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Early Childhood, Elementary, and
Secondary Education, Committee on
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Representatives

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NUTRITION ASSISTANCE

Actions Needed to Address Potential Online Sales of Infant Formula

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GAO Highlights

Highlights of [GAO-15-605T](#), a testimony before the Subcommittee on Early Childhood, Elementary, and Secondary Education, House of Representatives

Why GAO Did This Study

WIC provides supplemental foods—including infant formula—and assistance to low-income pregnant and postpartum women, infants, and young children. WIC regulations prohibit participants from selling the foods they receive from the program. However, the Internet has substantially increased as a marketplace in recent years, and news reports suggest that some participants have attempted to sell WIC formula online.

This testimony addresses: (1) what is known about the extent to which participants sell WIC formula online, and (2) USDA actions to prevent and address online sales of WIC formula. It is based on a December 2014 report, and includes April 2015 updates on actions USDA has taken to address the report's recommendations, which GAO obtained by analyzing USDA documents. For the 2014 report, GAO reviewed relevant federal laws, regulations, and USDA guidance; monitored online advertisements to sell formula in four metropolitan areas; reviewed a non-generalizable sample of policy manuals from 25 states, selected for their varied WIC caseloads and geography; and interviewed USDA and state and local officials.

What GAO Recommends

GAO recommended, in December 2014, that USDA better ensure WIC participants are aware of the prohibition against selling formula, require states to describe how they identify attempted sales, and assess online sales, including techniques for monitoring. USDA agreed, has taken some action, and plans to do more.

View [GAO-15-605T](#). For more information, contact Kay Brown at (202) 512-7215 or brownke@gao.gov

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What GAO Found

The U.S. Department of Agriculture (USDA) does not have data to determine the national extent of online sales of infant formula provided by the Special Supplemental Nutrition Program for Women, Infants, and Children (WIC). Nevertheless, state WIC officials and GAO's own limited monitoring suggest that some WIC participants have offered formula for sale online. Of the officials we spoke with in 12 states, those from 5 states said that they have found WIC formula offered for sale online by participants. GAO monitored one online classified advertisements website in four large metropolitan areas for 30 days and found 2 posts in which individuals attempted to sell formula specifically identified as WIC—from among 2,726 that advertised infant formula generally. A larger number, 481 posts, advertised formula generally consistent with the formula brand, type, container volume, and amount provided to WIC participants, but these posts did not indicate the source of the formula. Because WIC participants purchase the same formula brands and types from stores as non-WIC customers, monitoring attempted online sales of WIC formula can present a challenge. State officials GAO spoke with cited other challenges to monitoring online sales, such as the fact that individuals posting formula for sale online are able to remain relatively anonymous, and their posts may contain insufficient information to allow staff to identify them as WIC participants.

USDA has taken some steps toward helping states prevent and address online sales of WIC formula but has not collected information that could assist states in determining cost-effective approaches for monitoring such sales. In December 2014, GAO found that USDA had not specifically directed states to tell participants that selling WIC formula was a participant violation, which could have led to participants making these sales without realizing doing so was against program rules. GAO also found that states were not required to report their procedures for controlling participant violations—including sales of WIC benefits—to USDA, leaving the department without information on state efforts to ensure program integrity in this area. Through interviews with state and local WIC agency officials from 12 states, GAO found that states varied in the method and level of effort devoted to monitoring these sales and lacked information to determine cost-effective approaches for monitoring. Without information on the national extent of online sales of WIC benefits or effective monitoring techniques, both USDA and the states are unable to target their resources effectively to address related risks. As a result, GAO recommended that USDA require state agencies to inform participants of the prohibition against selling WIC formula and describe to USDA how they identify attempted sales. GAO also recommended that USDA collect information about the national extent of attempted online sales of WIC formula benefits and determine cost-effective techniques states can use to monitor them. In response, USDA issued revised guidance in April 2015 stating that it expects states to (1) inform participants that selling WIC benefits violates program rules and (2) report their procedures for monitoring attempted WIC benefit sales to USDA. Also in April 2015, USDA officials reported that although they had not yet taken action to assess the national extent of online sales and determine cost-effective techniques to monitor them, they planned to explore ways to do so.

Chairman Rokita, Ranking Member Fudge, and Members of the Subcommittee:

Thank you for the opportunity to discuss our work on the online sale of infant formula received through the Special Supplemental Nutrition Program for Women, Infants, and Children (WIC).¹ In fiscal year 2013, the federal government spent approximately \$6.5 billion on WIC, which provided food, nutrition education, breastfeeding support, and health and social service referrals to about 9 million low-income pregnant and postpartum women, infants, and young children. U.S. Department of Agriculture (USDA) regulations establish the types and maximum amounts of food, including infant formula, participants may receive, and state and local agencies administering the program establish policies and procedures for determining specific amounts of WIC foods—at or below these maximum levels—to provide to participants.² WIC rules prohibit participants from selling foods they receive from the program, including infant formula,³ and participants who violate WIC rules are subject to various sanctions, including repayment of the value of benefits and disqualification from the program. In our 1999 study of WIC fraud and abuse, we found that there were relatively few documented cases nationwide of participants selling infant formula for cash, and generally low rates of WIC participant fraud overall, in contrast to the relatively high rate of WIC vendor fraud.⁴ However, the use of the Internet as a marketplace has substantially increased in recent years, and news reports suggest that some participants have attempted to sell WIC formula online. Improper use of WIC benefits undermines the integrity of the program and its ability to provide key nutrition assistance and services to vulnerable populations.

My testimony today will focus on (1) what is known about the extent to which participants sell WIC formula online, and (2) what steps USDA has taken to prevent and address the online sale of WIC formula.

¹ 42 U.S.C. § 1786.

² WIC regulations are found at 7 C.F.R pt. 246.

³ See 7 C.F.R. § 246.2.

⁴ GAO, *Food Assistance: Efforts to Control Fraud and Abuse in the WIC Program Can Be Strengthened*, [GAO/RCED-99-224](#) (Washington, D.C.: August 1999). Since we issued this report, USDA has conducted several studies of WIC vendor management issues. In contrast, the department has not conducted studies of WIC participant fraud.

This statement is based on a report we issued in December 2014 addressing online sales of infant formula and includes updates conducted in April 2015 on the actions USDA is taking to address our prior recommendations.⁵ For our December 2014 report, we collected and analyzed information using a variety of methods. We reviewed relevant federal laws, regulations, and guidance from USDA to determine requirements related to the provision of formula to infants receiving WIC benefits, as well as to identify federal, state, and local roles related to preventing and addressing online sales of WIC formula. In addition, we assessed USDA's controls against GAO Standards for Internal Control in the Federal Government.⁶ To determine the role USDA regulations and guidance play in preventing and addressing online sales of WIC formula, we reviewed a non-generalizable sample of 25 state WIC policy and procedure manuals. While not generalizable to the U.S., we selected these states primarily for their varied WIC caseloads and diverse geographic locations. Also, as a group, these states provide services to approximately two-thirds of all WIC participants in the U.S. We also monitored online classified advertisements offering formula for sale using one popular e-commerce website in four metropolitan areas over 30 days between June and July 2014.⁷ We selected these areas based on (1) high number of births, (2) high WIC caseloads, and (3) geographic dispersion. In addition, we interviewed USDA officials, as well as 17 state and 2 local WIC officials representing 12 states.⁸ More detailed information on our objectives, scope, and methodology for our work can be found in the

⁵ GAO, *Nutrition Assistance: Additional Guidance Could Assist States in Reducing Risk of Online Sale of Infant Formula*, [GAO-15-94](#) (Washington, D.C.: December 2014).

⁶ GAO, *Government Operations: Standards for Internal Control in the Federal Government*, [AIMD-00-21.3.1](#) (Washington, D.C.: Nov. 1, 1999). GAO's internal control standards, issued pursuant to the requirements of the Federal Managers' Financial Integrity Act of 1982, Pub. L. No. 97-255, 96 Stat. 814, provide the overall framework for establishing and maintaining internal control in the federal government, and for identifying and addressing major performance and management challenges and areas at greatest risk of fraud, waste, abuse, and mismanagement.

⁷ "E-commerce" websites allow users to advertise the sale of goods and services. This monitoring provided some preliminary information about the extent to which WIC participants in the four metropolitan areas attempted to sell WIC formula online. We did not investigate individual cases as part of these efforts.

⁸ National WIC Association staff assisted us in contacting these officials, more than half of whom were Association board members. While the WIC administrators we interviewed represented a range of geographic locations, the views they shared are not generalizable to all states.

issued report. To obtain updates on USDA's actions to address our prior recommendations, we reviewed information provided by USDA officials and analyzed documents describing actions the department has taken.

We conducted the work on which this statement is based in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Background

Established as a national program in the mid 1970s, WIC is intended to improve the health status of low-income pregnant and postpartum women, infants, and young children by providing supplemental foods and nutrition education to assist participants during critical times of growth and development.⁹ Pregnant and post-partum women, infants, and children up to age 5 are eligible for WIC if they are found to be at nutritional risk and have incomes below certain thresholds.¹⁰ According to USDA, research has shown that WIC helps to improve birth and dietary outcomes and contain health care costs, and USDA considers WIC to be one of the nation's most successful and cost-effective nutrition intervention programs.

WIC Food Benefits

WIC participants typically receive food benefits—which may include infant formula—in the form of paper vouchers or checks, or through an

⁹ For the purposes of this report, an "infant" is a person younger than 1 year of age.

¹⁰ See 42 U.S.C. §§ 1786(b), (d), 7 C.F.R. § 246.7(c)-(e). Prospective participants who have nutritionally-related medical conditions, such as anemia, or dietary deficiencies that impair or endanger health, such as inadequate diet, meet the nutritional risk criteria for WIC eligibility. WIC applicants must also be living in the state in which they apply (except for Indian state agencies). While federal statute and regulations define criteria that must be used to determine applicants' income eligibility for WIC, state and local agencies are also given some discretion. To be eligible, applicants' income generally must fall at or below 185 percent of the U.S. Poverty Income Guidelines. A person who participates in certain other programs, such as the Supplemental Nutrition Assistance Program, Medicaid, or Temporary Assistance for Needy Families, automatically meets the income eligibility requirement. We previously reported on WIC's income eligibility determination process in *WIC Program: Improved Oversight of Income Eligibility Determination Needed*, [GAO-13-290](#) (Washington, D.C.: February 28, 2013).

electronic benefit transfer card, which can be used to purchase food at state-authorized retail vendors.¹¹ USDA has established seven food packages that are designed for different categories and nutritional needs of WIC participants. Authorized foods must be prescribed from the food packages according to the category and nutritional needs of the participants.¹² USDA recently revised the food packages to align with current nutrition science, largely based on recommendations of the National Academies' Institute of Medicine.¹³

Infants who are not exclusively breastfeeding can receive formula from WIC until they turn 1 year of age.¹⁴ While federal regulations specify the maximum amount of formula different categories of infants are authorized to receive, state and local agency staff also have some flexibility in determining precise amounts to provide, depending on an infant's nutritional needs. Staff at local WIC agencies play a critical role in

¹¹ State agencies will be required to implement WIC electronic benefit transfer systems by October 1, 2020, unless exempted by USDA. 42 U.S.C. § 1786(h)(12). USDA issued a proposed rule to implement this provision in February 2013. Special Supplemental Nutrition Program for Women, Infants and Children (WIC): Implementation of the Electronic Benefit Transfer-Related Provisions of Public Law 111–296, 78 Fed. Reg. 13,549 (Feb. 28, 2013). As of May 5, 2015, a final rule had not yet been published.

¹² See 7 C.F.R. § 246.10(e). The regulations also establish nutritional standards and maximum monthly allowances for the supplemental foods to be provided to participants. In general, reductions to the maximum monthly allowances in the food packages are permitted only when medically or nutritionally warranted, or in certain other circumstances. Such reductions cannot be made for cost-savings, administrative convenience, caseload management, or to control vendor abuse. 7 C.F.R. § 246.10(c).

¹³ See Institute of Medicine of the National Academies, *WIC Food Packages: Time for a Change* (Washington, D.C.: 2005). In 2007, USDA issued interim regulations revising the WIC food packages, which state agencies were required to implement by October 1, 2009. Special Supplemental Nutrition Program for Women, Infants, and Children (WIC): Revisions in the WIC Food Packages, 72 Fed. Reg. 68,966 (Dec. 6, 2007), Special Supplemental Nutrition Program for Women, Infants and Children (WIC): Revisions in the WIC Food Packages; Delay of Implementation Date, 73 Fed. Reg. 14,153 (Mar. 17, 2008). FNS issued final regulations in 2014. Special Supplemental Nutrition Program for Women, Infants, and Children (WIC): Revisions in the WIC Food Packages, 79 Fed. Reg. 12,274 (Mar. 4, 2014).

¹⁴ USDA, through regulations and guidance, has emphasized the importance of encouraging participating mothers to breastfeed. WIC regulations require state and local agencies to create policies and procedures to ensure that breastfeeding support and assistance are provided to WIC participants throughout the prenatal and postpartum period. 7 C.F.R. § 246.11(c)(7), (d). Further, formula amounts issued to breastfed infants are to be tailored to meet but not exceed the infant's nutritional needs. See 7 C.F.R. § 246.10(e). For example, a fully-breastfed infant would not receive any formula.

determining infants' feeding categories, and they have the authority to provide them with less formula than the maximum amount allowed for each category, if nutritionally warranted. Nutrition specialists, such as physicians or nutritionists, working at the local agency perform nutritional assessments for prospective participants as part of certification procedures.¹⁵ They use the nutritional assessment information to appropriately target food packages to participants.

WIC Program Oversight and Administration

USDA's role in operating WIC is primarily to provide funding and oversight, and state and local WIC agencies are charged with carrying out most administrative and programmatic functions of the program. Specifically, USDA provides grants to state agencies, which use the funds to reimburse authorized retail vendors for the food purchased by WIC participants and to provide services. As part of its federal monitoring and oversight obligations, USDA annually reviews the state plan for each state WIC agency, which provides important information about the agency's objectives and procedures for all aspects of administering WIC for the coming fiscal year.¹⁶ For their part, state agencies are responsible for developing WIC policies and procedures within federal requirements, entering into agreements with local agencies to operate the program, and monitoring and overseeing its implementation by these local agencies.

The WIC oversight structure is part of the program's internal controls, which are an integral component of management. Internal control is not one event, but a series of actions and activities that occur on an ongoing basis. As programs change and as agencies strive to improve operational processes and implement new technological developments, management must continually assess and evaluate its internal controls to assure that the control activities being used are effective and updated when

¹⁵ To be certified as eligible for the WIC program, a competent professional authority on the staff of the local agency must determine that the applicant is at nutritional risk through a medical and/or nutritional assessment. 7 C.F.R. § 246.7(e). A "competent professional authority" must be a physician, nutritionist, dietitian, registered nurse, physician's assistant, or state or local medically trained health official. 42 U.S.C. § 1786(b)(3), 7 C.F.R. § 246.2. These specialists perform nutritional assessments for each certification period, which varies depending on the type of participant. Infant participants are recertified approximately every 6 months. 7 C.F.R. § 246.7(g)(1).

¹⁶ 42 U.S.C. § 1786(f)(1), 7 C.F.R. § 246.4(a). USDA regulations also provide for other monitoring activities, such as management evaluations and reviews, audits, and investigations. 7 C.F.R. §§ 246.19-.21.

National Data on Online Sales of WIC Infant Formula Are Unavailable, but Evidence Suggests Some Participants Attempt Them

necessary. Management should design and implement internal controls based on the related cost and benefits. Effective internal controls include: (1) communicating information to management and others to enable them to carry out internal control and other responsibilities and (2) assessing the risks agencies face from both external and internal sources.¹⁷

USDA does not have data that can be used to determine the national extent of online sales of WIC formula, and department officials told us that USDA has not conducted a comprehensive study to assess these sales.¹⁸ According to the officials, the department does not collect data on this issue, in part because it is not the department's responsibility to sanction WIC participants for program violations. Rather, they said, it is the responsibility of state agencies to establish procedures to prevent and address participant violations, including attempts to sell WIC food benefits.¹⁹

According to state officials, states' monitoring efforts have revealed some WIC formula offered for sale online. Of the officials we spoke to from 12 states, those from 5 states said that they have found WIC formula offered for sale online by participants. Officials in 3 of these states said that they have found fewer than 0.5 percent of their WIC participants attempting these sales online. Officials in 2 other states did not estimate percentages but stated that the incidence is low.²⁰

¹⁷ See [AIMD-00-21.3.1](#).

¹⁸ In addition, we conducted a literature search on this topic and found no studies that estimated the national extent of online sales of WIC formula.

¹⁹ Under the WIC regulations, the sale of WIC benefits is a participant violation. A participant violation is defined as any intentional action of a participant, parent or caretaker of an infant or child participant, or proxy that violates federal or state statutes, regulations, policies, or procedures governing the WIC program. Participant violations include "exchanging cash-value vouchers, food instruments or supplemental foods for cash, credit, non-food items, or unauthorized food items, including supplemental foods in excess of those listed on the participant's food instrument." 7 C.F.R. § 246.2. State agencies are required to establish procedures designed to control participant violations, as well as sanctions for those who commit them. 7 C.F.R. § 246.12(u). If the state agency determines that program benefits have been obtained or disposed of improperly as the result of a participant violation, the state agency must establish a claim against the participant for the full value of such benefits. 7 C.F.R. § 246.23(c)(1).

²⁰ Officials from four other states discussed their regular online monitoring efforts, but did not characterize the incidence of attempted online sales of WIC formula in their states.

Consistent with these state accounts, our own monitoring of a popular e-commerce website for 30 days in four large metropolitan areas found few posts in which individuals explicitly stated they were attempting to sell WIC-provided formula. Specifically, we identified 2,726 posts that included the term “formula,” and 2 of these posts explicitly stated that the origin of the formula was WIC.²¹ In both posts, the users indicated they were selling the WIC formula because they had switched to different brands of formula.

Posts Advertising WIC-Provided Infant Formula For Sale

- **A posting from late June 2014 included the container size in the title and stated:** “I am looking to sell 5 [brand name] 12.5oz cans (NOT OPENED) because [infant] is super picky and does not want to drink it no matter what i do. [Infant] will drink the [store brand] kind for some reason. I told my WIC office to switch me to another brand but they say it might take 3 months. Im asking 35\$ but best offer will do since the brand I buy is from [store] so Im not looking to make a profit here if you consider each can is 16\$ at the store. please text if interested!!
- **A posting from early July 2014 included the brand, type, and container size in the title and stated:** “I have 7 powder cans of [brand name] they dnt expire for another year at least just got them from my wic n we ended up switching formulas so its \$65.00 for pick up all 7 cans or \$70 if i have to drive.”

Source: GAO monitoring of online classified advertisements. | GAO-15-605T

From the same e-commerce website, we also identified 481 posts, of which any number could have been advertising WIC-provided formula. However, these posts did not state that the advertised formula was from WIC, and while the formula offered for sale was generally consistent with formula provided through WIC, we could not identify it as such. Specifically, during our 30 days of monitoring formula advertisements, we applied a number of criteria to narrow the broad pool of advertisements to identify those that may have been selling WIC formula. First, because state agencies are generally required to award single-source contracts for WIC formula,²² we searched for posts advertising formula brands that matched the state-specific WIC-contracted brand. We found that about three-quarters (2,013 posts) fit this criterion. We then reviewed each of these posts and determined that 346 of the posts fit each of three additional criteria, which we chose because they are generally consistent with WIC formula provided to infant participants.

1. The formula type, such as soy or sensitive, advertised for sale was equivalent to one of the types provided to WIC participants in the state in which the posting was made.
2. The volume of the formula container advertised was equivalent to the volume of one of the containers provided to WIC participants in the state in which the posting was made.

²¹ We did not investigate these two cases, or other cases, as part of our monitoring efforts, but we provided information about these cases to USDA officials.

²² Subject to certain exceptions, WIC state agencies are required to use either a single-supplier competitive bidding system for infant formula, or use an alternative cost containment system that provides equivalent or greater savings. “Competitive bidding” means the state agency selects a single source (a single infant formula manufacturer) offering the lowest price, as determined by the submission of sealed bids. 42 U.S.C. § 1786(b)(17), (h)(8), 7 C.F.R. § 246.16a.

3. The amount of formula advertised represented a large proportion of the maximum amount of formula authorized to be provided to fully formula-fed WIC infant participants each month, averaged across all ages.²³

Examples of Posts Advertising Formula Generally Consistent with that Provided to WIC Participants

- **A posting from mid-June 2014 stated:** "\$10 a can! 14 -12.9 oz Cans of [brand name and type] Formula. Expiration Date is - July 1, 2015. Please take it all. I will not separate the formula! NOT FROM WIC!!! [Child] is now 14 months and no longer needs this. Email only please
- **A posting from mid-June 2014:** "[Child] Turn A Year Already, and we Just bought her 7 Brand New Cans of [brand name and type]. She no longer needs Formula. Selling each Can for \$10. Brand New, NOT Open. 12.4 Oz. EXP. 1 March. 2016."

Source: GAO monitoring of online classified advertisements. | GAO-15-605T

Beyond the 346 posts that matched these three criteria, we found another 135 that met at least one, but not all, of the criteria. However, since we did not investigate any of these posts further, we do not know if any or all of these 481 posts were attempts to sell WIC formula.

Through our monitoring efforts, and through interviews with USDA and state and local WIC officials, we identified a number of key challenges associated with distinguishing between WIC-obtained formula sales and other sales:

- Each state's specific WIC-contracted formula brand is typically available for purchase at retail stores by WIC participants and non-WIC participants alike, without an indicator on the packaging that some were provided through WIC.
- There are a number of reasons why individuals may have excess formula. For example, a WIC participant may obtain the infant's full monthly allotment of formula at one time; alternatively, non-WIC parents may purchase formula in bulk at a lower cost to save money. In either case, if the infant then stops drinking that type of formula, parents may attempt to sell the unused formula.
- Individuals posting formula for sale online are able to remain relatively anonymous, so WIC staff may not have sufficient information to link the online advertisement with a WIC participant. According to one WIC official we spoke with, staff in that state identify approximately one posting a week with sufficient detail about the seller—such as name or contact information—for staff to pursue. A WIC official from

²³ We included this criterion because participants receiving WIC vouchers for formula may be likely to purchase the infant's entire monthly allotment of formula at one time. This may result in WIC participants having multiple cans of unused formula, for example, if the infant switches formulas during the month, as noted in the two posts we found that explicitly stated the individuals were attempting to sell WIC formula online. A relatively large amount of formula may also indicate an intent to traffic WIC benefits in bulk in order to make a profit. We recently reported on trafficking of food benefits in another federal nutrition program. See GAO, *Supplemental Nutrition Assistance Program: Enhanced Detection Tools and Reporting Could Improve Efforts to Combat Recipient Fraud*, [GAO-14-641](#) (Washington, D.C.: August 21, 2014).

another state said that staff previously used phone numbers to identify WIC participants posting formula for sale, but they believe participants then began to list other people's phone numbers on posts.

- Advertisements for infant formula sales can be numerous online, and formula for sale originates from varied sources. For example, through our literature search, we found multiple news reports on stolen infant formula advertised for sale online.

USDA Has Assisted States in Preventing and Addressing Online Sales, but Monitoring Guidance is Lacking

USDA has taken steps aimed at clarifying that the online sale of WIC benefits is a participant violation. For example, in 2013, USDA proposed regulations that would expand the definition of program violation to include offering to sell WIC benefits, specifically including sales or attempts made online.²⁴ Earlier, in 2012, USDA issued guidance to WIC state agencies clarifying that the sale of, or offer to sell, WIC foods verbally, in print, or online is a participant violation.²⁵ This guidance stated that, in accordance with federal regulations, USDA expects states to sanction and issue claims against participants for all program violations,²⁶ but it did not provide direction on ways to prevent online sales of WIC foods, including formula. That same year, USDA also sent letters to four e-commerce websites—through which individuals advertise the sale of infant formula—requesting that they notify their customers that the sale of

²⁴ This proposed rule focused on implementing electronic benefit transfer for the WIC program. Special Supplemental Nutrition Program for Women, Infants and Children (WIC): Implementation of the Electronic Benefit Transfer-Related Provisions of Public Law 111-296, 78 Fed. Reg. 13,549, 13,561 (Feb. 28, 2013).

²⁵ WIC Policy Memorandum #2012-1, *Offering to Sell WIC Foods, Benefits and/or EBT Cards Publicly or Online* (February 10, 2012).

²⁶ The regulations require state agencies to establish sanctions for participant violations, which may include disqualification from the program for a period of up to 1 year. 7 C.F.R. § 246.12(u)(1). Mandatory sanctions are required for certain types of violations: for example, when a state establishes a claim of \$100 or more against a participant who improperly disposed of program benefits—such as through online sales—it must disqualify the participant for 1 year. However, the regulations also provide state agencies some flexibility, allowing them to establish exceptions to, or terminate, mandatory disqualifications in certain circumstances. 7 C.F.R. § 246.12(u)(2). Beyond the mandatory sanctions, in most cases the regulations do not specify how severely states should sanction participants for particular violations. The WIC regulations also require that, when appropriate, the state agency must refer participants who violate program requirements to federal, state, or local authorities for prosecution under applicable statutes. 7 C.F.R. § 246.12(u)(5).

WIC benefits is prohibited, and two of the companies agreed to post such a notification.²⁷

More generally, USDA has highlighted the importance of ensuring WIC program integrity through guidance issued in recent years aimed at encouraging participants to report WIC program fraud, waste, and abuse to the USDA Office of the Inspector General (OIG). For example, in 2012, USDA disseminated a poster developed by the OIG and attached it to a guidance document describing its purpose, which includes informing WIC participants and staff how to report violations of laws and regulations relating to USDA programs. The following year, USDA issued additional guidance that encouraged states to add contact information for the OIG to WIC checks or vouchers, or to their accompanying folders or sleeves.²⁸ USDA indicated that both guidance documents were intended to facilitate participant reports of suspected fraud, waste, and abuse to the OIG, but neither specifically directed states to publicize the fact that attempting to sell WIC benefits, either online or elsewhere, qualifies as an activity that should be reported.

Although WIC regulations require that state agencies establish procedures to control participant violations,²⁹ we found that states vary in whether their required procedures include informing participants of the prohibition against selling WIC formula. The WIC regulations require that all participants (or their caretakers) be informed of their rights and responsibilities and sign a written statement of rights and obligations during the certification process.³⁰ The regulations also require certain program violations to be included in the information provided on rights and responsibilities. However, according to USDA officials, the sale of WIC food benefits is not required to be included, nor do the regulations

²⁷ We recently reported that USDA has also made similar efforts to curb potential online trafficking of benefits in the Supplemental Nutrition Assistance Program. See GAO, *Supplemental Nutrition Assistance Program: Enhanced Detection Tools and Reporting Could Improve Efforts to Combat Recipient Fraud*, [GAO-14-641](#) (Washington, D.C.: August 21, 2014).

²⁸ WIC Policy Memorandum #2013-4, *OIG Hotline Information on WIC Food Instruments* (June 10, 2013).

²⁹ 7 C.F.R. § 246.12(u)(1).

³⁰ 7 C.F.R. § 246.7(i)(10), (j).

require participants be informed of this violation through other means.³¹ In our review of rights and responsibilities statements from 25 states' WIC policy and procedure manuals, we found that 7 did not require local agency staff to inform participants that selling WIC benefits is against program rules.³² Inconsistent communication to participants about this violation conflicts with federal internal control standards,³³ and participants who are unaware of this prohibition may sell excess formula online, thus inappropriately using program resources. Based on these findings, we recommended in our December 2014 report that USDA instruct state agencies to include in the rights and responsibilities statement that participants are not allowed to sell WIC food benefits, including online. USDA agreed with this recommendation, and in April 2015, department officials reported that they intend to revise WIC regulations to require state agencies to include in participant rights and responsibilities statements the prohibition against selling WIC food benefits online. In the interim, USDA included this as a best practice in the 2016 WIC State Plan guidance it disseminated to state agencies on April 6, 2015. Department officials indicated that USDA expects states to move forward on this action and not wait for regulations.

In addition, we found that states vary in the ways they identify attempted sales of WIC formula through monitoring efforts, and USDA has not collected information on states' efforts to address these sales. Of the officials that we spoke to from 12 states, those from 9 states mentioned that they regularly monitor online advertisements.³⁴ However, the method

³¹ State agencies are required to ensure that local agencies advise participants, or their caretaker, when appropriate, that the supplemental foods issued are only for their personal use. 7 C.F.R. § 246.10(b)(2)(ii)(D).

³² In addition, we found that 18 of the states' rights and responsibilities statements did not require local agency staff to inform participants that selling WIC benefits online specifically is prohibited.

³³ Federal internal control standards call for agency management to ensure that there are adequate means of communicating with external stakeholders that may have a significant impact on the agency achieving its goals. See [AIMD-00-21.3.1](#).

³⁴ Although not regular monitoring, an official from one state said that staff monitor some e-commerce websites as time allows, focusing their efforts on following up on complaints the state receives that indicate potential formula sales. An official from another state said that some local agency staff monitor e-commerce websites on their own, but it is not required by state policy. Officials from the final state did not provide information on the extent to which staff monitor online sales of WIC formula.

of monitoring and the level of effort devoted to this activity varied across states. For example, officials in one state said that a number of staff within the state office, as well as a number of those in local agencies, search social media websites daily. In contrast, officials from another state said that staff spend about a half day each week monitoring online sites for attempted sales of WIC food benefits, and an official from a different state said that staff monitor for such sales only when time allows. A USDA official told us that the department would like to provide more support to states in pursuing likely cases of participant fraud related to the online sale of WIC food benefits, but it has not yet determined how to be of assistance.

USDA officials indicated they believe states are monitoring attempted sales of WIC formula online to identify this participant violation; however, the department has not gathered information on the status of state efforts to address online sales. Although USDA officials review each WIC state plan annually to ensure that it is consistent with federal requirements, a state's procedures for identifying participant violations are not among the required elements for WIC state plans included in federal statute and regulations.³⁵ Because USDA does not require that state agencies document their procedures for identifying participant sales of WIC foods, including online sales of infant formula, USDA does not know whether or how states are working to ensure program integrity in this area. The fact that the department does not work more directly with states on this issue is also inconsistent with federal internal control standards.³⁶ We recommended in our December 2014 report that USDA require state agencies to articulate their procedures for identifying attempted sales of WIC food benefits in their WIC state plans and analyze the information to ascertain the national extent of state efforts. USDA agreed with this recommendation, and department officials reported in April 2015 that they intend to revise WIC regulations to require state agencies to include in state plans their procedures for identifying attempted sales of WIC food

³⁵ 42 U.S.C. § 1786(f)(1), 7 C.F.R. § 264.4(a). One related required element is the state agency's plan for collecting and maintaining information on cases of participant fraud and abuse. We also found that the guidance USDA provides to states on developing their state plans, while relatively detailed in some respects, does not direct states to describe their plan for identifying program violations, including sales of WIC food benefits.

³⁶ [AIMD-00-21.3.1](#). According to federal internal control standards, agency management needs operating information to determine compliance with laws and regulations. Also, the standards note that factors outside management's control or influence can affect an agency's ability to achieve all its goals.

benefits. In the interim, USDA included this as a best practice in the 2016 WIC State Plan guidance it disseminated to state agencies on April 6, 2015.

USDA and the states also lack information to determine cost-effective approaches for monitoring these attempted sales. According to USDA, state, and local WIC officials, because of the various challenges state WIC staff face in distinguishing between WIC-obtained formula sales and other sales, the return on investment for monitoring these sales is low. One USDA official noted that it is difficult for states to prove that participants are selling WIC food benefits, which increases the amount of time and effort state staff need to spend to address these cases.³⁷ Officials from one state WIC agency and one local WIC agency we spoke to said that efforts by state and local agency staff to identify and address online WIC formula sales result in few confirmed cases and draw away scarce resources from other aspects of administering the program. One USDA official said that states that sanction a participant for attempting to sell WIC formula without sufficient evidence that it occurred will likely have the violation overturned during the administrative appeal process.³⁸ These cases also appear unlikely to result in court involvement, as when we asked the 19 officials from 12 states how these cases were addressed, only one said that a couple had gone through the legal system.³⁹ Federal internal control standards state that agencies should

³⁷ As noted previously, proving that a WIC participant is attempting to sell WIC infant formula is difficult in part because online advertisements do not always include the name or phone number of the seller.

³⁸ See 7 C.F.R. § 246.9. According to USDA, each state must balance the need to ensure WIC program integrity by imposing sanctions with the likely costs and benefits of these activities, taking into account, for example, the potential impacts on sanctioned participants' nutritional needs. An official from one of the states that we spoke with noted that when state staff are considering sanctions for participants, they must be careful to do so without adversely affecting child participants. For example, the official said that when suspending benefits for adult participants, staff sometimes allow the child to continue receiving benefits if a different adult agrees to be the person responsible for those benefits. As mentioned previously, state agencies have some flexibility in determining sanctions for participant violations, subject to federal requirements. In our review of 25 state policy and procedure manuals, we found that state approaches for addressing participants' attempted sales of WIC foods vary. For example, the sanctions for this violation included a written warning in 10 states and either a 6-month or 1-year disqualification in 5 states.

³⁹ As noted earlier, when appropriate, state agencies must refer participants who violate program requirements to federal, state, or local authorities for prosecution under applicable statutes.

design and implement internal controls based on the related costs and benefits. According to USDA, because of the substantial risks associated with improper payments and fraud related to WIC vendor transactions, both USDA and the states have focused their oversight efforts in recent years on addressing vulnerabilities in the management of this area, rather than focusing on possible participant violations. However, because the use of the Internet as a marketplace has substantially increased in recent years and the national extent of online sales of WIC food benefits is unknown, USDA and the states have insufficient information to assess the benefits of oversight efforts related to this participant violation.⁴⁰ Because of this, we recommended in our December 2014 report that USDA collect information to assess the national extent of attempted online sales of WIC formula benefits and determine cost-effective techniques states can use to monitor online classified advertisements. USDA agreed with this recommendation, and department officials reported in April 2015 that they plan to explore ways to assess the extent of online sales of WIC formula and identify and share best practices, cost-effective techniques, or new approaches for monitoring online advertisements with state agencies. To do this, they noted that they will draw on funds designated for addressing high-priority programmatic issues. We believe this approach will help states to strike the appropriate balance of costs and benefits when determining how to target their program integrity resources.

Chairman Rokita, Ranking Member Fudge, and Members of the Subcommittee, this completes my prepared statement. I would be pleased to respond to any questions you may have at this time.

⁴⁰ [AIMD-00-21.3.1](#). Federal internal control standards call for agencies to analyze risks from both external and internal sources and employ mechanisms to identify and deal with any special risks brought on by changes in economic or industry conditions. They also note that the attitude and philosophy of management toward control operations such as monitoring can have a profound effect on internal control.

GAO Contact and Staff Acknowledgements

If you or your staff have any questions about this statement, please contact Kay E. Brown, Director, Education, Workforce, and Income Security, at 202-512-7215 or brownke@gao.gov. Contact points for our Offices of Congressional Relations and Public Affairs may be found on the last page of this statement. GAO staff who made key contributions to this statement include Sarah Cornetto, Aimee Elivert, Rachel Frisk, and Sara Pelton.

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