

Testimony of Michael Gay
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On Behalf of The National Grocers Association

Before the U.S. House of Representatives Committee on Appropriations
Subcommittee on Agriculture, Washington, D.C.

“The Infant Formula Crisis”

Wednesday, May 25, 2022

2:00 PM ET

Good afternoon, Chairman Bishop, Ranking Member Harris, and Members of the Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Subcommittee. My name is Michael Gay, and I currently manage Food Fresh, an independent, locally-owned grocery store in Claxton, Georgia. It is an honor and a privilege to speak with you today.

I am testifying on behalf of the National Grocers Association, the trade association representing the independent supermarket industry. NGA represents the 21,000 independent community grocers and the wholesalers that service them. Independent community grocers account for 33 percent of all grocery sales, exceeding \$250 billion, and more than 1 million American jobs. We are inherently tied to the strength and vitality of the markets we serve – at the heart of local communities and the U.S. economy. Independents provide jobs and boost local tax revenues while bringing choice, convenience, and value to hard-working Americans.

My store, Food Fresh, is the only grocery store in Evans County, Georgia. We work hard every day to make our community better, including accepting both SNAP and WIC programs in our store. We often serve customers working overtime or two jobs to make ends meet. For these customers, every minute they spend with their children is precious, whether it's helping them with homework or discussing their day. The shortage of infant formula has been playing out in my store for weeks. Moms and families are worried about where their child's next meal will come from and with infants, formula is often the only food they can eat. This shortage is causing

families to spend less time with their kids and more of their limited time and resources searching for infant formula.

I have had to put limits on the number of formula canisters customers can purchase in my store. This is heartbreaking to do and enforce when so many families are in such great need. My manager has to personally manage the formula in my store because the demand is so great. I had seven phone calls yesterday asking if I had a specific brand formula in store. When I told moms that I had the same type of formula in a different brand, they were scared to switch because they did not understand that the formulas are very similar.

These are examples of what I have seen happening in my store. I would like to share a little bit about what the members of the NGA are experiencing. In a survey of its members, NGA found that most stores are dealing with formula shortages, the vast majority are unable to access specialty formulas, they are receiving inconsistent information from state WIC agencies, and consumers are panic buying at their stores. Scared families are stocking up on formula for their own children or grandchildren, driving long distances to purchase formula, or having family members in other cities purchase formula for them and ship it to them. All these purchases, which are often larger than normal, are contributing to making the situation worse.

These stories are all important context for what I believe is critical to recognize, the role that WIC is playing in this shortage. WIC purchases account for more than half of the formula sold in the United States, therefore, WIC is ever present in infant formula discussions for retailers.

WIC is an essential program for families in my community and communities around the country. It provides supplemental nutrition to moms, babies, and kids and we are honored to be able to provide this program for the families in our community. WIC is not a money maker for retailers – in fact, it's the opposite. Many stores actually lose money as WIC vendors. But it is an important community service, and we participate to ensure our families get the resources they need to grow healthy kids and future leaders.

Independent community grocers play an essential role as the private partners in the public-private partnership of WIC. Without independent grocers' involvement in WIC, the program would simply not operate effectively and many families in need would be left behind. But as it exists today, WIC is very burdensome for participating vendors and is dominated by red tape and regulations that make it difficult for retailers to offer the program. I'm going to share a few opportunities for improvement that we believe would be important consider for the long-term to help avoid future disruptions to the availability of WIC products like infant formula.

First, WIC's rigid rules have made it difficult for the program to be responsive to critical shortages throughout the pandemic and, now during this formula crisis. Recently, I often have not had enough formula for a mom to fill her prescription when she comes into the store. While Georgia will be implementing electronic WIC in the coming months, currently, families are still using paper vouchers to access their WIC benefits in stores. If a mom comes to my store with a prescription for four cans of formula, and I only have two cans on the shelf, she can only get two cans for the month because she must turn in her prescription voucher with her purchase. She cannot return later to purchase the other two cans.

The lack of e-WIC is also leading to the inequitable distribution of formula to families. Because I'm trying to make sure everyone has access to at least some formula, I have limited how much families can purchase at one time. We cannot limit WIC moms because they can only purchase one time per month, which has led to WIC moms being able to purchase more formula than non-WIC moms. Since Georgia is a Mead Johnson state, the formula shortage has taken longer to materialize but we are seeing this issue getting worse quickly. It took until this week to approve substitutions. We are hoping that the manufacturers will support these changes and allow for substitutions moving forward.

Substitutions must be made easily available when situations like this arise. The emergency waivers instituted by the USDA during the pandemic have provided flexibility in some states, but those waivers are only available because of the pandemic. And in states like Georgia, the flexibilities have taken way too long to be applied.

Retailers have experienced difficulties keeping WIC-approved foods and formula in stock after natural disasters due to infrastructure and transportation issues, and during the onset of the COVID-19 pandemic due to high demand. This created situations in which WIC participants were unable to purchase certain products on their prescription lists until a waiver request has been submitted by the state WIC agency and approved by the U.S. Department of Agriculture (USDA), which takes time. Unfortunately, this often leads to WIC participants walking away from the store without their prescribed products in hand.

To prevent this issue from happening in the future and to create a more efficient product substitution process, Congress should allow WIC vendors operating during severe supply shortages, disasters, or public health emergency areas be provided flexibility by permitting substitution for certain WIC-authorized items that are unavailable. The flexibility should be automatic and limited to WIC-approved items impacted by supply chain disruptions. The USDA should direct states to include product substitutions for WIC in their emergency preparedness plans. These changes would have allowed families to immediately switch to another formula in states with shortages contracts allowing for the smooth continuation of feeding for infants.

Second, there is also a significant need for USDA to examine the long-term effects of cost containment, competitiveness and peer grouping formulations for WIC vendors. States operate a peer group system in which retailers participating in WIC are grouped together to monitor vendor prices, to determine that reimbursements to stores reflect prices in like stores, and to ensure that prices are cost competitive. When these groups are not updated in a timely manner, they lead to reduced reimbursements for retailers even if their situation has changed. There have also been situations where states have not been transparent about their peer groupings and technical definitions that determine the peer groups leading to misaligned prices and losses for stores. For these reasons, more clarification and direction from states is needed on the formulation of WIC peer groups. USDA should direct states to notify retailers which peer group they are in, and the criteria used to determine it. States should also be directed to publicize the methodology used to determine peer groups. These cost-containment measures have led to reduced retailer reimbursement and reduced retailer participation in the program leading to fewer locations for families to access formula.

Additionally, the WIC infant formula cost containment measures have led to extreme consolidation in the formula marketplace, leaving it highly vulnerable to supply disruptions like we are experiencing now. These contracting practices must be reviewed to ensure the future food security of the nation's babies and families.

Yesterday, the FTC announced they are launching an inquiry into the ongoing shortage of infant formula. It is important that we get to the bottom of this issue to ensure that it never happens again. NGA is supportive of this inquiry and is willing to support the FTC efforts however possible.

Finally, retailers participating in WIC programs that have not transitioned to e-WIC often take a loss when wholesale prices increase in infant formula because the increase in cost to the store goes into effect immediately, while the increase in reimbursement to the retailer may be reflected several months to over a year later. A timelier reflection of formula price increases in the reimbursements to stores is needed to ensure small rural stores can afford to continue participating in the WIC program.

In conclusion, we want to work to maintain our strong existing public-private partnership with the WIC program and continue to serve our rural and urban families and babies. We hope to work with you to improve the WIC program and increase access to infant formula for both families and retailers.

We commend Congress for recent efforts to support a White House Conference on Food, Nutrition, Hunger, and Health. NGA plans to participate in this conference and we expect to support these WIC reform proposals as part of our recommendations for the conference.

We all know that infant formula is a necessity for babies to grow and thrive. Let's all work together to get these babies fed and ensure that this never happens again. Thank you for the opportunity to discuss this important issue today. I look forward to your questions.