

6.0 Vendor Sanctions

Effective Date: 09-01-2022

6.03 Adverse Actions Against Vendors

PURPOSE: To describe the different types of adverse actions the Department may take against Vendors in the WIC Program. Sanctions are based on the type of program violation identified.

DEFINITIONS:

Corrective Action Plan (CAP) means a written agreement between a Vendor and the Department that may be entered into in lieu of termination and disqualification. A CAP includes conditions for a Vendor to establish a pattern of compliance and must be successfully completed for the Vendor to retain its WIC authorization.

Civil money penalty (CMP) means a monetary fine that is calculated in lieu of termination and disqualification when a sanction or adverse action is being taken against a Vendor.

Monetary claim means the amount of money that is owed to the Department in restitution for payments received by the Vendor that they were not entitled to.

Program violation means any intentional or unintentional action of a WIC Vendor's current owners, officers, managers, agents, or employees (with or without the knowledge of management) that violates the WIC Vendor Contract or Federal or State statutes, regulations, policies, or procedures governing the Program.

Sanction means a punitive or adverse action taken against a WIC Vendor for identified program violations. Sanctions may include, but are not limited to, termination, disqualification, and civil money penalties in lieu of disqualification.

A. POLICY:

1. Termination, Disqualification and Denial. The Department, at its sole discretion, may terminate, disqualify and/or deny a WIC Vendor for any of the State Agency or Federal violations specified per the WIC Vendor Sanction Schedule. (See Exhibit 6.01A WIC Vendor Sanction Schedule.)
 - a. Vendors whose contracts are terminated, or who are disqualified and/or denied and wish to become authorized again must reapply (if disqualified, after the disqualification period) for a WIC Vendor Contract. (See Vendor Policy 2.01 Vendor Applications & Authorization.)
 - i. The Vendor must meet all current requirements for a WIC Vendor Contract, including the WIC Vendor Selection Criteria and Limitation

Policy requirements. (See Policy 2.02 WIC Vendor Selection Criteria and 2.04 Vendor Limitation Policy.)

- ii. The Department shall not contract with a Vendor during any disqualification period from the WIC Program.

 - b. The Department shall not accept voluntary withdrawal of the Vendor from the WIC Program or use nonrenewal of the WIC Vendor Contract as an alternative to taking adverse action against a Vendor. (See Policy 2.06 Contract Expiration & Termination.)

 - c. If, during the course of a single investigation, the Department determines a Vendor has committed multiple violations, the Department shall disqualify the Vendor for the period corresponding to the most serious mandatory sanction. (See Exhibit 6.01A WIC Vendor Sanction Schedule.)

 - d. Vendors may appeal termination, termination and disqualification, or a civil money penalty (CMP) according to the most recent Appeals Policy for Vendors. (See Vendor Policy 7.0 Vendor Appeals.)
2. Corrective Action Plans and Civil Money Penalties. Vendors subject to adverse action, at the Department’s sole and exclusive discretion, may be given an opportunity to pay a civil money penalty (CMP) and/or enter into a corrective action plan (CAP) in lieu of termination and disqualification, subject to the conditions listed in the WIC Vendor Sanction Schedule. (See Exhibits 6.01A WIC Vendor Sanction Schedule, Exhibit 6.03A Corrective Action Plan Agreement.)
- a. The Department will not impose a CMP in lieu of permanent disqualification for Vendors convicted of trafficking or illegal sales as stated under Section III of the WIC Vendor Sanction Schedule.

 - b. If the Department determines that disqualification of a Vendor would result in inadequate participant access, the Department shall impose a CMP in lieu of disqualification only for those violations specified in the WIC Vendor Sanction Schedule. (See Vendor Policy 2.04 Vendor Limitation Policy.)

 - c. The CMP amount shall be determined using the formula in USDA Federal Regulations at 7 CFR 246.12 (l)(1)(x) and shall not exceed the amount stated in 7 CFR 3.91(b)(3)(v).

 - d. A Vendor who does not pay, only partially pays, or fails to timely pay a CMP assessed in lieu of disqualification will be disqualified from the WIC Program for the length of the disqualification corresponding to the most serious violation for which the CMP was assessed.

- e. For a Vendor who has previously been assessed a CMP for any of the sanctions specified in the WIC Vendor Sanction Schedule and receives another sanction for any of these violations, the second CMP will be doubled up to the maximum allowable amounts.
 - f. A CMP shall not be imposed in lieu of disqualification for third or subsequent sanctions for violations specified in Section V of the WIC Vendor Sanction Schedule. The Vendor will be subject to double the sanction (e.g., disqualification period).
 - g. The Department will not disqualify a Vendor if the Vendor was issued a CMP in lieu of disqualification from SNAP or another WIC State Agency if the Department determines the Vendor is needed to ensure participant access. The Department will not issue a CMP in addition to the one issued by SNAP or another WIC State Agency. (See Vendor Policy 2.04 Vendor Limitation Policy.)
 - h. For sanctions for which a Vendor is required to pay a monetary claim, the Department, in its sole and exclusive discretion, may enter into a CAP in lieu of disqualification with or without issuance of a CMP.
3. SNAP Disqualification. WIC and SNAP have a reciprocal relationship and disqualification of a Vendor from one program may lead to disqualification of a Vendor from the other.
- a. Vendors who have been disqualified from the SNAP Program shall be disqualified and/or terminated from the WIC Program. The disqualification shall be for the same length of time as the SNAP disqualification and may begin at a later date than the SNAP disqualification. Such disqualification is not subject to Administrative Review, Administrative Hearing, or other judicial review under the WIC Program.
 - b. Disqualification of a Vendor from the WIC program may result in disqualification as a retailer in SNAP. Such disqualification may not be subject to administrative or judicial review under SNAP.
4. Criminal or Civil Prosecution.
- a. A Vendor who commits fraud or abuse of the Program is liable to prosecution under applicable Federal, State or Local laws.
 - b. In accordance with Federal regulations, those who have willfully misapplied, stolen, or fraudulently obtained Program funds shall be subject to a fine of not more than \$25,000 or imprisonment for not more than five (5) years, or both, if the value of the funds is \$100 or more. If the value is less than \$100, the penalties are a fine of not more than \$1,000 or imprisonment for not more than one (1) year or both.

References:

- 7 CFR Part §246.12 (i), (l)
- 7 CFR Part § 3.91(b)(3)(v)

Cross-references:

- 2.01 Vendor Applications & Authorization
- 2.02 Vendor Selection Criteria
- 2.04 Vendor Limitation Policy
- 2.06 Contract Expiration & Termination
- 7.0 Vendor Appeals

Exhibits:

- 6.01A WIC Vendor Sanction Schedule
- 6.03A Corrective Action Plan Agreement