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Allison Post, Chief
WIC Administration, Benefits, and Certification Branch, Policy Division
Food and Nutrition Service
1320 Braddock Place, 3rd Floor
Alexandria, VA 22314

[Submitted via regulations.gov]

Re: Proposed Rule: Special Supplemental Nutrition Program for Women, Infants, and Children (WIC): Revisions in the WIC Food Packages (FNS-2022-0007-0001)

Dear Chief Allison Post:

The National Women's Law Center (NWLC) appreciates the opportunity to submit this comment in support of the U.S. Department of Agriculture (USDA) proposed rule revising the food packages for the Special Supplemental Nutrition Program for Women, Infants, and Children (WIC), which was published in the Federal Register on November 21, 2022 (Proposed Rule).¹

NWLC fights for gender justice—in the courts, in public policy, and in our society—working across the issues that are central to the lives of women and girls. NWLC uses the law in all its forms to change culture and drive solutions to the gender inequity that shapes our society and to break down the barriers that harm all of us—especially women of color, LGBTQ+ people, and low-income women and families. For 50 years, NWLC has been on the leading edge of every major legal and policy victory for women.

NWLC supports USDA's proposed changes to benefits in the WIC program because they are important measures to address food insecurity among women, LGBTQ+ people, and families. The increase in the Cash Value Benefit (CVB) will provide participants with more resources to buy fruits and vegetables.² The updated food packages will allow for greater flexibility and choice for WIC recipients.³ Taken together, the changes in the Proposed Rule represent a crucial first step to address recommendations from the White House Hunger Summit and will help women, LGBTQ+ people, and families obtain the nutritious food they need.

¹ SPECIAL SUPPLEMENTAL NUTRITION PROGRAM FOR WOMEN, INFANTS, AND CHILDREN (WIC): REVISIONS IN THE WIC FOOD PACKAGES, 87 Fed. Reg. 71090 (proposed Nov. 21, 2022) (to be codified at 7 C.F.R. pt. 246), <https://www.govinfo.gov/content/pkg/FR-2022-11-21/pdf/2022-24705.pdf>.

² See *id.* at 71106.

³ See *id.* at 71091.

WIC is an important support for low-income women, LGBTQ+ people, and families who face increased need during pregnancy and while caring for young children.

WIC is a vital program to improve food security and nutrition for low-income women, LGBTQ+ people, and families. The updated food packages make much-needed, evidence-backed changes that will more effectively support the health and well-being of women, LGBTQ+ people, and families.

Women face especially precarious economic circumstances as they welcome a new baby. Lack of robust public investment in policies that support caregiving leaves families with young children struggling to balance work and family responsibilities.⁴ The combination of increased unpaid caregiving responsibilities, frequent lack of access to paid leave and affordable, high-quality child care, often interferes with paid work and strains already limited budgets. Together with the increased costs associated with raising young children, economic hardship can deepen for young families.⁵ As a result, families with young children have some of the highest rates of poverty of any age group.⁶

The COVID-19 pandemic only increased the financial challenges of pregnancy and caring for young children. Throughout the pandemic, WIC has been a critical support for pregnant, breastfeeding, and post-partum people and for children birth to five:

- In 2021, over one in three (35 percent) of adult women WIC recipients had incomes below the FPL.⁷
- In 2021, more than six in ten (62 percent) of adult women recipients were women of color.⁸
- In 2019, 17 percent of LGBTQ women living with children participated in WIC compared to 11 percent of non-LGBTQ women and 5 percent of non-LGBTQ men living with children.⁹

If counted in the official poverty measure, WIC would have lifted the incomes of 81,000 people above the Federal Poverty Level in 2021, including 39,000 children and 26,000 women (9,000 of

⁴ TRANSFORMATIVE PUBLIC INVESTMENTS IN CHILD CARE AND PRE-KINDERGARTEN WILL DRAMATICALLY CUT COSTS FOR FAMILIES, NAT'L WOMEN'S LAW CTR. (March 2, 2022), <https://nwlc.org/wp-content/uploads/2022/03/ReduceChildCareCostFS.pdf>.

⁵ Jasmine Tucker and Julie Vogtman, WHEN HARD WORK IS NOT ENOUGH: WOMEN IN LOW-PAID JOBS, Nat'l Women's Law Ctr., 2 (April 2020), https://nwlc.org/wp-content/uploads/2022/02/Women-in-Low-Paid-Jobs-report_pp04-FINAL-4.2.pdf.

⁶ Robert Paul Hartley, Ajay Chaudry, Melissa Boteach, Estelle Mitchell and Kathryn Menefee, A LIFETIME'S WORTH OF BENEFITS: THE EFFECTS OF AFFORDABLE, HIGH-QUALITY CHILD CARE ON FAMILY INCOME, THE GENDER EARNINGS GAP, AND WOMEN'S RETIREMENT SECURITY, Nat'l Women's Law Ctr. (April 12, 2022), <https://nwlc.org/resource/a-lifetimes-worth-of-benefits-the-effects-of-affordable-high-quality-child-care-on-family-income-the-gender-earnings-gap-and-womens-retirement-security/>.

⁷ NAT'L WOMEN'S LAW CTR. CALCULATIONS BASED ON U.S. CENSUS BUREAU, 2022 ANNUAL SOCIAL AND ECONOMIC SUPPLEMENT USING SARAH FLOOD ET AL., INTEGRATED PUBLIC USE MICRODATA SERIES (IPUMS): VERSION 8.0 [Machine-Readable dataset] (Minneapolis: University of Minnesota, 2022), <https://ipums.org/>.

⁸ *Id.*

⁹ Spencer Watson, Oliver McNeil, and Bruce Broisman, THE ECONOMIC WELL-BEING OF LGBT ADULTS IN THE U.S. IN 2019, "Ctr. for LGBTQ Econ. Advancement & Rsch., 12 (June 2021), <https://lgbtq-economics.org/wp-content/uploads/2021/06/The-Economic-Well-Being-of-LGBT-Adults-in-2019.pdf>.

whom are Black, 4,000 of whom are Latina, and 13,000 of whom are white, non-Hispanic women).¹⁰

The Proposed Rule would provide additional, robust support to women and families. Updated food packages will improve the benefits of more than 6.3 million WIC participants and, most significantly, the 4.9 million women and children who will receive enhanced fruit and vegetable benefits.¹¹ The science-backed recommendations in the Proposed Rule address nutritional needs while increasing participant choice and autonomy. The Proposed Rule thus supports equitable access to the nutritious foods women, LGBTQ+ people, and families need at the crucial time of pregnancy and young childhood.

NWLC supports the Proposed Rule’s increased value in the CVB because it would expand access for WIC participants.

Permanently increasing the value of the CVB each month from \$9 to \$25 for children and from \$12 to \$44/\$49 for pregnant and postpartum participants, bolsters a vital benefit.¹² These increased amounts will allow WIC participants greater access to fruits and vegetables to meet their needs, reduce food insecurity, and support the increased nutritional needs of pregnant, postpartum and breastfeeding people. To be further responsive to these needs, NWLC supports the National WIC Association's recommendation for USDA to align the CVB level for pregnant participants with NASEM recommendations.

The increased CVB values temporarily enacted in 2021 gave women, LGBTQ+ people, and families increased access to the fruits and vegetables of their choice during the pandemic. While the pandemic recession has ended, the need for expanded nutritional assistance persists.¹³ As the portion of WIC benefits that allows for the most participant autonomy, permanently increasing the CVB would allow participants to choose healthy items that reflect their taste preferences and cultural traditions, as well as the flexibility to add variety to the foods they choose.

Further, increased benefit levels that were first introduced in 2021 in response to pandemic hardships should be maintained as the Proposed Rule is implemented. The requirement to implement food packages in their entirety, rather than piecemeal, may introduce uncertainty around the ability of states to maintain CVB levels during implementation. As states implement the rule and adjust their food packages, they should not have to wait for food package adjustments to be implemented to offer the increased CVB. USDA should make clear that increased CVB levels may be maintained while states adjust their systems to accommodate new food products and substitutions, so that WIC participants do not experience a drastic drop in their benefit levels.

¹⁰ *Supra* note 7.

¹¹ See WIC DATA TABLES, MONTHLY DATA – STATE LEVEL PARTICIPATION BY CATEGORY AND PROGRAM COSTS, FY 2022 (PRELIMINARY), U.S.D.A., FNS, <https://www.fns.usda.gov/pd/wic-program> (last visited Feb. 17, 2023).

¹² See *supra* note 1 at 71094, 71127.

¹³ WHITE HOUSE, BIDEN-HARRIS ADMINISTRATION NATIONAL STRATEGY ON HUNGER, NUTRITION, AND HEALTH (SEPT. 2022), at 10, 24, <https://www.whitehouse.gov/wp-content/uploads/2022/09/White-House-National-Strategy-on-Hunger-Nutrition-and-Health-FINAL.pdf>.

NWLC supports the Proposed Rule’s updated food packages as they align with nutritional needs and increase participant choice.

We applaud USDA for aligning food package recommendations with the guidance of the National Academies of Sciences, Engineering, and Medicine (NASEM).¹⁴ NASEM’s recommendations on the WIC program align with the issuance of the first-ever distinct recommendations for pregnancy, lactation, and the first two years of life.¹⁵ These recommendations represent an important commitment to public health within these populations.

We also strongly support these proposed changes because they will expand participant choices in the food packages. Allowing more autonomy and flexibility means WIC participants have greater options and recognizes each family is unique. WIC participants are better able to access nutritional foods when they can select the options that best suit their needs.

The proposed changes that would allow increased substitution of dairy products allow participants to choose what is best for them. Allowing a broader range of package and container sizes will further increase the options available to WIC participants, such as single-serve yogurts or string cheese, increasing their ability to align WIC benefits with their needs.¹⁶

Additionally, following through on USDA’s proposal to allow more plant-based dairy alternatives in the future will further increase flexibility while meeting nutritional needs.¹⁷ This proposal to develop alternatives is responsive to allergy concerns and will increase the value of the WIC package for those who do not consume dairy or soy products.

The Proposed Rule similarly expands participant choice by increasing whole grain options to include grains that are consumed in various cultures.¹⁸ This increases the ability of the program to provide familiar and appropriate foods, especially to participants who are new immigrants or refugees. For all participant families, increased whole grain options – including stronger standards for breakfast cereals – will better allow them to tailor a healthy family menu of their choosing.

Conclusion

NWLC strongly supports the Proposed Rule and urges USDA to move quickly to a Final Rule. Making permanent the increased CVB levels and updating food packages to increase participant autonomy work to reduce food insecurity and support the nutritional needs of pregnant, breast-feeding and postpartum people and their families.

¹⁴ See REVIEW OF WIC FOOD PACKAGES: IMPROVING BALANCE AND CHOICE: FINAL REPORT, N. Acads. of Scis., Eng’g and Med., 109-10 (2017), <https://doi.org/10.17226/23655>.

¹⁵ See *supra* note 1 at 71100-01; U.S.D.A. & U.S. DEP’T OF HEALTH AND HUM. SERVS. DIETARY GUIDELINES FOR AMERICANS, 2020-2025, 54 (Dec. 2020), https://www.dietaryguidelines.gov/sites/default/files/2021-03/Dietary_Guidelines_for_Americans-2020-2025.pdf.

¹⁶ See *id.* at 71097.

¹⁷ See *id.* at 71095-71098.

¹⁸ See *id.* at 71101-02.



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