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THE WIC REGULATIONS PENDING AT OMB

OMB is now considering a final regulation that USDA has submitted to change the formula used since 1994 to allocate WIC funds among states. OMB required significant changes to be made in the proposed rule on this matter before it was published last fall. If OMB again changes the USDA submission to make the final rule resemble the proposed rule, the likely result will be reductions over time in the number of women and children the WIC program serves, state hostility, and possible Congressional action to prevent the Administration from implementing the revised allocation formula. In the wake of comments that overwhelmingly rejected the changes that OMB asked to be made in the proposed rule, as well as analysis suggesting the OMB-recommended provisions would likely have the unintended effect of causing fewer women and children to be served, OMB should approve USDA's final rule rather than have it changed.

Background

About a year ago, USDA submitted a proposed rule to OMB to modify the formula for allocating WIC funds. The proposal represented the outcome of extensive negotiations with the states, conducted through the National Association of WIC Directors.

OMB required significant changes in the proposed rule before clearing it for publication. Under the proposed rule as published, a number of states could lose significant amounts of funds over time (which would be shifted to other states). This likely would cause many of the "loser" states to reduce over time the number of women, infants, and children they serve through WIC, even if Congress provides money to expand WIC overall. If food price inflation averaged three percent per year, for example, California's annual WIC allocation would, by 2003, be reduced approximately $35 million a year below the amount the state would need to keep pace with inflation since 1999 so the state could continue serving the same number of participants.

States and the National Association of WIC Directors reacted rather angrily to the changes that OMB directed be made in the proposed rule. In addition, a number of Members of Congress wrote to protest these aspects of the rule. (These letters include a letter from the full Massachusetts delegation, including Senators Kennedy and Kerry, as well as letters from a good part of the California delegation, and letters from

Senators Rockefeller, Leahy, Dodd, and Reed, among others.) The comments submitted to USDA on the proposed rule overwhelmingly opposed the OMB-inspired changes.

In addition, analysis that we have conducted indicates that the OMB-recommended changes likely would lead to the misallocation of some WIC funds, because funds would be shifted from states that can use them to states that likely can*not*, thereby causing fewer women and children to be served nationally and more WIC funds to go unspent.

The final rule that USDA has submitted for clearance apparently moves back substantially toward the original changes in the allocation formula that USDA and the states negotiated. Such a course is the best route to follow. Additional information follows.

The Issue

Under the original changes that USDA and the states negotiated, states in which USDA has estimated that the percentage of WIC-eligibles being served exceeds the national average participation rate would be allocated slightly less each year than their prior year's grant level adjusted for food price inflation. This would leave modestly more money for states in which the participation rate is below the national average.

The OMB-directed changes that appear in the proposed rule would move significantly farther in this direction, more substantially reducing the amounts that the states with above-average participation rates would receive. Each year these states would be allocated *less than half* of the increment they would need to keep pace with inflation in WIC food costs, enabling larger amounts to be shifted to "below average" states.

For reasons outlined below, this course is unwise. It should be noted that states did not divide along winner and loser lines when commenting on the changes OMB made in the proposed rule; to the contrary, these changes aroused broad-based state opposition.

- The Administration has estimated that "full funding" in WIC is 7.5 million participants. We are now close to 7.4 million participants. As this may suggest, a number of states are effectively at full funding now and cannot use additional money to expand.

- It appears that the "above-average" states increasingly are states that have succeeded in reaching and serving higher percentages of eligible women and children, while the "below-average" states increasingly seem to be states that are achieving little or no further caseload growth when provided the resources to do so. This seems to be one of the principal reasons that the above-average states are above average and the below-average states are below average.

- In FY 1996, USDA offered additional WIC funds to the 30 below-average states a total of 112 times (i.e., the typical such state received nearly four such offers over the fiscal year). These states declined to take *any* additional funds 97 out of these 112 times. In FY 1998, the below-average states turned down 54 of 72 such offers of additional funds. (No such offers were made in FY 1997 or 1999.) In neither FY 1996 nor FY 1998 did a single below-average state accept all of the funds it was offered to bring it up to, or closer to, the national average participation rate.

- These data suggest that a principal effect of the proposed rule would be to shift funds from states that have shown they can use the funds to serve eligible women, infants, and children to states that will not be able to use all (or any) of the transferred funding. As a result, the proposal would likely lead to a reduction in participation nationally and an increase in unspent funds (and in more funds carried over from one year to the next).

  Congress has directed USDA to reduce carry-over funds. Higher levels of unspent funds would likely trigger Congressional criticism of the Administration's management of WIC and also could lead Congress to appropriate less for the program.

- Another important issue is that if the data USDA uses to determine the number of eligible women, infants, and children in a given state are not accurate, that state can wrongly be categorized as above-average or below-average. This is probably occurring. While the Census data used to estimate the number of persons eligible for WIC are fairly accurate on the national level, the state-level data are less accurate. This is particularly true for small states and states with populations that may be under-counted by the Census, such as states with large immigrant populations.

- This is a problem for California. California is one of the principal states that has been able to expand its WIC program significantly in recent years, and California WIC officials believe further expansion is possible, especially in light of the Administration's May 25 guidance clarifying that receipt of WIC and other non-cash benefits will not subject immigrants to "public charge" or related problems. Yet California is classified as an above-average WIC state and would lose significant funding over time under the proposed allocation formula. The Census data that cause California to be classified an above-average state undercount immigrants, making the reliability of California's above-average ranking questionable.

Under the proposed rule, with the OMB-directed changes, California would have to make some reductions in WIC caseload. (The reduction would grow a little larger each year.) Yet the Clinton Administration is promoting its excellent guidance on immigrant benefit receipt and public charge and encouraging states to enroll more poor legal immigrants in means-tested programs for which they qualify. The allocation formula changes in the proposed WIC rule consequently would work at cross-purposes with the Administration's public charge guidance. The proposed WIC rule would make it more difficult for California to add significant numbers of eligible immigrants to WIC (or cause California to reduce WIC participation among eligible *non*-immigrants with slightly less acute need for WIC to make room for more immigrants).

The bottom line is that the changes USDA was asked to insert into the proposed rule would have the likely effect, over time, of requiring states classified as above-average to reduce WIC participation in order to shift funds to below-average states in amounts that exceed what a number of those states likely would use. The probable result would be lower WIC participation nationally, precisely the opposite of what the Administration has sought every year since 1993. Addressing this problem entails moving back to the formula that USDA and the states originally negotiated (or something close to it), which is what USDA is now proposing.