June 24, 2022

Federal Trade Commission
600 Pennsylvania Avenue, NW
Washington, DC 20580

Re: Solicitation for Public Comments on Factors that May Have Contributed to the Infant Formula Shortage and Its Impact on Families and Retailers
Docket Number FTC-2022-0031

Federal Trade Commissioners:

Thank you for the opportunity to provide comments on factors that may have contributed to the infant formula shortage. The Commission requested public comments regarding whether families purchasing infant formula through the Special Supplemental Nutrition Program for Women, Infants and Children (WIC) have faced additional barriers to accessing infant formula during the shortage and the impact of WIC’s competitive bidding process on the infant formula sector’s number of suppliers, capital investment, and total manufacturing capacity.

The Center on Budget and Policy Priorities is a nonpartisan research and policy institute focused on programs and policies that promote economic and health security. Our work on federal nutrition programs, including WIC, has been a core component of our work for 40 years. We have deep expertise on WIC policy, including the program’s competitive bidding process for infant formula.

Our organization’s founder and former President helped shape the development of competitive bidding in WIC in the 1980s. Our organization supported Senate and Federal Trade Commission investigations into anti-competitive practices by infant formula manufacturers in the early 1990s and has closely followed the competitive bidding process and proposed changes to it since that time.

As WIC currently serves more than 40 percent of U.S. infants and represents more than half of U.S. infant formula purchases, the program could play an important role in building more resilience into the infant formula sector, and perhaps expanding competition in the market as well. However, any policy changes must be considered carefully. The savings from WIC’s competitive bidding process have played an important role in allowing WIC to serve all eligible applicants with the limited funding the program receives through the annual appropriations process. For more than 20 years WIC has not turned away eligible applicants or put them on a waiting list due to lack of funds.

---

A key goal of any policy changes must be maintaining access to the program for the millions of low-income women, infants, and young children who rely on the program for healthy foods, nutrition education, breastfeeding support, health care referrals, and other assistance.

Our comments will focus on providing the Commission with:
- information about the history, structure, and impact of the WIC program’s competitive bidding process;
- information regarding WIC’s policy response to the infant formula shortage; and
- considerations for the Commission’s work on this issue moving forward.

**Competitive Bidding Helps Ensure Access to WIC**

Infant formula shortages triggered by a safety recall have brought attention to the role that the WIC program plays in the infant formula market. WIC provides nutritious foods (including infant formula), nutrition education, breastfeeding support, and referrals to health care and social services for millions of low-income families, improving lifetime health for women, their infants, and young children.²

For decades, WIC has supported breastfeeding — including by providing additional WIC foods that parents who are breastfeeding and their infants need — while also allowing low-income families to get formula they might not otherwise be able to afford. Ensuring that policy changes to strengthen the infant formula market do not impede access to WIC is critical so that low-income families can afford the nutritious food, including formula, they need for healthy development.

**How Competitive Bidding Works**

Although WIC recognizes and promotes breastfeeding as the optimal source of nutrition for infants, it provides iron-fortified infant formula for babies who are not exclusively breastfed. Despite objections from infant formula manufacturers, in 1989 Congress and President George H.W. Bush enacted legislation on a bipartisan basis requiring all state WIC programs to use competitive bidding for the purchase of infant formula, unless the state could institute an alternative mechanism that would provide comparable savings.³ (No state has yet used an alternative.)

State WIC programs — individually or in alliances of several state agencies — solicit bids for discounts on formula.⁴ The process is competitive; generally two or three companies bid for each contract. The bidder offering the lowest net price becomes the sole provider of regular infant formula through WIC in the state, provided it can meet the other contract requirements.⁵ (Babies or

---


⁴ *Ibid.* While geographic state agencies serve the vast majority (97 percent in fiscal year 2021) of WIC participants, territories or tribal organizations can serve as state agencies operating the WIC program.

⁵ Larger states or alliances are required to conduct separate competitive bids for milk-based and soy-based formula.
young children who need a specific kind of formula can get it through the WIC program even if the company that won the bid doesn’t manufacture that type.) Federal laws and regulations provide detailed instructions on the bidding and selection processes, which are conducted in a transparent way.⁶

Although one manufacturer is selected for the contract, it is misleading to call this a “sole source” contract, since that term typically describes a non-competitive process where one company is awarded a contract without a bidding process, usually because no other company can meet the contract requirements. The Small Business Administration defines a sole source contract for federal business as “a kind of contract that can be issued without a competitive bidding process.”⁷ In contrast, WIC’s bidding process is so competitive that WIC receives large discounts off the wholesale price of infant formula.

More than 47,000 grocery stores nationwide have been approved to accept WIC benefits based on their prices and the variety of foods they offer.⁸ Participants select their WIC-approved foods, including infant formula, from grocery store shelves and use a WIC electronic benefits card to pay at the register. (See Figure 1.)

---

⁶ 7 C.F.R. § 246.16a.
Competitive Bidding Substantially Reduces WIC’s Infant Formula Costs

For infant formula manufacturers, winning a WIC contract results in purchases increasing among non-WIC participants as well as WIC participants. This could reflect wide availability of their product, favorable shelf space in stores, samples or recommendations provided by health care providers, and/or word of mouth. The increase in WIC brand purchases arises even for formulas, like toddler formulas, that are not typically available through WIC. Estimates suggest that sales to non-WIC participants in a state might double or triple when a manufacturer wins a WIC contract in that state.\(^9\)

As a result, even though bidding is entirely voluntary, manufacturers routinely compete aggressively on WIC contracts and offer substantial rebates. Nationwide, the competitive bidding process yields $1 billion to $2 billion a year in rebates. (See Figure 2.) The 2021 savings of $1.6 billion were enough to provide WIC benefits to more than 2 million low-income women, infants, and young children. Even with the savings, the WIC program spent more than half a billion dollars on infant formula in fiscal year 2018 (the most recent year of available data), much of which likely went to retailers to cover their markup.\(^10\)


Due to the savings on infant formula, WIC’s total spending on the foods it provides — including discounted formula plus other WIC foods, which are generally not discounted — is well below their full retail value.¹¹ (See Figure 3.)

¹¹ The average monthly federal cost of WIC foods was $35.34 per participant in fiscal year 2021, but the average retail value of WIC foods was $56.68 per participant (excluding the increase to fruit and vegetable benefits funded through the American Rescue Plan). CBPP analysis of Department of Agriculture WIC administrative data available at https://www.fns.usda.gov/pd/wic-program.
Savings Allow WIC to Serve All Eligible Applicants

WIC receives “discretionary” funding through the annual congressional appropriations process, competing with a broad range of other programs for the limited funding available. Congress authorizes a specific amount of funding each year and the U.S. Department of Agriculture (USDA) gives each state a grant to operate the program.

Most other federal nutrition programs, such as the Supplemental Nutrition Assistance Program (SNAP, formerly known as food stamps) and the National School Lunch Program, operate as “entitlements,” meaning their budgets automatically expand to ensure that all eligible applicants can receive benefits. With WIC, by contrast, the number of families that can receive benefits depends upon the size of the annual appropriation, any carryover funding from the prior year, the formula discounts WIC receives, and the costs of providing WIC foods and formula and of operating the program. The competitive bidding process, by substantially lowering WIC’s infant formula costs, has slowed the overall growth of WIC food costs, allowing the program to serve more eligible families within each year’s funding level. (See Figure 4.)

For many years after WIC’s creation in 1974, Congress did not provide enough funding to serve all eligible low-income women and children who sought benefits. State agencies provided benefits to those with the most serious health conditions and created waiting lists for other eligible
individuals. Over time, with bipartisan support, Congress gradually raised the annual WIC appropriation with the goal of eventually providing enough funding each year to serve all eligible low-income women, infants, and young children who applied. With the help of savings from infant formula competitive bidding as well as larger appropriations, the program finally reached this “full funding” level by 1997, and Administrations and Congresses of both parties have continued to fully fund WIC since then to meet projected needs. One reason for this bipartisan support is that studies have shown that investments in prenatal WIC lead to substantial health care savings.

As a result of these funding increases, combined with the significant savings each year from infant formula discounts, for more than 20 years WIC has not turned away eligible applicants or put them on a waiting list due to lack of funds. Maintaining that access is critical as policymakers add much-needed resiliency to the infant formula supply, so low-income families with young children or pregnant adults can afford the nutritious food, including formula, they need for healthy development. Moreover, if access to WIC were to erode, the disturbing racial disparities in maternal and infant health, due to historical and structural racism and discrimination, might be exacerbated.

**Consolidation Predates Competitive Bidding**

While there has been some speculation that WIC’s competitive bidding process contributed to consolidation among infant formula manufacturers, the market was already highly concentrated when competitive bidding was adopted, and the number of major players in this sector has remained largely unchanged since then.

Only three formula manufacturers bid on states’ early WIC contracts: two large companies, Mead Johnson and Ross Laboratories, and a smaller company, Wyeth. A fourth competitor, Nestlé, entered the U.S. market when it acquired Carnation in 1989 and participated in a limited number of bids starting in 1990. But Wyeth exited the WIC program in 1996 and switched to producing generic-branded formula, bringing the number of competitors back to three.

---

12 WIC rules establish seven priority categories. In general, priority goes to persons with medically based nutrition risks over dietary-based nutrition risks, to pregnant and breastfeeding women and infants over children, and to children over postpartum women. See 7 C.F.R. § 246.7(e)(4).


14 Maternal and infant mortality and associated risk factors are higher for families of color than for white families. Black and Latina women have higher risk of severe pregnancy-related health issues and Black people are three times likelier to die due to pregnancy than white people. Black, Native American, and Pacific Islander people have higher shares of preterm births, low birthweight births, or births for which they received late or no prenatal care, compared to white people. In part as a result of these factors, infants of these groups are roughly twice as likely to die as white infants. Samantha Artiga et al., “Racial Disparities in Maternal and Infant Health: An Overview,” Kaiser Family Foundation, November 10, 2020, [https://www.kff.org/report-section/racial-disparities-in-maternal-and-infant-health-an-overview-issue-brief/](https://www.kff.org/report-section/racial-disparities-in-maternal-and-infant-health-an-overview-issue-brief/).

More than three decades after competitive bidding was adopted, there are still three companies receiving state WIC contracts: Abbott, Mead Johnson, and Nestlé (Gerber).\(^\text{16}\) (See Figure 5.) The players are ultimately the same as well. Ross Laboratories was acquired by Abbott in the 1960s and changed its name to Abbott Nutrition in 2007.\(^\text{17}\) In addition, Nestlé and Wyeth are now the same company: Wyeth was acquired by Pfizer in 2009, and then subsequently acquired by Nestlé in 2012.\(^\text{18}\)

Consolidation in the industry clearly predates WIC’s competitive bidding process. Nonetheless, it is worth exploring whether the process has made it harder for new or smaller companies to begin manufacturing formula or to gain market share. It is also worth exploring whether modest changes to WIC’s competitive bidding process could support industry diversification, but only if changes could be designed to avoid jeopardizing access to the program, which would occur if the discounts provided on WIC purchases of formula were to drop substantially. The revisions to the process that have been made over the last few decades may shed light on the kinds of modest changes that might help with industry diversification without altering the competitive bidding structure or substantially reducing savings.

---

\(^\text{16}\) Ibid. Gerber is currently owned by Nestlé, but Mead Johnson also had an agreement to market Gerber-brand formula from 1989 to 1997.


Bidding Process Revised Over Time

Without the competitive bidding process, infant formula manufacturers would receive full price on formula provided through WIC. Congress has rejected industry efforts to eliminate or weaken the basic structure of the competitive bidding process, instead implementing modest changes over time to make the process fairer and to make it easier for smaller companies to bid, though as noted above, the infant formula market has remained highly concentrated. These changes include:19

- **Addressing partial redemptions.** Initially, infant formula manufacturers’ rebates were based on the number of cans of formula listed on WIC participants’ vouchers, which may have substantially exceeded the number of cans that participants actually redeemed at stores. In 2004, Congress required state agencies to establish a system to ensure that rebate invoices provided a reasonable estimate or an actual count of the number of cans sold to participants.

- **Limiting the size of state alliances.** In 2004, Congress also added new limits on the size of state alliances (groups of states that procure infant formula together through the same bid solicitation) so that companies with less production capacity would have more contracts to

19 These and other provisions related to competitive bidding for infant formula are contained in 42 U.S.C. § 1786(h)(8)(A).
bid on. In general, as a result of the limit, state alliances may only serve up to 100,000 infants, though alliances that existed prior to this change were permitted to continue and serve additional infants as long as they did not add new states.

- **Requiring separate bids for milk- and soy-based formula.** Congress in 2004 also required large state agencies and alliances serving a monthly average of 100,000 infants or more to solicit separate bids for milk-based and soy-based formula. This can allow two different manufacturers to provide formula to WIC participants in a state, one for each category. In addition, because less soy-based formula is provided, separate bid solicitations might make it easier for companies with less production capacity to bid on these contracts.

More recently, some members of Congress have proposed further changes. For example, child nutrition reauthorization bills in both the House and Senate in 2016 included proposals requiring state agencies to: ensure that infant formula rebate invoices provide an actual count of the number of units sold to participants; allow manufacturers holding infant formula contracts to conduct annual audits of rebate invoices; limit the duration of contracts and require mutual consent for extensions; and make a reasonable effort to notify all approved infant formula manufacturers when the state published a bid solicitation. In the current Congress, bipartisan bills have been introduced in both chambers that would require USDA to establish a public database of all state bid solicitations for infant formula to make it simpler for potential bidders to access information about contract opportunities.

Even though Gerber has been a consistent bidder, states contracting with Gerber serve a far smaller share of infants participating in WIC nationally than states contracting with Abbott or Mead Johnson. Gerber’s share increased following the 2004 legislative changes, reaching 28 percent in 2012, but has since decreased again. While these changes may have helped the smallest bidder gain ground at least temporarily, they did not attract new entrants; the same three manufacturers have continued to hold all state WIC contracts. It would be worthwhile to explore with smaller manufacturers why they have not bid on WIC contracts and whether modest changes to the competitive bidding process would entice them to bid.

20 The Improving Child Nutrition Integrity and Access Act (S. 3136) and Improving Child Nutrition and Education Act (H.R. 5003) were both reported out of committee in the 114th Congress but neither was considered on the floor. Both bills also included provisions requested by infant formula manufacturers regarding adjunctive eligibility for WIC. Medicaid, SNAP, and TANF monthly cash assistance payment recipients are “adjunctively eligible” for WIC, which means they are considered income-eligible and do not need to separately document their income to enroll in WIC. (See 7 C.F.R. § 246.7 (d)(2)(vi).) As the Affordable Care Act’s Medicaid expansion allowed states to extend eligibility to higher-income households, some infant formula manufacturers feared that families who would otherwise have paid full price for formula would instead receive it through WIC at the heavily discounted rate. Both bills included provisions allowing infant formula manufacturers to unilaterally terminate their WIC contract if a state increased its income eligibility limit in Medicaid in a manner that would substantially increase the number of infants served by WIC. See also Tennille Tracy, “Makers of Baby Formula Press Their Case on WIC Program,” Wall Street Journal, April 27, 2015, https://www.wsj.com/articles/makers-of-baby-formula-press-their-case-on-wic-program-1430177799.

21 The WIC Healthy Beginnings Act (S.3216/H.R. 7603).

22 In fiscal year 2012, Nestlé had contracts with 13 states with 28 percent of infants participating in WIC; Abbott had contracts with 22 states and the District of Columbia with 34 percent of infants participating in WIC; and Mead Johnson had contracts with 15 states with 38 percent of infants participating in WIC. As of May 2022, Nestlé (Gerber) had contracts with six states and Puerto Rico with 12 percent of infants participating in WIC; Abbott had contracts with 34 states and the District of Columbia with 47 percent of infants participating in WIC; and Mead Johnson had contracts with ten states with 41 percent of infants participating in WIC. (See Figure 5.) CBPP analysis of U.S. Department of Agriculture and state administrative data.
WIC Responding to Current Shortage by Expanding State Flexibility

As a result of the February 2022 Abbott recall of formula manufactured at a Michigan factory that produced a large share of its formula, WIC participants in states that provide Abbott formula needed an immediate alternative. USDA, other federal policymakers, and formula manufacturers have taken several steps to address the shortage in states that have contracts with Abbott and other states with shortages arising from the ripple effects of the recall.

- USDA promptly gave states the opportunity to request waivers so they could allow WIC participants to use WIC benefits to buy other brands and types of formula without the medical documentation they would ordinarily need. All states with Abbott contracts and nearly all other states have been approved for these waivers. USDA is continuing to approve waivers and has urged states to use all available flexibilities to help families obtain formula. While this doesn’t put more formula on store shelves, it helps low-income families get the formula that is available.

- USDA is providing information on an ongoing basis to state WIC agencies and WIC participants about the recall. In addition, the Food and Drug Administration, Centers for Disease Control and Prevention, and American Academy of Pediatrics have posted information for families about the recall and safe infant feeding practices.

- Other companies have been sending some of their formula to the states with Abbott contracts to alleviate the shortages there. These companies are still obligated to provide formula in the states where they have contracts, but there are reports of shortages in non-Abbott states, perhaps due to supply reductions and panic buying.

---


24 A regularly updated summary of the federal response to the infant formula shortage is available at https://www.whitehouse.gov/formula/.


• In states that contract with Abbott, the company has been providing the rebates on purchases of other brands that it normally provides on its own products, so WIC costs haven’t surged, and it has committed to continuing to do so through August.30

• The federal government is working to obtain specialty formula for babies (and other children and adults) with medical conditions who cannot tolerate regular formula and for whom formula may be their sole source of nutrition. In normal circumstances, low-income families whose infants have special nutritional needs can receive specialty formula through WIC with medical documentation, even if their state does not have a contract with that product’s manufacturer.31 Unfortunately, the Abbott facility affected by the recall was a leading producer of several of these specialty products. In late April, the Food and Drug Administration (FDA) updated its infant formula advisory to recognize that families’ need for these products may outweigh the risks in some cases;32 the FDA has worked with Abbott to release limited stock of certain metabolic, amino acid-based, and other specialty formulas produced at the affected facility on a case-by-case basis.33 The Administration has also prioritized specialty infant formulas in its efforts to bring in formula from other countries.34 Most of these specialty formulas are being distributed to families, including WIC participants, by health care providers.

• USDA recently began allowing states that hold contracts with Mead Johnson or Gerber, which are not providing rebates on other brands, to use WIC funds to cover the full cost of other brands of regular formula if the contracted company cannot provide enough and agrees to this flexibility.35 While this would increase WIC food costs, the funding provided for the current fiscal year is sufficient to absorb the increase on a temporary basis. It will be important to make sure that the WIC appropriation for the coming 2023 fiscal year is again sufficient to serve all eligible applicants.


31 WIC can provide specialty formula for infants with special medical needs, sometimes referred to as “exempt” formula, but states do not receive rebates on these products from the manufacturers. State WIC agencies are also required to coordinate with the state’s Medicaid program and other potential medical payors regarding these specialty infant formulas and can only cover the cost of these formulas in situations where reimbursement is not provided by another entity. See 7 CFR § 246.10(e)(3)(vi).


Federal legislation enacted in May will put the WIC program in a better position to respond to supply disruptions going forward. It allows USDA, in the event of an emergency, disaster, or supply chain disruption, to adopt program flexibilities similar to those it is now employing under temporary COVID-19 rules. The legislation also requires each new or renewed infant formula contract to explain how the manufacturer will protect WIC participants from disruptions in the event of a recall.

Using authority from the May legislation, USDA began offering nationwide waivers to allow states to authorize and issue infant formula that the federal government is importing to address the shortage even though it may not meet all WIC requirements. For example, WIC requires states to only issue formula obtained from manufacturers that are registered with the FDA, which may not be applicable for this imported formula. These waivers ensure that formula that is now available to non-WIC participants is also accessible to WIC participants.

Policy Response Should Prioritize Preventing Future Shortages and Protecting Access to WIC

The current shortage has highlighted this nation’s lack of a backup plan for a major disruption in infant formula supply. Over time, it would be helpful to reduce industry consolidation and lower retail prices for formula and it will be worth exploring whether WIC can play a role in either. But the most pressing concern is building resilience into the infant formula industry so that the health of babies and others who rely on formula as a main or sole source of nutrition won’t be put at risk again.

Key policy questions include:

- **How can we build resiliency into the infant formula market for both regular and specialty formulas?** This would include measures like incentivizing or requiring infant formula manufacturers to maintain a larger stock of formula on hand to assist in the event of a disruption; incentivizing or requiring infant formula manufacturers to have the capacity to quickly ramp up production; identifying other manufacturers that could produce infant formula if necessary, and considering contractual arrangements that would ensure they would be ready to do so if needed; incentivizing or requiring factory diversification so that a manufacturer cannot have most or all of its production capacity in a single factory; identifying and addressing possible risks to the supply of infant formula ingredients or packaging materials and determining how to reduce those risks; and/or increasing imports of infant formula to reduce reliance on current manufacturers.

It will be important for resiliency-building measures to address specialty formulas as well as regular formulas. For example, formula companies could be incentivized or required to manufacture a range of specialty formulas or to diversify production facilities so that the closure of a single plant wouldn’t have such a large impact on the availability of a specific

---


formula. Alternatively, policies could be changed to allow foreign manufacturers to sell specialty formulas in the U.S.

- **How can WIC play a role in building resiliency?** As WIC is the purchaser of more than half the infant formula sold in the U.S., its competitive bidding process could offer a mechanism to establish resiliency-related requirements or incentives. But the changes needed to accomplish this must be designed carefully so as not to create unintended negative consequences.

Building resiliency through WIC will require added funding. It may be appropriate for the federal government to cover some or all of the extra costs associated with resiliency requirements — such as requirements to maintain a larger amount of stock on hand — as it does with some other vital medical supplies. But the overall funding for the program, which includes appropriated funds and discounts secured through the infant formula rebates, must be adequate to ensure that WIC can continue serving all eligible low-income families that apply. For example, suppose that WIC were to require companies to commit to maintaining a larger stock of formula on hand as a hedge against a shortage in order to enter into a WIC contract. This requirement would raise the companies' costs and presumably they would reduce the discount they would be willing to offer for WIC purchases, increasing WIC costs. The reduction in the discount would need to be offset by an increase in the appropriation to prevent a reduction in access to WIC and maintain the commitment to serving all eligible applicants. Note that if this kind of requirement were pursued, the WIC program would be subsidizing resiliency that benefits both WIC participants and non-WIC infant formula consumers, but it’s far from clear that policymakers would provide the appropriation increase.

While we think this is a reasonable idea to consider, it is important to note that including resiliency-related requirements in WIC contracts could *discourage* new entrants in the infant formula market or result in further consolidation. For example, a company with less production capacity may already struggle to meet the requirements of a large state’s WIC contract; adding a requirement that it must also maintain a larger stock of formula might further limit the number of contracts for which it can compete.

Similarly, policymakers could consider other resiliency-related requirements for WIC contract holders related to surge-production capacity or factory diversification. Any new requirements, however, will have some cost to manufacturers and so it will be important to tread carefully so as not to induce WIC funding shortages that lead to waitlists in the program — a problem that, as with the current infant formula shortages, would leave some families unable to access the formula their children need.

As resiliency requirement options are evaluated, it is important to consider ways to reduce the downsides with regard to both the impact on the discounts offered and on the creation of new barriers to entry or competition for WIC contracts, such as by varying the resiliency requirements based on the number of infants covered by the WIC contracts the manufacturer holds or giving more time for new entrants into the market to meet resiliency requirements.

- **How can the federal government support WIC state agencies to improve resiliency?** The Access to Baby Formula Act of 2022 enacted in May requires new state WIC contracts to address how manufacturers will ensure WIC participants have access to formula in the event of a future recall. In light of the recall and shortages, the next round of bid
solicitations might be more contentious than in the past. USDA can facilitate the process by providing states with examples of contract provisions that would help prevent and respond to supply disruptions. Establishing a clear federal standard with regard to resiliency-related requirements would allow for a more consistent approach across states and avoid putting state WIC administrators in the position of having to negotiate these provisions with formula manufacturers.

While increasing resilience to prevent future shortages is the most important policy goal, there may also be an opportunity to examine whether there are changes to WIC’s competitive bidding process that would improve the infant formula market without undermining access to WIC. While it is unclear whether WIC’s competitive bidding process has discouraged new entrants to the infant formula market or growth by smaller companies, it is worth considering whether process changes could make it easier for additional companies to bid on WIC contracts, make the process less burdensome for state WIC programs, and reduce formula costs for non-WIC consumers.

Over the years, infant formula manufacturers have urged policymakers to consider a multi-source contracting process, and a number of state and federal policymakers, including members of Congress, have expressed interest in that approach in light of the current shortages. But without the market share advantage that being the sole provider in a state confers, manufacturers are not likely to offer the substantial discounts that reduce the federal cost of WIC by $1 billion to $2 billion annually. It would be extremely risky to abandon the competitive bidding process that has been enormously effective for three decades in favor of a multi-source (or other) approach. Unless a multi-source approach could be designed to limit the reduction in discounts, it could well result in low-income families missing out on WIC, since it’s far from clear that policymakers would provide the substantial, ongoing increase in WIC funding needed to enable the program to continue serving all eligible applicants.

Additiona! Policy Questions Merit Attention and Research Over Time

Exploring the following questions and building on the research and analyses conducted to date could help the Federal Trade Commission, USDA, and members of Congress to identify factors that may have contributed to the infant formula shortage and opportunities for strengthening the U.S. infant formula market.

- **Does WIC’s competitive bidding process affect market consolidation?** Specifically, does it have an impact on potential or new entrants to the domestic formula market? In addition, if formula manufactured abroad can be safely imported, are there ways to allow those manufacturers to participate in the WIC program and competitive bidding processes? And, are there ways that generic manufacturers that produce store brands of infant formula could provide formula to WIC participants?

- **How does WIC impact wholesale prices for formula?** Examining wholesale prices relative to the results of WIC competitive bids could shed light on whether WIC’s competitive bidding process is affecting prices for non-WIC consumers. For example, it could be illuminating to analyze the relationship between winning the WIC contract and the amount of the rebate, and whether higher discounts are associated with increases in wholesale prices of the brand, type and quantity specified in a company’s winning bid and that company’s other products, as well as wholesale prices for losing bidders.

Past research that has examined wholesale prices includes:


How does WIC impact retail prices for formula? Examining retail prices relative to the results of WIC competitive bids could also shed light on whether WIC's competitive bidding process is driving up prices to non-WIC consumers. An analysis of retail prices could provide insight into the extent to which retail mark-ups for the primary WIC product are different than for other formulas.

Past research that has examined retail prices includes:


What is the impact of winning a state WIC contract on market share in that state? Examining how overall market share among infant formula manufacturers within a state is impacted by winning or losing a state WIC contract may illuminate the market incentives driving infant formula manufacturers’ bidding behavior and the extent to which WIC contracts may pose barriers to market growth for new or smaller manufacturers that lack the capacity to bid on WIC contracts. Examining changes over time in the states and share of infants served by each manufacturer could also help shape modest revisions to the competitive bidding process to encourage bidding by more manufacturers.

Past research that has examined market share includes:
What is the make-up of formula sales? Understanding the percentage of formula sales that are through WIC compared to non-WIC sales may illustrate WIC’s level of influence in how infant formula manufacturers determine wholesale prices, rebate bids, and marketing strategies. WIC consumers are not price sensitive as they receive the formula at no cost, formula sold to them is heavily discounted, and they do not have a choice in the brand of formula they receive through WIC. Conversely, non-WIC consumers may be more price sensitive, more persuadable by marketing, and have a greater choice of formula brands, including store brands that are not offered through WIC. In addition, examining the share of formula sales that are specialty formulas for infants with special medical needs may be meaningful as the supply of many of these products was acutely impacted by the closure of the Abbott plant. Manufacturers do not pay rebates when these specialty products are provided through WIC, and thus receive full price for these formulas. Understanding the relative magnitude of revenue from various products and customers might help shape modest revisions to the competitive bidding process that could increase resiliency or reduce consolidation.

What patterns emerge in WIC bids? The kind of patterns that might be worth exploring include bidding patterns by manufacturer and by state agency/alliance over time, whether there is variation in the bids manufacturers issue across state agencies/alliances, whether there is variation in bids over time, whether there is an association between the number of infants in the state/alliance and the bids, and whether there are trends in the range, median, and weighted average of bids across states over time. Patterns that emerge could shed light on the factors that influence the decision to bid, the amount of the rebate offered, and whether manufacturers engage in tacit signaling through their bids.

Past research that has examined bidding trends over time includes: