

## **Vendor Violation Points and Sanctions**

### **I. Vendor Violation Points and Sanction Procedures**

- a. The State Agency shall determine the type and level of sanctions imposed on the vendor based on the severity, nature, and pattern of the violations.
- b. The State Agency does not have to provide the vendor with prior warning that violations were occurring before conducting compliance purchases or imposing any of the State Agency violation points or sanctions described.
- c. If a State Agency finds that a vendor has committed a violation that requires a pattern of occurrences in order to impose a sanction, the State Agency will notify the vendor of the initial violation in writing prior to documenting another violation, unless the State Agency determines, in its discretion, on a case-by-case basis, that notifying the vendor would compromise the investigation. The State Agency will document the reason why the notification would compromise the investigation. The State Agency may conduct another compliance buy after the vendor receives the notification of violation or is presumed to be received by the vendor, consistent with the State Agency's procedures for providing such notification.
  - i. Notification is not required in the following circumstances:
    1. Violations involving redemptions that exceed the vendor's inventories; WIC vendor disqualifications or civil money penalties based on Supplemental Nutrition Assistance Program (SNAP) sanctions;
    2. Violations that only require one occurrence before a sanction is imposed; or if such notice could compromise covert investigations of the vendor being conducted by SNAP, the USDA Office of the Inspector General, the Utah State Police, the State Agency, or other authorities. The term "investigation" does not exclusively refer to WIC-related investigations.
  - ii. Notice will be provided for violations for a pattern of:
    1. Overcharging;
    2. Receiving, transacting and/or redeeming food instruments outside of authorized channels, including the use of an unauthorized vendor or an unauthorized person;
    3. Charging for supplemental food not received by the participant;
    4. Providing credit or non-food items other than alcohol, alcoholic beverages, tobacco products, cash, firearms, ammunition, explosives, or controlled substances (as defined in 21 U.S.C. 802) in exchange for WIC food instruments or WIC foods;

5. Providing unauthorized food items in exchange for WIC food instruments or WIC foods, including charging for supplemental foods provided in excess of those listed on the check.
  6. This notice requirement also applies to any violations for which a pattern of violations must be established in order to impose a State Agency vendor sanction per 7 CFR 246.12(l)(2).
- iii. When determining whether to notify the vendor, the State Agency will consider several factors, including but not limited to: the severity of the initial violation, the vendor's compliance history, or whether the vendor has been determined to be a high risk vendor. The State Agency has the discretion to determine which factors to consider and how much weight to assign to each factor. If the State Agency decides not to send the notice, the basis for its decision will be documented in the vendor file.
- d. Establishing a pattern of violations.
- i. Mandatory Federal Disqualifications: Mandatory Federal Sanctions that require a pattern are assigned a disqualification when at least three (3) independent violations are documented during any compliance investigation.
  - ii. State Agency Sanctions: All State Agency sanctions require documentation of a pattern of the same violation. A pattern of violations requires at least three (3) independent violations documented during any compliance investigation, or at least three (3) independent violations obtained through objective data or other non-compliance purchase investigations during a ninety (90) day period.
    1. The vendor will be provided a warning letter after each of the first two violations and given a fifteen (15) day period to take corrective action after each warning letter.
  - iii. The State Agency may assign violation points for the first State Agency-established violation, if such points will not result in a State agency sanction (for example, a disqualification or civil money penalty/fine).
    1. Violation points operating in the same manner as initial violations do not violate the requirement that State agency sanctions may only be imposed based on a pattern of violations.
  - iv. A pattern of violations may be established during a single review of the vendor's redemption records as part of an inventory audit, depending on the magnitude of shortfalls and the length of time between the violations.
  - v. A pattern of violations is not required for a permanent disqualification or a six (6) year disqualification for the sale of

alcohol, alcoholic beverages, or tobacco products in exchange for WIC food instruments or WIC foods.

- e. When more than one violation is detected during a single investigation, the disqualification period will be based on the most serious violation.
  - f. The State Agency may not accept voluntary withdrawal of a vendor from the WIC Program as an alternative to disqualification.
  - g. Any vendor who commits fraud or abuse of the WIC Program may be prosecuted under applicable federal, state or local laws. Any person who willfully misapplies, steals, or fraudulently obtains program funds, assets, or property valued at \$100 or more will be subject to a fine of not more than \$25,000, imprisonment for not more than five (5) years, or both. If the value is less than \$100, the person will be subject to a fine of not more than \$1,000, imprisonment for not more than one (1) year, or both.
- II. **Mandatory disqualification periods are assigned for the following WIC violations in according to 7 CFR 246.12:**
- a. **Permanent Disqualification from the WIC Program**
    - i. A vendor convicted of trafficking in food instruments or selling firearms, ammunition, explosives, or controlled substances (as defined by 21 U.S.C. 802) in exchange for food instruments or WIC foods; or
    - ii. A vendor is permanently disqualified from SNAP.
  - b. **Six (6) Year Disqualification from the WIC Program**
    - i. One incident of trafficking (buying or selling food instruments for cash); or
    - ii. One incident of selling firearms, ammunition, explosives, or controlled substances (as defined in 21 U.S.C. 802) in exchange for food instruments or WIC foods.
  - c. **Three (3) Year Disqualification from the WIC Program**
    - i. One incident of selling of alcohol or alcoholic beverages or tobacco products in exchange for food instruments or WIC foods;
    - ii. A pattern of claiming reimbursement for the sale of a specific supplemental food item in an amount exceeding the store's documented inventory of that item for a specific period of time;
    - iii. A pattern of vendor overcharges;
    - iv. A pattern of receiving, transacting, or redeeming food instruments outside of authorized channels, including the use of an unauthorized vendor or an unauthorized person;
    - v. A pattern of charging for a supplemental food item not received by the participant; or

- vi. A pattern of providing credit or non-food items other than alcohol, alcoholic beverages, tobacco products, cash, firearms, ammunition, explosives, or controlled substances (as defined in 21 U.S.C. 802) in exchange for food instruments or WIC foods.
- d. **One (1) Year Disqualification from the WIC Program**
- i. A pattern of providing unauthorized food items in exchange for WIC food instruments or WIC foods , including charging for supplemental foods provided in excess of those listed on the food instrument.
- e. **Second Mandatory Sanction**
- i. A vendor that was previously assessed any of the mandatory sanctions listed above shall receive a double sanction for its second violation requiring a mandatory sanction.
    - 1. Civil money penalties may only be doubled up to the limits allowed by this agreement.
- f. **Third or Subsequent Mandatory Sanction.**
- i. A vendor that was previously assessed two or more mandatory sanctions listed above shall receive a double sanction for its third mandatory sanction and any subsequent mandatory sanctions.
    - 1. The State agency may not impose civil money penalties in lieu of disqualification for third or subsequent mandatory sanctions.
- g. **Disqualification from the WIC Program Based on a SNAP Disqualification**
- i. The State Agency shall disqualify a vendor who has been disqualified from SNAP. The WIC Program disqualification will be for the same length of time as the SNAP disqualification. The WIC Program disqualification may begin at a later date than the SNAP disqualification and is not subject to administrative or judicial review under the WIC Program.
- h. **Civil Money Penalties in Lieu of Disqualification (CMP)**
- i. The State Agency may impose a civil money penalty in lieu of a permanent disqualification when it determines, in its sole discretion, and documents that:
    - 1. A permanent disqualification would result in inadequate participant access; and
    - 2. At the time of the violation, the vendor had an effective policy and training program in effect to prevent trafficking and the vendor owners were not aware of, did not approve of, and were not involved in the conduct of the violation. This requires that such polices must have been documented and

dated in writing prior to the violation and that the training was conducted and documented prior to the violation.

- ii. The State Agency may impose a civil money penalty in lieu of a six (6) to one (1) year mandatory disqualification if it determines (in its sole discretion) and documents that the disqualification would result in inadequate participant access.
- iii. If the State Agency permits a vendor to continue to participate in the Program in lieu of permanent disqualification, the State Agency shall assess the vendor a CMP in an amount determined in accordance with the following criteria:
  1. The maximum amount of the CMP shall not exceed:
    - a. \$15,041 for each violation; and
    - b. \$60,161 for the total amount of CMP or fines for multiple violations occurring during a single investigation.
  2. If a vendor does not pay, partially pays, or fails to timely pay (in full or any payment under an installment plan) a CMP within thirty (30) days of receipt of a notification letter, the State Agency will disqualify the vendor for the length of the applicable disqualification.
- iv. Formula for calculation of CMP:
  1. Multiply average monthly redemptions by 10%; multiply result by the number of months that the vendor would otherwise be disqualified = CMP amount.
- v. The State Agency may allow the vendor to pay the CMP using an installment plan that complies with federal and state laws concerning the collection of interest on such debts.

### **III. State Agency Violations and Points for Violations**

- a. The State Agency may assign violation points for the first State Agency-established violation a pattern of violations that is documented during any redemption analysis, monitoring visit, other formal visit, follow-up of previous problems, inventory audit, or any other objective means, if such points will not result in a State agency sanction (for example, a disqualification or CMP/fine).
- b. All State Agency warnings and violation points are cumulative and will be kept current for a period of two (2) years as long as the vendor is authorized on the Program.
  - i. Warnings and violation points accrued for each violation will be dropped two (2) years after the date of that violation, regardless of a renewal of a vendor agreement during that period.
  - ii. The State Agency will not otherwise remove any violation points, unless it is determined that points need to be removed by any

objective means of the State Agency, a Fair Hearing, or judicial order.

- c. Food vendors may be subject to claims for improper redemption, overcharged food instrument, or reimbursement for overcharges in addition to violation points.
- d. The State Agency may impose a civil money penalty (CMP) in lieu of a State Agency disqualification sanction. The CMP calculation, collection, and limitations are described above in Section II.i.
- e. A vendor that is assigned or accumulates five (5) violation points or more in any two-year period shall be required to submit a corrective action plan outlining the steps for addressing its violations.
- f. The following violations are assigned specific State Agency violation points and sanctions. State Agency violation points and sanctions are commensurate with the number of points accumulated for one or more of these violations in any combination:

Any combined total of:

- 5 – 9 points** = Initial or follow-up warning letter with required corrective action plan.
  - 10 - 14 points** = Follow-up warning letter with required training.
  - 15 - 17 points** = State Agency Sanction - 3 month disqualification or CMP
  - 18 - 19 points** = State Agency Sanction - 6 month disqualification or CMP
  - 20 or > points** = State Agency Sanction - 1 year disqualification or CMP
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|    | <b>Violations</b>  | <b>Points</b> |
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| a. | Failure to attend or complete the mandatory annual training sessions as outlined in the WIC Vendor Agreement, after one opportunity to reschedule, will result in a written warning. Subsequent incidents will result in points.   | <b>8</b>      |
| b. | An initial finding of civil rights discrimination against a WIC participant (as determined by the Office of Adjudication and Compliance); or   | <b>10</b>     |
| c. | Failure to serve a WIC Client without a justified legal basis will receive a written warning, prior to documenting another incidence of a violation that requires a pattern of incidences (in situations where providing notification would not compromise the investigation). The second incident will result in sanction points. | <b>10</b>     |
| d. | Failure to provide purchase invoices (from the wholesaler and or suppliers), inventory records, or documentation of sales data during monitoring visits or when otherwise requested by the State Agency.   | <b>10</b>     |
| e. | Providing infant formula that was not purchased from an approved wholesaler, distributor, retailer, or manufacturer.   | <b>10</b>     |

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| f.  | Failure to maintain inventory of WIC foods that meets vendor's peer group requirements identified during three compliance purchases or per finding during any monitoring or any store on-site visits, after being given one opportunity to correct the inadequacy.  | <b>8</b> |
| g.  | Failure to reimburse/refund an overcharge to the State Agency within thirty (30) days of notification.  | <b>8</b> |
| h.  | Failure to provide and document training to all employees who handle WIC transactions or failure to allow monitoring or training by WIC representatives.  | <b>8</b> |
| i.  | Failure to submit a corrective action plan when requested.  | <b>8</b> |
| j.  | Failure to provide WIC food instruments for review during monitoring upon request.  | <b>8</b> |
| k.  | Charging a price for any WIC-eligible food item that exceeded the average cost plus three (3) standard deviations of the same item sold by other WIC-authorized vendors in the peer group.  | <b>8</b> |
| l.  | Requiring cash to be paid to redeem WIC food instruments (in whole or part).  | <b>8</b> |
| m.  | Charging sales tax on WIC food items.   | <b>8</b> |
| n.  | Using the WIC acronym or logo, service mark, or close facsimiles in the name of the vendor, for any advertising, promotional material, and incentives. Using tags or labels with the WIC acronym or log, service mark, or close facsimiles on WIC-approved products. Using channel strips or shelf-talkers with the WIC acronym or logo, service mark, or close facsimiles without State Agency approval. | <b>8</b> |
| o.  | The vendor intentionally amended, adjusted, corrected, blotted out, or made markings over or concealed any validations or adjustment documentation (written or stamped) made by the State Agency on the original WIC food instrument or on any electronic copies of the WIC food instrument.  | <b>8</b> |
| p.  | The vendor provided incentives or promotions inconsistent with the provisions in this Agreement.  | <b>8</b> |
| q.  | Knowingly entering false information on the WIC food instrument.  | <b>8</b> |
| r.  | Verifiable discourteous treatment of a WIC participant or a pattern of allegations of such treatment.   | <b>5</b> |
| s.  | Limiting the number of food instruments that could be redeemed at the authorized vendor.  | <b>5</b> |
| t.  | Contacting WIC participants to correct discrepancies as a result of non-payment or in an attempt to recover funds for food instruments not paid by the State Agency or for food instruments subject to refund of overcharge.  | <b>5</b> |
| u.  | Failure to ask for the Utah WIC ID Packet at the time of transaction to verify signatures on the face of the food instrument, if verified through objective evidence such as compliance purchases.  | <b>5</b> |
| v.  | Vendor attempt to redeem a WIC food instrument in with dates, quantities/sizes of WIC prescribed foods, or signatures that have been altered or additional items have been typed or written on the front.   | <b>3</b> |
| w.  | Prices not clearly marked on food items or shelf.   | <b>3</b> |
| x.  | Failure to provide current prices on WIC food items during monitoring visits or upon State Agency request.  | <b>3</b> |
| y.  | Stocking or selling out of date or inconsumable WIC food to WIC participants. This includes any WIC product with a specific expiration date, sell by, best if sold by, or similarly wording with a date printed on the container or packaging.  | <b>3</b> |
| z.  | Duplicating or using an unauthorized, lost, or stolen stamp.  | <b>3</b> |
| aa. | Redemption of a brand name food item when a store brand/private label is  | <b>3</b> |

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|     | identified on the Utah WIC-authorized Food Card.   |          |
| bb. | Date stamped on food instrument does not match actual date transacted if imprinted on the back of the food instrument or verified by another method.   | <b>3</b> |
| cc. | A pattern of three or more attempts or redemptions of WIC food instruments not in compliance with redemption procedures during any calendar month; or 1% or more of all food instruments redeemed or submitted for redemption by the vendor being rejected for any reason during any calendar month. (Inappropriate redemption includes: accepted outside of authorized dates; date on food instrument does not match redemption date on back; missing authorized signature; missing total amount; accepted above the maximum allowable reimbursement amount [food instruments] or above the fixed maximum value [cash-value vouchers] as outlined in the WIC vendor agreement and WIC vendor training materials). | <b>2</b> |
| dd. | Submitting WIC food instruments for redemption without the vendor identification stamper equal to or greater than ten (10) WIC food instruments within any calendar month <u>and</u> greater than or equal to 1% of all food instruments redeemed by the vendor being rejected for any reason within the calendar month.   | <b>2</b> |
| ee. | Failure to accept a certified letter from the State Agency or leaving such a certified letter unclaimed.   | <b>2</b> |
| ff. | Asking the WIC participant to place the authorized signature on the front of the food instrument(s) before the purchase price has been written on the food instrument.   | <b>2</b> |
| gg. | Requesting a WIC participant to produce any additional forms of ID other than the WIC ID Packet when redeeming WIC food instruments.   | <b>2</b> |
| hh. | Failure to report a lost or stolen stamp within two (2) working days   | <b>2</b> |
| jj. | Failure to allow an authorized Utah WIC food item to be purchased.   | <b>2</b> |
| kk. | Any failure to comply with the Vendor Agreement or any failure to comply with the redemption procedures not otherwise noted.   | <b>2</b> |

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- g. The vendor will be notified in writing of the type of violations found and points assessed.
  - h. A vendor with 10-14 State Agency violation points will be required to receive training by the State or Local Agency about its violations within thirty (30) days of the notice of violation points.
  - i. The State Agency shall provide the appropriate FNS SNAP office with a copy of all notices of administrative action and information on vendors it has either disqualified or imposed a CMP based in whole or in part on:
    - i. Any act that constitutes a misdemeanor or felony violation of law;
    - ii. A pattern of claiming reimbursement for the sale of a specific food item in an amount exceeding the store's documented inventory of that food item for a specified period of time;
    - iii. Exchanging cash, credit, consideration other than eligible food, firearms, ammunition, explosives or controlled substances (as defined in 21 U.S.C. § 802) for food instruments or WIC foods;



- iv. A pattern of receiving, transacting, or redeeming WIC food instruments outside of authorized channels;
  - v. A pattern of exchanging non-food items for WIC food instruments or WIC foods;
  - vi. A pattern of charging WIC customers more for food than non-WIC customers or charging WIC customers more than current shelf price;
  - vii. A pattern of charging for food items not received by the WIC participant or for foods provided in excess of those listed on the food instrument; or
  - viii. One incident of providing alcohol or tobacco in exchange for WIC food instruments or WIC foods.
  
- j. Before disqualifying a food vendor, the State Agency will consider whether the disqualification would create undue hardship for WIC participants. An undue hardship means that there is no other WIC authorized vendor within twenty (20) miles. In deciding whether to postpone adverse action until a hearing decision is rendered, the State Agency may consider any additional relevant criteria.
  
- k. The State Agency will terminate this agreement on thirty (30) days written notice due to:
  - i. Changes to the agreement which would require all authorized vendors to complete a new agreement;
  - ii. Vendor failure to fulfill its obligations under this agreement in a timely and satisfactory manner;
  - iii. Unavailability or decrease in federal and/or state funding;
  - iv. Participant caseload management to effectively manage funding, in which the vendor with the highest cost per food package will be terminated and such termination would not affect participant access;
  - v. A change in federal regulations or recommended change that necessitates a decrease in the number of vendors to maintain a cost-effective WIC Program, or which alters the way vendors are selected, qualified, receive or accumulate violation points, or disqualified; or
  - vi. Fraud or abuse of the WIC Program as described in the agreement.
  
- l. All vendors participating in the Utah WIC Program have the right to a Fair Hearing when any adverse action (i.e. violation points, denial of payment, disqualification, or denial of application) could affect the vendor's participation in the WIC Program, except as otherwise limited by the agreement or WIC Program policies. Expiration of a contract or agreement with a food vendor is not subject to appeal. Requests for a Fair Hearing must be made within thirty (30) days from the date of the notice of adverse action. Direct all requests for a Fair Hearing to the State Agency.

- m. Referral to law enforcement authorities. When appropriate, the State must refer vendors who violate program requirements to federal, state, or local authorities for prosecution under applicable statutes.