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Improving Child Nutrition Integrity and Access Act of 2016: In Brief

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On January 20, 2016, by a unanimous voice vote, the Senate Committee on Agriculture, Nutrition, and Forestry voted to report its WIC and child nutrition reauthorization proposal.¹ Bipartisan approval of the committee's legislation, the Improving Child Nutrition Integrity and Access Act of 2016, is arguably the 114th Congress's most significant step toward reauthorizing the child nutrition and WIC programs. Since the 2010 reauthorization, the committees of jurisdiction—the Senate Committee on Agriculture, Nutrition, and Forestry and the House Committee on Education and the Workforce—held related hearings, but this is the first legislative action.² As of the date of this report, the House committee has not announced its plans for reauthorization.

This report offers some basic background on the last reauthorization, its expiration, and some of the policies in the Senate committee's legislation. Please see the Senate committee's resources for further details on the committee print and the legislative text. For more background on the programs' operations (such as eligibility rules, benefits, and services) or the 2010 reauthorization, please see the following CRS products:

- CRS In Focus IF10266, *An Introduction to Child Nutrition Reauthorization*
- CRS Report R41354, *Child Nutrition and WIC Reauthorization: P.L. 111-296*
- CRS Report R43783, *School Meals Programs and Other USDA Child Nutrition Programs: A Primer*
- CRS Report R44115, *A Primer on WIC: The Special Supplemental Nutrition Program for Women, Infants, and Children*
- CRS Report R41354, *Child Nutrition and WIC Reauthorization: P.L. 111-296*

As formulation and deliberation on the next reauthorization continues, cost estimates from the Congressional Budget Office (CBO), House proposals, and the 2016 elections may affect the path toward the next WIC and child nutrition reauthorization.

Acronyms Used in This Report

CACFP: Child and Adult Care Food Program

EBT: Electronic Benefit Transfer

FFVP: Fresh Fruit and Vegetable Program

FMNP: Farmers' Market Nutrition Program

¹ As of the date of this CRS report, the legislation has not yet been reported, nor formally introduced. Thus, it does not have a bill number nor does it have an entry on Congress.gov. The Congressional Budget Office (CBO) has not completed their cost estimate of the legislation; it is possible that policy and technical changes will be made to the legislation before it is reported or before it is considered on the Senate floor. A copy of the legislation and related materials are posted on the Senate Committee on Agriculture, Nutrition, and Forestry website, <http://www.agriculture.senate.gov/hearings/committee-print-improving-child-nutrition-integrity-and-access-act-of-2016>.

² During the 114th Congress, the Senate committee held one hearing on WIC and/or child nutrition programs, and the House committee held four hearings on WIC and child nutrition programs. During the 113th Congress, the Senate committee held two hearings on WIC and/or child nutrition programs, and the House committee held one hearing on WIC and/or child nutrition programs. See the committee websites for further detail: <http://www.agriculture.senate.gov/hearings>; <http://edworkforce.house.gov/calendar/list.aspx?EventTypeID=189>.

FNS: Food and Nutrition Service
HHFKA: Healthy, Hunger-Free Kids Act of 2010 (P.L. 111-296)
LEA: Local Educational Agency
NSLP: National School Lunch Program
RCCI: Residential Child Care Institutions
SBP: School Breakfast Program
SEBTC: Summer Electronic Benefit Transfer for Children
SFSP: Summer Food Service Program
USDA: U.S. Department of Agriculture
WIC: Special Supplemental Nutrition Program for Women, Infants, and Children

Current Status of Program Operations

The “child nutrition programs” (National School Lunch Program (NSLP) and certain other institutional food service programs) and the Special Supplemental Nutrition Program for Women, Infants, and Children (WIC) are primarily authorized by the permanent statutes, the Richard B. Russell National School Lunch Act (codified at 42 U.S.C. 1751 et seq.) and the Child Nutrition Act of 1966 (codified at 42 U.S.C. 1771 et seq.). These statutes and programs were last reauthorized by the Healthy, Hunger-Free Kids Act of 2010 (HHFKA, P.L. 111-296). Some of the authorities created or extended in the last reauthorization law expired on September 30, 2015.

As of the date of this report, Congress has not reauthorized the child nutrition and WIC programs, but the vast majority of operations and activities continue via funding provided by the FY2016 omnibus appropriation law (P.L. 114-113).³

In summary, a lapse in the reauthorization or extension of the HHFKA does not affect all activities equally:

- Most of the programs’ authorities to operate are in statute permanently (i.e., without expiration dates). Also, many of the programs’ authorizations of appropriations are permanent; these include NSLP, the School Breakfast Program (SBP), and the Child and Adult Care Food Program (CACFP). These programs with permanent authorizations of appropriations continue, without issue, via FY2016 appropriations (P.L. 114-113).
- However, a few pilot programs or temporary activities expire or sunset when they are not reauthorized. These include a California program to provide Summer Food Service Program (SFSP) snacks year-round, certain food safety audits, and preappropriated funds for a National Hunger Clearinghouse. USDA has now discontinued these activities.⁴
- A number of programs’ authorizations of appropriations ended after September 30, 2015. These include SFSP, WIC, WIC Farmers’ Market Nutrition Program (FMNP), and State Administrative Expenses. Programs with an expired

³ For further background, including a list of affected or potentially affected provisions, CRS has released a congressional memorandum. Congressional clients may request a copy from Randy Alison Aussenberg at raussenberg@crs.loc.gov.

⁴ Based on December 2015 and January 2016 emails between CRS and USDA staff.

authorization of appropriations can continue to operate so long as funding is provided; FY2016 appropriations law (P.L. 114-113) currently allows the above programs to continue to operate.

Senate Committee's Proposal: Selected Provisions

The sections below briefly summarize selected provisions of the Senate committee's legislation as the committee voted to report on January 20, 2016, and are organized thematically, by program. The summaries below do not provide all specifications for the policies discussed; see legislation for further detail. In particular, these summaries generally do not include the required timeline for USDA action, nor do they include reports to Congress. Please also note that agency rulemaking is often required or implied by the legislation; such rulemaking is likely to add details or specifications.

Authorities Extended through September 30, 2020

The Senate committee's proposal would extend the authorizations of appropriations of the Summer Food Service Program, WIC, WIC FMNP, and State Administrative Expenses. (Other major programs—like NSLP and SBP—have a permanent authorization of programs).

The proposal would also continue some of the authorizing provisions that sunset after September 30, 2015. Regarding the activities that are currently expired, the Senate committee's proposal would continue the California pilot and the food safety audit authorities, but it would not continue the preappropriated funding for a National Hunger Clearinghouse.

School Meals (National School Lunch Program and School Breakfast Program)

Nutrition Standards

Debates about the next child nutrition reauthorization have at times centered on the updated nutrition standards in the school meals programs.⁵ An update had been required by the 2004 and 2010 reauthorizations, and USDA-FNS issued the final rule in January 2012.⁶ The 2010 reauthorization also required nutrition standards for food served outside the school meals programs; to implement this, USDA-FNS issued an interim final rule in June 2013.⁷ The Senate committee's proposal includes a number of provisions that would affect these regulations and their implementation moving forward:

- **Change whole grains and sodium meal standards.** The proposal would require USDA to make changes to the regulations regarding the whole grain and sodium requirement, under an expedited rulemaking process (e.g., within 90 days of

⁵ See, for example, "Food Fight Fizzles as Senate Nears Compromise on School Nutrition Rules," *National Public Radio*, January 20, 2016, <http://www.npr.org/sections/thesalt/2016/01/20/463618556/food-fight-fizzles-as-senate-nears-compromise-on-school-nutrition-rules>.

⁶ For the final rule and related resources, see the USDA-FNS website at <http://www.fns.usda.gov/school-meals/nutrition-standards-school-meals>.

⁷ For further summaries and background on regulations noted in this paragraph, see "Selected Current Issues in the USDA Child Nutrition Programs" in CRS Report R43783, *School Meals Programs and Other USDA Child Nutrition Programs: A Primer*, by Randy Alison Aussenberg.

enactment). Although these details are not included in the proposal itself, negotiations between the Senate committee, the White House, USDA, and the School Nutrition Association resulted in agreement that these edits would be (1) reducing a 100% whole-grain requirement to 80% whole-grain, and (2) delaying the Target II sodium requirements for two years (2019).⁸ (**Section 309(b)**)

- **Study of sodium limits.** The proposal would require USDA to contract with an independent entity to review the sodium standards in the meal regulations. The proposal lists particular study questions, such as assessing the impact of the standards on student participation rates and “whether the latest scientific research indicates that further reduction ... is necessary to safeguard the health of children.” (**Section 309(a)**)
- **Advisory groups.** The proposal would require USDA to establish two groups specific to nutrition standards: (1) an interagency working group (USDA and the Centers for Disease Control and Prevention (CDC)) to issue guidance regarding fruits and vegetables in the school meals programs, and (2) an advisory panel to consider and develop recommendations on food sold outside of the reimbursable meals programs (**Section 309(c), (d)**). More generally, the proposal would also establish a School Nutrition Advisory Committee to “provide input in administration of” the NSLP and SBP. (**Section 305**)
- **Fluid milk requirements.** The proposal would require USDA to review school-age children’s milk consumption and the availability of varieties of milk in schools under current regulations. Among other questions, reviews would be required to assess whether consumption and availability meet the recommendations of the 2015-2020 Dietary Guidelines. Based upon specified requirements, revision of the regulations would also be required. (**Section 105**)

Application Verification

Under current law, schools are required to verify the data submitted on a sample of household applications for free and reduced-price school meals. In general, the standard verification sample under current law is the lesser of 3,000 or 3% of approved applications, with a focus on error-prone applications.⁹ Schools may also conduct verification “for cause” for questionable applications.¹⁰ Many schools employ “direct verification” (matching data from other low-income

⁸ While not all of the details are written into the legislation itself, the School Nutrition Association (SNA) posted a January 15, 2016, statement of the terms of an agreement reached between SNA, USDA, the White House, and the Senate committee, <https://schoolnutrition.org/News/AgreementReachedOnSchoolNutritionStandards/>. The terms of the agreement were also discussed in a colloquy between Ranking Member Stabenow and Senator Hoeven during the committee’s markup (mentioned in *Congressional Quarterly* coverage at <http://www.cq.com/alertmatch/277534762?0>). In recent years, “policy riders” in appropriations laws have provided some changes to the whole grain and sodium policies. Under the FY2016 appropriations law (P.L. 114-113), some school food authorities may receive waivers to the 100% whole grain rules and USDA would be prevented from reducing sodium to the Target II until “the latest scientific research establishes the reduction is beneficial for children.” See also CRS Report R44240, *Agriculture and Related Agencies: FY2016 Appropriations*, coordinated by Jim Monke.

⁹ Current law defines “error prone application” as “a household application that ... indicates a monthly income that is within \$100, or an annual income that is within \$1,200, of the income eligibility limitation for free or reduced-price meals.” (Section 9(b)(3)(D)(i) of Richard B. Russell National School Lunch Act (codified at 42 U.S.C. 1758(b)(3)(D)(i)).

¹⁰ 7 C.F.R. 245.6a(c)(7).

programs) to conduct their verification activities, but if data cannot be verified in this way, schools will contact households to verify.¹¹

The Senate committee’s proposal would significantly revise and rework application verification in the school meals programs. Major changes include the following:

- **Size of sample.** The Senate committee’s proposal would create a sample ceiling of the lesser of 10,000 or 10% of a local education agency’s (LEA) applications, but the sample could be reduced to as low as 3,000 or 3%. Factors that could reduce the LEA’s verification sample requirement are high or improved performance among certain integrity and program access activities (activities include direct verification, household responses, and direct certification), or in case of emergency. *(Section 105)*
- **Diverse types of applications sampled.** Instead of a focus on error-prone applications, the proposal would require that the sample include various categories of applications, including applications with data consistent with a documented pattern of error or fraud, applications with a case number from certain low-income programs instead of income information, and close-to-the-income-limit applications. Beyond specifically listed application types, random sampling may be used to reach the required sample size. *(Section 105)*
- **Error reduction plans for high-error schools.** The proposal would require states to work with the LEAs that have the “highest national rates of certification errors” to develop an error reduction plan and to monitor its implementation. The proposal lists a number of potential measures that may be included in such a plan. One possible measure for states is to increase an LEA’s verification sample size, but that measure may only be used for up to 50% of the LEAs with plans and may not be higher than 15,000 or 15% of applications. *(Section 113)*

Selected Other School Meals Provisions

Paid Lunch and Non-program Food Pricing. HHFKA set a floor for schools’ pricing of full-price (“paid”) meals and non-program foods (i.e., vending machines, a la carte line foods). These policies had been intended to ensure that federal subsidies for free and reduced-price meals did not end up subsidizing meals for non-needy children and non-meal foods. The Senate committee’s proposal would strike these price calculation requirements and instead create a broader “non-federal revenue target.” This proposal would require schools to contribute a calculated target of non-federal funds; the source of these non-federal funds may be household payments for full-price lunches but could also be other state or local contributions to the school food service program. *(Section 106)*

Kitchen Equipment and Infrastructure. The Senate committee’s proposal would add to the Richard B. Russell National School Lunch Act policies regarding kitchen equipment and related infrastructure. It would authorize discretionary grants for equipment and other specified capital improvements (up to \$30 million in discretionary funding for FY2016 and each fiscal year thereafter). It also would require USDA to offer loan guarantees; it includes discretionary funding (up to \$5 million for FY2016 and each fiscal year thereafter) for related fees, although

¹¹ For more background on verification under current law, see Quinn Moore, Judith Cannon, and Dallas Dotter, et al., Program Error in the National School Lunch program and School Breakfast Program: Findings from the Second Access, Participation, Eligibility and Certification Study (APEC II) Volume 1: Findings, USDA-FNS, May 2015, pp. 8-9, <http://www.fns.usda.gov/sites/default/files/ops/APECII-Vol1.pdf>.

appropriations for the fees would not be required for loan guarantee activities to occur. (*Section 116*)

Summer Meals (Summer Food Service Program (SFSP) and Other Program Options)

Under current law, most food offered in summer months is provided in congregate settings through the SFSP or the NSLP's Seamless Summer Option (SSO, an option only for schools).¹² ("Congregate" settings refer to specific sites where children come to eat and are supervised.) With the exception of the California pilot mentioned earlier and the SSO option for schools, organizations that provide summer and afterschool food need to participate in two separate programs (SFSP and CACFP At-risk Afterschool).

Following related testimony in multiple 114th Congress committee hearings, as well as the introduction of a number of freestanding proposals, the Senate committee's proposal would pilot or expand a number of alternatives for feeding low-income children during the summer months¹³ (*Section 107*):

- **Streamlining afterschool and summer programs.** The Senate committee's proposal would authorize eligible institutions to operate SFSP and CACFP At-risk Afterschool sites under one application. In FY2018, up to seven states would be authorized to operate this pilot. In FY2019, three states could be added to the limit. In FY2020, two additional states could be added. In FY2021, and each fiscal year thereafter, one additional state could be added. The Secretary of Agriculture would be required to select states with low SFSP participation and states that had not yet transitioned their WIC program to Electronic Benefit Transfer (EBT). Among other requirements, eligible institutions would have to provide meals during at least 20 summer days (or school vacation days in areas that operate a continuous school calendar) in order to participate. Under this streamlined option, the daily reimbursement maximum would be one meal (during summer, only lunch/breakfast) and one snack.
- **Electronic Benefit Transfer (EBT) election.**¹⁴ The Senate committee's proposal would authorize states to make a special election, in place of congregate meal

¹² For further background, see "Summer Food Service Program (SFSP)" in CRS Report R43783, *School Meals Programs and Other USDA Child Nutrition Programs: A Primer*, by Randy Alison Aussenberg.

¹³ During 114th Congress hearings, witnesses testified about SFSP and summer alternatives before the House Committee on Education and the Workforce (April 15, 2015; June 16, 2015; June 24, 2015) and the Senate Committee on Agriculture, Nutrition, and Forestry (May 7, 2015). The 114th Congress introduced bills on summer meals, including (companion bills paired, when applicable): S. 613/H.R. 1728; S. 1539/H.R. 2715; S. 1966.

¹⁴ From FY2010 through FY2016, appropriations laws have provided authority and funding for an EBT demonstration project. These projects provide electronic food benefits over summer months to households with children in order to make up for school meals that children miss when school is out of session and as an alternative to the Summer Food Service Program meals. Related projects originally were authorized and funded in the FY2010 appropriations law (P.L. 111-80). In limited areas, projects have been operated and funded since then, most recently in the FY2016 appropriations law (P.L. 114-113). They received \$23 million for FY2016 (including \$7 million in §741(b)). For more information, see USDA-FNS FY2016 Congressional Budget Justification, <http://www.obpa.usda.gov/32fns2016notes.pdf>, p. "32-24"; and USDA-FNS website, "Summer Electronic Benefit Transfer for Children (SEBTC)" <http://www.fns.usda.gov/ops/summer-electronic-benefit-transfer-children-sebtc>. On January 28, 2016, prior to its FY2017's budget release, the Administration announced that a SEBTC expansion would be included in the FY2017 budget; see fact sheet, <http://www.fns.usda.gov/sites/default/files/ops/FY17SEBTCBudgetFactSheet.pdf>. Additional details about the Administration's Nationwide Summer EBT proposal are available in the FY2017 budget (continued...)

service, to issue \$30 per summer month, per eligible child, on a WIC EBT card.¹⁵ This election, funded by the SFSP mandatory funding, would be provided for a limited number of children. In FY2018 (the first year), no more than 235,000 children could be served under this election; in FY2019, no more than 260,000 children; in FY2020, and each fiscal year thereafter, no more than 285,000 children. In addition to the mandatory funding authorized, up to \$50 million would be authorized to be appropriated to serve additional children. Among other criteria and considerations, USDA would be required to limit this election to eligible households that live in (1) poor areas that are rural and without congregate feeding sites, (2) poor areas that have limited access to SFSP and other authorized alternatives, or (3) areas with less than 50% of households eligible for free schools meals and with limited access to SFSP and other authorized alternatives.

- **Offsite consumption election.** The Senate committee’s proposal would, beginning in summer 2017, permit states to allow institutions to provide SFSP meals to be consumed offsite. This election would be available for children (1) in a rural area, or (2) a non-rural area in which more than 80% of students are certified as eligible for free or reduced-price meals. Home delivery of meals (no more than two meals per child per delivery) is an example of how a state might use this election.
- **Allowances for offsite consumption.** For institutions operating congregate feeding sites, the Senate committee’s proposal would require USDA to grant a state’s request for offsite consumption when the site is closed due to extreme weather considerations, violence or other public safety concerns temporarily prevent children from traveling safely to the site, or other emergency circumstances are present.
- **Discretionary funding available for a third meal.** The Senate committee’s proposal would authorize discretionary funding for up to six state agencies to pilot the provision of three meals per day, or two meals and one snack.

Child and Adult Care Food Program (CACFP)

Among the Senate committee proposal’s policies for CACFP are the following changes to institutional eligibility and reimbursements (*Section 109*):

- **Additional institutions.** Residential child care institutions (RCCIs) and boarding schools funded by the Bureau of Indian Education would be eligible for CACFP meal and snack reimbursement in addition to the school meals programs.
- **Additional food for longer-duration child care.** Child care institutions would be able to claim reimbursement for an additional snack for each child that is in care for nine hours or more per day. Under current law, two meals and one snack

(...continued)

USDA-FNS Explanatory Notes on p. “32-34,” <http://www.obpa.usda.gov/32fns2017notes.pdf>.

¹⁵ The \$30 would be adjusted annually for inflation, children eligible for free or reduced-price school meals and living in an area administering this option would be eligible, and only states that have transitioned their WIC program to EBT could participate.

or one meal and two snacks are the daily limits per child regardless of duration of care.

Farm to School Grant Program¹⁶

Beginning FY2017 and each year thereafter, the Senate committee's proposal would increase annual mandatory funding (from \$5 million to \$10 million) for the Farm to School Grant Program. It would also increase maximum grant amounts (from \$100,000 to \$200,000). Among other updates, the proposal would add "implementing agricultural literacy and nutrition education" as an allowable use for grants and require USDA to make improving procurement and distribution a goal of grant making. (*Section 110*)

Fresh Fruit and Vegetable ("Snack") Program¹⁷

Under current law, with the exception of a pilot included in the 2014 farm proposal, the fruit and vegetable snacks served through the program must be fresh—not frozen, dried, or canned. The Senate committee's proposal would create "hardship exemption" criteria and a process under which some schools could serve frozen, dried, or canned fruits and vegetables instead of only fresh items. Subject to USDA's and the states' implementation, schools with limited access to quality fresh fruits and vegetables year-round or with limited facilities to store, prepare, or serve fresh fruits and vegetables would be able to participate in the snack program by providing frozen, dried, or canned fruit and vegetable snacks. In the first year of a hardship exemption, the school could serve up to 100% of their fruit and vegetable snacks in these forms; however, the ceiling would drop over four years, moving from 100% to 60% to 20% to 0%, transitioning the exempt schools from 0% fresh offerings to 100% fresh offerings.

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

The Senate committee's proposal would make changes to child eligibility and states' infant formula and foods competitive bidding in WIC, including the following: (*Section 204(a)*)¹⁸

- **Child eligibility.** Under current law, in all states, children (who meet all other eligibility criteria) are eligible for WIC benefits until they reach five years of age. The Senate committee's proposal would create a state option where children may participate in WIC until their sixth birthday or until they enter full-day kindergarten (whichever comes first).
- **Infant certification period.** Currently, states have the option to certify infants and children for up to one-year periods. The Senate committee's proposal would allow states to certify infants for up to two years at a time.

¹⁶ For more information on grants and grantees, see the USDA-FNS program website, <http://www.fns.usda.gov/farmtoschool/farm-school-grant-program>.

¹⁷ This program is authorized by the Richard B. Russell National School Lunch Act but is funded by the Section 32 of the Act of August 24, 1935 (P.L. 74-320, as amended; 7 U.S.C. 612c). Since first piloted in 2002, this program has been amended by both farm bills and child nutrition reauthorization laws. The 2014 farm bill (P.L. 113-79, Section 4214) authorized a pilot project for canned, frozen, or dried fruits and vegetables.

¹⁸ For more information on how the WIC program currently operates (including eligibility rules, EBT, vendor, and infant formula and infant food competitive bidding), see CRS Report R44115, *A Primer on WIC: The Special Supplemental Nutrition Program for Women, Infants, and Children*, by Randy Alison Aussenberg.

- **Income eligibility calculation.** When counting a household’s income for WIC eligibility, the Senate committee’s proposal would require all states to exclude certain Department of Defense payments (Basic Allowance for Housing, Basic Allowance for Subsistence) and the amounts of child support paid if household members are legally obligated to pay child support.
- **Measures related to the integrity of benefit redemption.** The Senate committee’s proposal would require all states to educate participants on the safe and legal disposal of unused or excess infant formula purchased with WIC benefits. The proposal also includes several policy changes related to accurate invoicing of WIC infant formula purchases, so that manufacturer rebates are issued more precisely.
- **WIC vendors.** The Senate committee’s proposal would add notification requirements if a state were to place a moratorium on authorizing new vendors. In setting maximum allowable reimbursement levels for vendors, the proposal would require states to exclude WIC vouchers that had not been redeemed in full (would not include EBT purchases). The proposal would require the Secretary to review states’ vendor authorization processes.
- **Changes to competitive bidding for infant formula and infant foods.** The proposal would make a number of changes related to the competitive bidding and contract award process for infant formula and infant foods, including allowing an infant formula contractor in a state to terminate its contract if the state raises Medicaid income eligibility (with exact parameters of this increase and contract termination to be determined by the Secretary)¹⁹ and requiring states to issue a justification statement to USDA before entering into exclusive contracts for infant food.
- **Transition to EBT.** The 2010 reauthorization set a requirement that states transition their benefit systems from voucher-based to EBT by October 1, 2020. The Senate committee’s proposal would authorize discretionary funding (up to \$25 million annually for FY2016-FY2020) for “enhancing and accelerating” EBT implementation. The proposal would also create penalties for states that fail to comply with the implementation timeline.

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¹⁹ WIC applicants that participate in Medicaid are deemed income eligible for the program; this Medicaid-WIC relationship is called adjunctive eligibility. In addition to this change for infant formula contracts in Section 204(a), Section 204(b) of the Senate committee’s bill would require the Comptroller General of the United States to conduct a study to examine the impact of adjunctive eligibility on WIC.