition Legislation in the 104<sup>th</sup> Congress*, and CRS Report 97-108, *Child Nutrition Issues in the 105<sup>th</sup> Congress*.

The most recent comprehensive amendments to child nutrition law were made in the 1998 William F. Goodling Child Nutrition Reauthorization Act (P.L. 105-336), which extended the appropriation authorizations for all child nutrition programs not permanently authorized through FY2003. This law's major initiative expanded the availability of federal subsidies for snacks served outside of regular school schedules (typically after-school programs). Additional amendments authorized demonstration projects providing free breakfasts for elementary schoolchildren without regard to family income, increased administrative flexibility for schools, states, and WIC agencies, made it easier for private nonprofit sponsors to operate summer nutrition programs, changed licensing and health/safety requirements for child nutrition providers, added a number of provisions to protect the integrity of the WIC and Child and Adult Care Food programs, and limited the degree to which WIC agencies can keep unused money and spend it in the following year.

Reauthorization of appropriations for child nutrition and WIC programs (and, with it, a major comprehensive review of all the programs) is not scheduled until 2003. However, a number of significant changes to child nutrition and WIC law have been enacted since the 1998 reauthorization law. They and legislative issues raised (but still pending) are covered in this report. Issues that have not become the subject of *legislative* interest (e.g., concerns over updating the federal rules governing the content of WIC food packages) and appropriations issues are not.<sup>3</sup>

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

<sup>3</sup> For coverage of funding for child nutrition and WIC programs, see CRS Report RL31577, *Child Nutrition and WIC Programs: Background and Funding*, by Joe Richardson.

## Legislation in the 106<sup>th</sup> Congress

Seven laws affecting child nutrition and WIC programs were enacted in the 106<sup>th</sup> Congress. The enacted provisions were, in many cases, derived from bills introduced during the 106<sup>th</sup> Congress, but not, themselves, acted on; these are noted where appropriate.

### P.L. 106-65

The FY2000 Defense Authorization law (P.L. 106-65; Section 674; enacted October 5, 1999) required the Secretary of Defense to implement a WIC program for overseas military personnel (earlier law had *permitted* this).

### P.L. 106-78

In addition to making FY2000 appropriations for child nutrition and other Agriculture Department programs, P.L. 106-78 (Section 752; enacted October 22, 1999) changed the name of the National School Lunch Act to the Richard B. Russell National School Lunch Act in honor of former Senator Russell of Georgia.<sup>4</sup>

### P.L. 106-170

A law making changes affecting social security disability programs, P.L. 106-170 (Section 411; enacted December 17, 1999) included a provision revising child nutrition law (Section 6(e) of the Richard B. Russell National School Lunch Act) so as to reduce the value of commodities provided for child nutrition programs.<sup>5</sup> This change was supported by the Administration in its FY2000 child nutrition budget and included in the FY1999 and FY2000 Agriculture Department appropriations measures. It required that the value of “bonus” food commodities (already in Department stocks and distributed to schools) count toward meeting a mandate that 12% of all School Lunch program assistance be provided in the form of commodities – thereby reducing the need to *purchase* additional so-called “entitlement” commodities to meet the minimum 12% threshold. It was to be effective for FY2001 through FY2009. However, Section 241 of P.L. 106-224 (discussed below) overrode it for FY2001, and Section 4301 of P.L. 107-171 (discussed in the next section of this report) continued the override through FY2003.

### P.L. 106-224

On June 20, 2000, the President signed P.L. 106-224, the Agriculture Risk Protection Act (H.R. 2559). A number of provisions of this new law – in Subtitle E, **Sections 241-244** – made significant revisions to the laws governing child nutrition and WIC programs. The child nutrition and WIC amendments were not part of either the House or Senate versions of H.R. 2559. They were added in the House-Senate

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<sup>4</sup> This name change was proposed in S. 575 of the 106<sup>th</sup> Congress.

<sup>5</sup> Savings from this change in child nutrition law were used to pay for some of the added costs expected to be incurred from the disability program provisions of P.L. 106-170.

conference on the measure and included in the conference agreement (H.Rept. 106-639) approved by the House and Senate on May 25, 2000. Virtually all were derived from recommendations put forward in various child nutrition bills introduced in the 106<sup>th</sup> Congress (see footnotes below). Overall, they were estimated to have a *net* cost of about \$80 million (in budget authority) or \$100 million (in outlays) for FY2000-FY2005. The majority of costs were associated with the commodity purchase provisions of Section 241, and partially offsetting savings were derived from the provisions of Child and Adult Care Food program amendments of Section 243.

**Section 241** required the Agriculture Department to increase the purchase of food commodities for distribution through the School Lunch program in FY2000 and FY2001.<sup>6</sup> For FY2000, it directed the Department to buy \$34 million worth of commodities over and above the amount already scheduled to be provided. For FY2001, it (1) temporarily changed the law (as revised by P.L. 106-170, noted above) to remove a mandate that any “bonus” commodities acquired for agricultural support purposes and donated to schools be counted toward a minimum requirement that 12% of all school lunch assistance be in the form of commodities (thereby forcing the purchase of more “entitlement” commodities to meet the 12% requirement) and (2) mandated that the Department buy an additional \$21 million worth of commodities for schools. As a result, it was estimated that mandatory commodity purchases for the School Lunch program in FY2001 would be some \$76 million more than previously scheduled.

**Section 242** made changes to child nutrition law to allow schools and WIC agencies to take a more active role in helping to identify and enroll eligible children for Medicaid or assistance under the State Child Health Insurance Program (SCHIP).<sup>7</sup> It allowed schools to share income and other relevant information they collect when determining eligibility for free or reduced-price meals in the School Lunch program with state Medicaid and SCHIP agencies – as long as there is a written agreement that limits use of the information to identifying and enrolling children in Medicaid or SCHIP and parents are notified and given a chance to “opt out.” Section 242 also established a one-state pilot project under which WIC administrative funds could be used to help identify and enroll eligible children in Medicaid and SCHIP (and provided a small grant to defray some of the added costs to local WIC agencies).

**Section 243** incorporated a number of amendments aimed at improving the integrity and management of the Child and Adult Care Food Program (CACFP) – primarily in response to 1999 reports by Agriculture Department’s Office of Inspector General and the General Accounting Office criticizing program operations (particularly with respect to family day care home providers and their sponsors).<sup>8</sup>

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<sup>6</sup> The directive to increase commodity purchases for school lunch programs derived from a proposal advanced in the Emergency Commodity Distribution Act (H.R. 3614/ S. 2056 of the 106<sup>th</sup> Congress).

<sup>7</sup> The provisions to increase the role of schools and WIC agencies in identifying and enrolling children for Medicaid and SCHIP derived from proposals included in the SCHIP Improvement Act (S. 1570/H.R. 2807 of the 106<sup>th</sup> Congress).

<sup>8</sup> The CACFP integrity provisions were largely derived from proposals in the Child and  
(continued...)



The major program integrity provisions of the law: (1) disqualified institutions that have been determined ineligible to participate in any other publicly funded program because they violated requirements of that program, (2) added requirements that sponsoring organizations employ sufficient monitoring staff to ensure effective oversight of local providers and have in place a policy that restricts other work by employees that would interfere with their oversight responsibilities, (3) established specific eligibility criteria for applicant institutions (particularly with regard to their administrative and financial management capabilities), (4) tightened tax-exemption requirements for private nonprofit institutions, (5) gave state agencies greater control over the approval process for institutions (e.g., in some instances, limits can be placed on the number of approved institutions in a given area), (6) strengthened requirements for site visits to participating institutions, (7) required parental notification of an institution's participation in the CACFP, (8) mandated the establishment of procedures for terminating or suspending institutions failing to fulfill their responsibilities or engaging in unlawful practices, (9) restricted administrative cost payments to sponsors of day care centers in the program, (10) limited the ability of day care homes to change sponsors without good cause, and (11) allowed withholding of administrative funds from states failing to provide sufficient training, technical assistance, and monitoring in the CACFP.

**Section 243** also expanded an existing pilot project and established a new pilot. A pre-existing pilot operating in Iowa and Kentucky permitted *for-profit child care centers* to participate in the CACFP under more liberal rules than were normally applied (i.e., in Iowa and Kentucky, they could participate if more than one-quarter of their children are from families with income below 185% of the federal poverty guidelines).<sup>9</sup> The new law allowed this pilot to expand to one more state (Delaware). Taking this a step further, P.L. 106-554 (discussed below) made the Iowa/Kentucky/Delaware pilot rule a nationwide rule (through FY2001), and P.L. 107-76 (discussed in the next section of this report) extended nationwide application of the rule through FY2002. *Outside-of-school programs* for “at-risk” schoolchildren can receive federal subsidies for free snacks they serve in poor areas. The new law authorized a pilot project – to operate in six states (expanded to include Illinois by P.L. 107-76, discussed in the next section of this report) – under which these programs can receive federal payments for free meals (typically suppers) as well as snacks.

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<sup>8</sup> (...continued)

Adult Care Food Program Management Improvement Act (an Administration bill; S. 2356 of the 106<sup>th</sup> Congress) and the bipartisan Child and Adult Care Program Integrity Act (H.R. 4520 of the 106<sup>th</sup> Congress). The 1999 reports that influenced these changes were – (1) *Presidential Initiative: Operation Kiddie Care*. Food and Nutrition Service, Child and Adult Care Food Program, National Report on Program Abuses. U.S. Department of Agriculture, Office of Inspector General Audit Report No. 27601-7-SF (August 1999); and (2) *Efforts to Control Fraud and Abuse in the Child and Adult Care Food Program Should be Strengthened*. U.S. General Accounting Office. RCED-00-12 (November 1999).

<sup>9</sup> For more information, see the description of the CACFP in CRS Report RL31577, *Child Nutrition and WIC Programs: Background and Funding*, by Joe Richardson.

**Section 244** made several small adjustments to the WIC program primarily aimed at giving WIC agencies in Alaska, Hawaii, and outlying areas more flexibility (e.g., allowing Alaska to use funding provided for food to pay for necessary services to remote Indian or Native villages, permitting these agencies to disregard military cost-of-living allowances in determining income eligibility for WIC benefits).

### **P.L. 106-398**

Section 662 of the Defense Authorization measure for FY2001 (P.L. 106-398; H.R. 4205/H.R. 4508; H.Rept. 106-945; enacted October 30, 2000) changed the law requiring a WIC program for overseas military personnel to make clear that military housing assistance (including the basic allowance for housing) will not be taken into account in judging eligibility for WIC benefits.

### **P.L. 106-472**

The Grain Standards and Warehouse Improvement Act of 2000 (P.L. 106-472; enacted November 9, 2000) contained technical and clarifying amendments to the provisions of the Agriculture Risk Protection Act (P.L. 106-224, discussed above) and an extension of funding authority for removal/destruction of federally provided food commodities (e.g., those provided through school meal programs) when they pose a health or safety risk.

### **P.L. 106-554**

The omnibus FY2001 Consolidated Appropriations Act (P.L. 106-554; H.R. 4577; H.Rept. 106-1033; enacted December 21, 2000) incorporated amendments to the Richard B. Russell National School Lunch Act derived from: (1) H.R. 2907/ S. 1995 and (2) S. 3054 of the 106<sup>th</sup> Congress.<sup>10</sup> The provisions taken from H.R. 2907/S. 1995 loosened rules governing participation of *for-profit child care centers* in the CACFP by making the rule applying to Iowa, Kentucky, and Delaware a national eligibility standard for for-profit centers (see the discussion of Section 243 of P.L. 106-224 above) – *but only through the end of FY2001*.<sup>11</sup> The provisions taken from S. 3054 established a pilot program to increase participation in the *Summer Food Service program* in states with very low participation rates – by eliminating certain administrative/paperwork requirements for public sponsors of summer programs. Both the child care center and summer program pilot amendments were added by House-Senate conferees on the consolidated appropriations measure, without separate action by either the House or the Senate.

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<sup>10</sup> These amendments were contained in Sections 101 and 102 of Title I of Division B (Section (1)(a)(4)) of the Miscellaneous Appropriations portion of the Consolidated Appropriations Act for FY2001.

<sup>11</sup> As noted earlier, making the Iowa/Kentucky/Delaware rule a national standard was extended through FY2002 by P.L. 107-76 (see the next section of this report).

## Legislative Issues and Legislation in the 107<sup>th</sup> Congress

The size of the appropriation for the WIC program was the major child-nutrition-issue in the 107<sup>th</sup> Congress – with two supplemental appropriations approved to meet rising participation pressures and special action taken to ensure FY2002 funding for the WIC farmers’ market nutrition program (see CRS Report RL31577, *Child Nutrition and WIC Programs: Background and Funding*). However, a number of child nutrition and WIC *legislative* issues (which can also affect costs) were addressed in the 107<sup>th</sup> Congress, or are likely to return in the 108<sup>th</sup> Congress.

### Child and Adult Care Food Program (CACFP): For-profit Child Care Centers<sup>12</sup>

As noted above in the discussion of legislation enacted in the 106<sup>th</sup> Congress, provisions of P.L. 106-554 (an appropriations measure) loosened rules governing participation of for-profit child care centers in the CACFP by making an eligibility rule used in Iowa, Kentucky, and Delaware nationally applicable. This rule allows private for-profit centers to get subsidies under the CACFP if at least 25% of their enrolled children meet the income requirements for free or reduced-price meals. The alternate standard for the rest of the country tied the eligibility of for-profit centers to their receipt of at least some funding under Title XX of the Social Security Act (Social Services Block Grants). This “rest-of-the-country” standard greatly limits participation by for-profit centers because the major funding sources for child care have shifted since its adoption – to Child Care and Development Block Grants and Temporary Assistance for Needy Families block grants. There has been relatively little controversy over revising the eligibility rules for for-profit child care centers in the CACFP – recognizing that tying their eligibility to receipt of Title XX money is out of date and that a requirement that they serve a significant proportion of lower-income children is more targeted. But the cost of doing so has stalled attempts to change them over the last several years, and a policy allowing “pooling” of Title XX money has mitigated the restrictive effect of the “rest-of-country” rule (for information on the “pooling” policy, see the description of the CACFP in CRS Report RL31577, *Child Nutrition and WIC Programs: Background and Funding*).

The liberalization of the rules for for-profit child care centers enacted in P.L. 106-554 was to have expired September 30, 2001. However, Section 743 of the FY2002 Agriculture Department appropriations law (P.L. 107-76; H.Rept. 107-275) made the more liberal Iowa/Kentucky/Delaware rule effective nationwide *through the end of FY2002*. This action meant that Congress was again faced with deciding on the eligibility policy to be applied to for-profit providers.<sup>13</sup> And, in response, Section 731 of the Senate Appropriations Committee version of the FY2003

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<sup>12</sup> Also see the description of the CACFP in CRS Report RL31577, *Child Nutrition and WIC Programs: Background and Funding*, by Joe Richardson.

<sup>13</sup> **Note:** Title VI (Section 6001) of S. 940/H.R. 1990 proposed to make the current temporary policy for for-profit centers permanent.

Agriculture Department appropriations measure (S. 2801) proposed to further extend the national applicability of the Iowa/Kentucky/Delaware rule through FY2003, with the expectation that the issue would be addressed in the 2003 child nutrition reauthorization debate.<sup>14</sup> However, the 107<sup>th</sup> Congress did not act on the FY2003 appropriations measure, and authority for national application of the Iowa/Kentucky/Delaware rule lapsed when Congress instead chose to approve a “continuing resolution” (P.L. 107-294) to fund most federal activities through January 11, 2003. Reinstatement of this authority will depend on action in the 108<sup>th</sup> Congress related to the FY2003 Agriculture Department appropriations bill and reauthorization/review of child nutrition programs.

## **Child and Adult Care Food Program (CACFP): Family Day Care Homes**

In 1996, the law governing the CACFP was changed to establish a “2-tier” system of subsidies for family day care homes.<sup>15</sup> Under this system, the federal subsidy rates for meals/snacks are higher for homes located in lower-income areas (or operated by a lower-income provider). As this change has been implemented, two issues have been raised by organizations sponsoring family day care homes; these sponsoring organizations perform administrative and technical assistance tasks for the individual homes they sponsor and receive federal payments for doing so (based on the number of homes sponsored). Sponsors contend that, with the change in subsidy rules for day care homes (the old law had a single subsidy rate for all homes and fewer administrative tasks for sponsors), they should receive a larger administrative subsidy. They also maintain that day care home operators should be eligible for the higher subsidies paid in the case of lower-income operators *without having to go through a special income test* – if they already participate in a federal or state income-tested program with an income eligibility limit no higher than the CACFP standard. This, they argue, would ease administrative burdens and may have been an oversight in the 1996 change in law.<sup>16</sup>

Title VI (Section 6003) of S. 940/H.R. 1990 would have significantly increased CACFP payments made to day care home sponsors who handle individual homes’ administrative tasks. And Section 6002 of the bill would have allowed day care homes operated by providers participating in an income-tested benefit program for lower-income persons that has an income eligibility limit no higher than the CACFP limit to qualify for higher subsidies without going through a separate income test.

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<sup>14</sup> Moreover, accompanying committee report language encourages states to conduct outreach to recruit new for-profit providers using the less restrictive Iowa/Kentucky/Delaware eligibility rule and the “pooling” authority noted in the CACFP description in CRS Report RL31577, *Child Nutrition and WIC Programs: Background and Funding*, by Joe Richardson.

<sup>15</sup> For information on the “2-tier” system, see the description of the CACFP in CRS Report RL31577, *Child Nutrition and WIC Programs: Background and Funding*, by Joe Richardson.

<sup>16</sup> For example, where higher subsidies are claimed for meals/snack served to individual lower-income children, participation in another means-tested program is sufficient.

## Child and Adult Care Food Program (CACFP): After-School Initiatives

In addition to the question of changing rules for private for-profit child care centers and day care homes in the CACFP (see discussions above), revisions affecting the CACFP's outside-of-school and day-care home components received some attention. Title VI (Section 6004) of S. 940/H.R. 1990 included significant changes to the CACFP that have been pressed by program advocates for several years. And a change in law incorporated in the FY2002 Agriculture Appropriations measure added one state to the six states that may offer free meals (typically suppers) – in addition to free snacks – in their CACFP outside-of-school programs for at-risk schoolchildren in poor areas.

Outside-of-school (typically after-school) programs serving free snacks are now supported under the CACFP in areas where at least half the children are eligible for free or reduced-price school meals. Title VI proposed to significantly expand the number of areas in which CACFP subsidies could go to after-school programs by allowing areas in which “poor economic conditions” are determined to exist to qualify.

P.L. 107-76 (the FY2002 Agriculture Department appropriations law) added one state (Illinois) to the six states previously permitted to allow their CACFP operators to offer (and receive federal subsidies for) free *suppers* in outside-of-school programs for at-risk children in poor areas. The six states already included were: Delaware, Michigan, Missouri, New York, Oregon, and Pennsylvania. Going a step further, Title VI (Section 6004) of S. 940/H.R. 1990 would have provided CACFP subsidies for suppers nationwide, instead of the limited number of states now covered.

### Commodity Support for Schools: The 12% Rule<sup>17</sup>

As noted earlier in the discussion of legislation enacted in the 106<sup>th</sup> Congress, Section 241 of P.L. 106-224 temporarily removed a mandate that any “bonus” commodities acquired for agricultural support purposes and donated to schools be counted toward a minimum requirement that 12% of all school lunch assistance be in the form of commodities. This ensured that the Agriculture Department would have to continue to purchase more “entitlement” commodities to meet the 12% requirement, and thus increased the total amount of commodity support provided to schools. This change was to have expired September 30, 2001.

In response, Section 4301 of the 2002 “farm bill” (P.L. 107-171; the Farm Security and Rural Investment Act of 2002) continued the bonus commodity provisions of P.L. 106-224 through FY2003.<sup>18</sup> This effectively increased

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<sup>17</sup> See the description of commodity distribution in CRS Report RL31577, *Child Nutrition and WIC Programs: Background and Funding*, by Joe Richardson.

<sup>18</sup> In addition – (1) S. 1179 (the Emergency Commodity Distribution Act of 2001) proposed to make *permanent* the change enacted in P.L. 106-224; and (2) S. 1246 (*reported* by the (continued...))

Agriculture Department commodity purchases for schools by at least an estimated \$50+ million a year for FY2002 and FY2003. However, whether to count “bonus” commodities for purposes of the 12% rule is likely to recur as an issue in the 2003 child nutrition reauthorization debate.

## Commodity Support for Schools: Fruits and Vegetables

In addition to increasing the overall volume of commodities provided to schools (see the discussion of the 12% rule above), the 107<sup>th</sup> Congress acted to expand the presence of fresh fruits and vegetables in schools, responding to concerns over the quality of food served in school nutrition programs. The 2002 “farm bill” (P.L. 107-171; the Farm Security and Rural Investment Act) included two provisions –

- ! Section 10603 requires at least \$50 million a year in fresh fruit and vegetable purchases for schools. This is to be provided through the pre-existing “Department of Defense Fresh Program” in order to utilize the Department’s extensive acquisition/distribution network.
- ! Section 4305 provides \$6 million for a 1-year pilot program to make free fruits and vegetables (including dried fruits) available to students in a limited number of elementary and secondary schools.

Both of these actions coincided with and reinforced statements in Appropriations Committee reports accompanying the FY2002 and FY2003 Agriculture Department appropriations measures backing expansion of support for fresh fruits and vegetables in schools.

## Locally Produced Foods

As a component of federal agricultural support policies, the 2002 “farm bill” (P.L. 107-171; the Farm Security and Rural Investment Act) included two provisions relating to the purchase of locally produced foods for school meal programs –

- ! Section 4303 requires the Agriculture Department to encourage the purchase of locally produced foods in school meal programs and authorizes \$400,000 a year to be appropriated for start-up grants to defray costs incurred in carrying out this policy.
- ! Section 4304 adopts an amendment to the Richard B. Russell National School Lunch Act that – to the maximum extent practicable – requires school food authorities in Puerto Rico to purchase commodities or food products that are produced in Puerto Rico in sufficient quantities to meet their needs.<sup>19</sup> This supplements a general “Buy American” rule for child nutrition programs and copies

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<sup>18</sup> (...continued)

Senate Agriculture, Nutrition, and Forestry Committee on July 25, 2001) would have extended the FY2001 expiration date through FY2002.

<sup>19</sup> This provision was derived from H.R. 3997 of the 107<sup>th</sup> Congress.

a special variation of that rule that previously applied only in Hawaii.

## Competitive Foods

Current School Lunch and School Breakfast program rules prohibit the sale of foods of minimal nutritional value (primarily, sodas and candies) in competition with school meals in school food service areas during meal periods. Other competitive foods may be sold in food service areas during mealtimes only if all the income accrues to the benefit of the school or student organizations. States and schools can impose additional restrictions on the sale of competitive foods. But there are no federal standards governing the offering of competitive foods outside of food service areas during mealtimes or relating to competitive foods that are offered for free.

A significant number of schools have chosen to enter into contracts with, and be paid by, companies that offer competitive foods (often through vending machines, or sometimes for free). The agreements can be structured so that only one company's products are allowed on school grounds (sometimes called "pouring rights" agreements when they involve sodas). These foods are generally offered outside school food service areas and can be of various types – ranging from sodas to juices, candies to vitamin-enriched grain products.

Opposition (including among school food service operators) has developed to allowing schools to enter into these types of agreements and thereby sanction the offering of potentially non-nutritious foods in competition with school meal programs. Schools are seen as making money from the sale of food items that may run counter to the focus on improving children's eating habits and nutrition status. Opponents ask for some type of federal rule barring schools in the school meal programs from allowing the service of non-nutritious foods or those of minimal nutritional value. However, school administrators and food companies with these agreements argue that: (1) tight local school budgets need the extra money raised by these agreements, (2) not all competitive foods are lacking in nutritional value, and (3) the decision should be a local one, not dictated by federal rules.

S. 745 (the Better Nutrition for School Children Act of 2001) would have expanded the current rule against the sale of competitive foods by barring the sale, *donation, or service* without charge of foods of minimal nutritional value *on school grounds* during mealtimes. With regard to the school day between breakfast and lunch, it would have required the Agriculture Department to (1) review federal, state, and local laws, policies, and practices covering the sale, donation, or service without charge of foods of minimal nutritional value, and (2) issue regulations relating to the sale, donation, or service without charge of foods of minimal nutritional value. The regulations could prohibit foods of minimal nutritional value between breakfast and lunch on all or part of the school grounds, or permit states and local school authorities to decide.

H.R. 2129 (also entitled the Better Nutrition for School Children Act of 2001) would have required the Agriculture Department to prescribe regulations relating to the service of foods in competition with school meal programs covering the entire school day and all school grounds. It would also have eliminated the current

provision of law permitting the sale of competitive foods in food service areas during mealtimes if the proceeds go to the school or student organizations.

In related activity, Appropriations Committee report language accompanying the FY2002 and FY2003 Agriculture Department appropriations measures supported expansion of pilot initiatives (underway in Iowa and Wisconsin) offering milk through school vending machines.

## **Paperwork Reduction in School Meal Programs**

For a number of years, child nutrition law has included two rules – called “provision 2” and “provision 3” – that allow schools with high proportions of needy students to avoid the paperwork and administrative burdens associated with certifying children eligible for free and reduced-price school meals, at little or no net cost (see footnotes 3 and 5 earlier in this report). In 1998, a grant program was established to encourage schools to make greater use of these rules. Under this initiative (originally scheduled to expire September 30, 2001), 12 states received grants under which they provide technical and other assistance to schools that enable them to determine whether they should take advantage of these rules and how to do it.

On July 25, 2001, the Senate Committee on Agriculture, Nutrition, and Forestry reported S. 1246 (the Emergency Agricultural Assistance Act of 2001). This version of the House-approved H.R. 2213 would have extended the time that the 12 grantee states could provide assistance to September 30, 2003. However, the Senate did not pass the Senate Committee’s version of the 2001 emergency agricultural assistance legislation. Instead, it approved the House version, which has been enacted as P.L. 107-25. The House version did not include provisions to extend the paperwork reduction initiative.

The issue was resolved in the FY2002 Agriculture Department appropriations law (P.L. 107-76). Section 766 of this law adopted a proposal in the Senate’s version to extend the time the grantee states can provide assistance to September 30, 2003, and required a report on the activities of state agencies receiving the grants.

## **Eligibility for Military Families**

All housing allowances granted to military personnel and reported on their leave and earnings statements are counted as income in determining eligibility for free and reduced-price school meals. On-base housing provided free (in-kind income) is not counted. The Department of Defense is implementing a “privatized” military housing policy under which formerly free housing operated by military authorities is converted to privately operated housing, or military personnel are moved from free to privately operated housing. In these “privatization” scenarios, military personnel are given a housing allowance that they pass on to the private operator, the housing allowance is counted (it is included on leave and earnings statements), and military families formerly eligible for free or reduced-price school meals can lose eligibility.



Advocates for military families and schools with large populations of children from military families argued that families in privatized military housing were being unfairly penalized – losing eligibility for free or reduced-price school meals when their circumstances have not substantively changed. Schools also argued that they were penalized because they lose out on funding allocated according to how large a population of children receiving free/reduced-price meals they have (a widely used proxy for how poor the school’s student population is).

H.R. 3082, H.R. 3216, and S. 1973 all responded to these arguments and proposed to require that, in cases where military personnel live in privatized housing, their housing allowance *not* be counted as income in determining eligibility for free or reduced-price school meals. On December 11, 2001, H.R. 3216 was approved by the House. However, this action was overtaken with the enactment of the 2002 “farm bill” (P.L. 107-171; the Farm Security and Rural Investment Act of 2002). Section 4302 of this law enacted the provisions of H.R. 3216 – effective through FY2003. It is expected that the issue will reappear for a final resolution in the 2003 child nutrition reauthorization debate.

Privatization of military housing presents a slightly different problem for the WIC program. In determining income eligibility for WIC benefits, states may choose to exclude any housing allowance received by military personnel residing *off-base* – regardless of whether they live in “privatized” housing. All states have taken this option. On-base housing provided free (in-kind income) is not counted. However, housing allowances provided for *on-base* privatized housing must be counted. Military family advocates make the case that the current WIC rule was predicated on an understanding that all on-base housing is provided free (and would not be counted when judging eligibility). They argue that conversion of on-base housing to privately operated housing units (using housing allowances) should not deny WIC eligibility since the families’ circumstances have not materially changed.

In response, Section 4306 of the 2002 “farm bill” (P.L. 107-171) amended WIC law by adding an option for states to exclude any housing allowance in cases where military personnel live in privatized on-base housing.

The above noted immediate concerns over the treatment of military families’ housing assistance highlight a larger underlying issue for school meal programs that may be addressed when child nutrition laws come up for review in 2003. Should the value of housing provided free be treated differently than cash housing allowances included in military paychecks? Under current law, the value of housing provided free (most on-base housing) is not considered in judging eligibility for free/reduced-price school meals, but housing allowances are counted. Thus, two otherwise identical military families can be treated differently depending on the type of military housing support they receive. Under the legislation noted above, free housing will continue to be disregarded. But housing allowances will be treated differently. Allowances provided for privatized housing will be disregarded, but counted in other cases.<sup>20</sup> Finally, the legislation will continue the practice of following different

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<sup>20</sup> It should be noted that implementing a policy disregarding some housing allowances, but  
(continued...)

policies for school meal programs and the WIC program (e.g., housing allowances for off-base, non-privatized housing will be counted in school meal programs, but not in the WIC program).

## Expansion of the Summer Food Service Program

Participation in the Summer Food Service program has not significantly increased in recent years and is still a fraction of participation of lower-income children in school meal programs.<sup>21</sup> This has prompted calls for measures to encourage local sponsors to join the program. One such initiative – eliminating certain paperwork requirements for public agency sponsors (documentation of all costs) – was enacted as a pilot project in P.L. 106-554 (discussed earlier). The documentation eliminated is not required of public sponsors (schools) in the school meal programs. Preliminary results of this project (operating in some 13 states) indicate that it is bringing about significant increases (almost 10%) in participation.

S. 2660 would have made the pilot project rule part of permanent law, as would Section 747 of the Senate Appropriations Committee version of the FY2003 Agriculture Department appropriations measure (S. 2801). However, the 107<sup>th</sup> Congress did not act on the FY2003 appropriations bill, and expansion of the pilot project rule was not approved. Nationwide application of this rule will likely be an issue in the 2003 child nutrition reauthorization debate.

## School Breakfast Program and Before-School Initiatives

As with the Summer Food Service program, advocates of the School Breakfast program have called for measures to encourage its expansion. At present, 74% of schools participating in the School Lunch program also operate breakfast programs. But the proportion of schools participating has grown only slightly in the last 6 years.<sup>22</sup>

One approach has been supported in recent Agriculture Department appropriations laws. The FY2001 and FY2002 measures provided \$500,000 to support a school breakfast start-up grant program in Wisconsin, and the Senate Appropriations Committee version of the FY2003 appropriations bill (S. 2801) would have increased that to \$3.3 million and called for expansion to an additional five or more states (with at least \$1 million reserved for Wisconsin). Start-up (and

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<sup>20</sup> (...continued)

not others, may prove to be administratively difficult for schools and hard to understand for parents.

<sup>21</sup> Refer to a recent report by the Food Research and Action Center (FRAC): *Hunger Doesn't Take a Vacation: A Status Report on the Summer Food Service Program for Children (2002, Tenth Edition)*. It is available through FRAC's website – [<http://www.frac.org>].

<sup>22</sup> Refer to a recent report by the Food Research and Action Center (FRAC): *School Breakfast Score Card (2001, Eleventh Edition)*. It is available through FRAC's website – [<http://www.frac.org>].

expansion) grant funding for school breakfast programs was eliminated by the 1996 welfare reform law (P.L. 104-193).

Another approach is represented by H.R. 4192 (the Education Grants for Great Starts Act). This proposal would have established a limited number of demonstrations to support and evaluate the provision of before-school activities that (1) advance student academic achievement and (2) encourage the establishment of (and increase participation in) school breakfast programs.

Finally, it should be noted that another avenue for expanding the reach of the School Breakfast program is represented by an ongoing pilot project testing the results of offering free breakfasts to all students in participating schools. This pilot was authorized in the 1998 child nutrition reauthorization law and later funded at \$13 million (about half for evaluation costs).<sup>23</sup> Whether to take this approach may be an issue in the 2003 child nutrition reauthorization debate.

## **Nutrition and Physical Activity Initiative**

Responding to concerns about overweight and obesity among children (and adults), a bill aimed at improving nutrition and increasing physical activity – the Improved Nutrition and Physical Activity Act (S. 2821) – proposed grants, studies, and a new National Nutrition Foundation. Because child nutrition and WIC programs play a significant role in participating children’s health status, they likely would be an important component in all three initiatives. The bill would have authorized grants to state and local entities for school health initiatives related to prevention of overweight and obesity, including education and training for school food service professionals and activities to improve the nutritional status of schoolchildren. The Agriculture Department would have been directed to contract for a study of its food and nutrition assistance programs to investigate whether they are based on the latest scientific evidence, whether they contribute to either preventing or enhancing overweight and obesity among children (and adults), and whether they can be changed to contribute to the prevention of overweight and obesity. And a new National Nutrition Foundation would have been established in the Department of Agriculture. The foundation was to be charged with supporting and carrying out research on (and disseminating information about) nutrition and food assistance programs – including the nutritional effects of readily available, competing foods at schools with school meal programs.

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<sup>23</sup> Preliminary results of this pilot are described in a report from the Office of Analysis, Nutrition, and Evaluation (OANE) of the Agriculture Department’s Food and Nutrition Service – *Evaluation of the School Breakfast Pilot Project: Findings from the First Year of Implementation, October 2002*. It is accessible at the Food and Nutrition Service website: [<http://www.fns.usda.gov/oane>].