

**701. Purpose of Vendor Monitoring:**

To maintain program integrity, the WIC State Agency has implemented an on-going vendor monitoring and corrective action system. This system is designed to prevent and detect fraud and abuse, and to ensure compliance with Federal Requirements.

The State Agency is responsible for monitoring vendors to determine their compliance with Program regulations and vendor agreements. Investigations, which are a component of vendor monitoring activities, may remain open from a period of 30 days to one year. State Agency investigations include, but are not limited to:

- Eligibility criteria reviews (pre-authorization monitoring)
- Routine monitoring review
- Educational visits
- Formula inventory audits
- Compliance buys

The State Agency must notify a vendor in writing when an investigation reveals an initial violation. A pattern of two (2) violations must be established in order to impose a sanction. If a vendor is currently under investigation, the State Agency may determine that notifying the vendor may not be warranted if it is believed that this may compromise the investigation.

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**702. Routine Monitoring Visits**

The State Agency will monitor no fewer than 5% of authorized vendors per fiscal year. Routine monitoring visits may be announced or unannounced.

Objective: To evaluate a vendor's compliance with the Vendor Agreement and WIC Program regulations. Routine monitoring activities include, but are not limited to:

- Evaluating the store's sanitary conditions
- Reviewing shelf prices and WIC shelf labels
- Verifying compliance with minimum stocking requirements
- Reviewing CVC and WIC check transaction procedures and redeemed checks on hand
- Checking expiration dates
- Checking quality of WIC-approved food items
- Interviewing the store manager

Findings:

- Immediate feedback will be provided concerning the findings of the visit, with written notification provided within two (2) weeks. Vendors should view feedback as an opportunity to get answers to questions concerning WIC policies and procedures
- Results are also sent to the corporate office of chain stores (if applicable)
- See Attachment 5 - Vendor Monitoring Form for an example monitoring form

Vendor's responsibility: Vendors should be prepared to do the following:

- Discuss possible solutions to problems observed
  - Mutually agree upon corrective action-items for follow up
  - Sign and date the visit summary to document visit and actions taken
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**703. Educational Visits:**

Educational Visits are unannounced monitoring visits that end with the State Agency representative sharing visit results with the manager to educate on WIC policies and procedures.

Objective: To monitor performance and train vendors, as needed, on WIC transactions

Findings:

- The State Agency representative will share results and action steps with the vendor, and provide technical assistance to resolve identified problems
- A written summary of the above items is sent to the vendor, and corporate office (if applicable), within two (2) weeks

Vendor's Responsibility:

- Discuss findings with the State Agency representative
  - Sign and date the visit summary
  - Implement corrective action, as needed
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**704. Technical Assistance Visits:**

Technical assistance visits are conducted upon request to review a problem area and develop appropriate solutions. For example, a vendor may request advice on how to ensure cashiers detect check errors properly, or how to complete the Corrective Action Follow-up Report.

Objective: To assist the vendor by addressing specific concerns and needs

Findings: A written summary is provided within two (2) weeks of the visit

Vendor's Responsibility: Inform the WIC State Agency of actions taken

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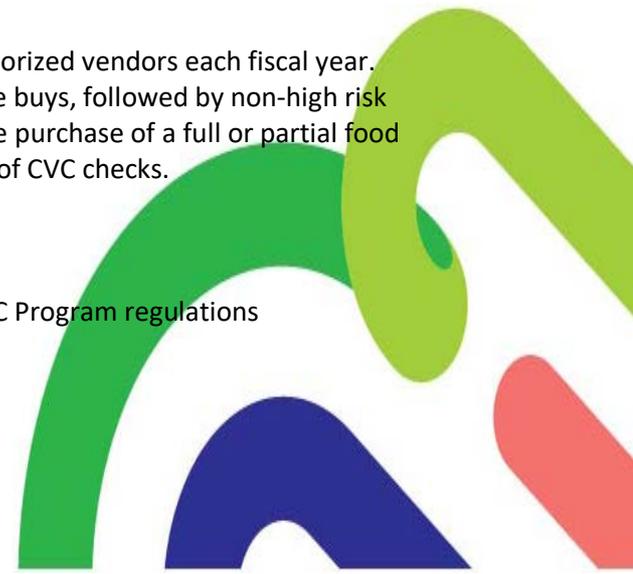
**705. Compliance Investigations:**

1. **Compliance Buys** are covert, on-site investigations in which a representative of the Program poses as a participant, parent or caretaker of an infant or child participant, or proxy, and transacts one or more WIC checks without revealing during the visit their identity as a representative of DC WIC.

Compliance buys will be performed on at least 5% of all authorized vendors each fiscal year. Vendors deemed high risk will be first priority for compliance buys, followed by non-high risk vendors suspected of fraud or abuse. Buys may consist of the purchase of a full or partial food package, purchase of multiple items or one food, or the use of CVC checks.

Objectives:

- Determine the degree of vendor compliance with WIC Program regulations
- Verify suspected fraud or abuse
- Gather evidence of fraud or abuse



Findings:

- The State Agency will notify a vendor in writing of the type of violation(s) committed
- If the same violation(s) occurs more than twice in a compliance investigation, the store will be sanctioned and/or applied a civil money penalty based on the violations cited (see section 710 for the sanction schedule)

Vendor's Responsibility

If abuse or non-compliance is detected during a compliance investigation, the store will be sanctioned and required to implement the following corrective actions:

- Document actions taken to resolve and prevent abuse or further non-compliance with WIC policies using the Corrective Action Follow-Up Report provided by the State Agency
- Submit the report to the WIC State Agency within two (2) weeks of receiving notification of non-compliance by emailing it to [info.vendor@dc.gov](mailto:info.vendor@dc.gov).

- 2. Formula Inventory Audits** are used to identify potential discrepancies between vendors' purchasing records compared to WIC transactions processed at the vendors' location.

Each fiscal year, a sample of WIC authorized vendors deemed high-risk shall be selected for formula inventory audits. The State Agency shall verify that the stores' formula purchases, WIC redemptions, and inventory invoices within a one-month period correlate with each other, and ensure that formulas are being purchased from DC WIC-approved suppliers.

Objectives:

- Examine discrepancies, if any, between vendor's reported formula sales and actual quantity of formula purchased with WIC checks
- Ensure vendors are purchasing formula from DC WIC-Approved suppliers
- Gather evidence of fraud or abuse regarding infant formula

Findings:

- The State Agency will notify the vendor in writing of the results of the audit, and of any follow-up actions required
- Stores whose purchase records do not support the quantity of WIC sales for a standard contract formula based on redeemed WIC checks, or who purchased infant formula from non-approved suppliers, shall be sanctioned and/or disqualified from the WIC Program

Vendor's Responsibility: If abuse or non-compliance is detected, the store will be sanctioned and required to implement the following corrective actions:

- Document actions taken to resolve and prevent abuse or further non-compliance with WIC policies using the Corrective Action Follow-Up Report provided by the State Agency
- Submit the report to the WIC State Agency within two (2) weeks of receiving notification of non-compliance by emailing it to [info.vendor@dc.gov](mailto:info.vendor@dc.gov).

**706. USDA Monitoring:**

Periodically, the USDA Mid-Atlantic Regional Office (MARO) conducts a review of vendor management and food delivery system activities to monitor compliance with federal WIC regulations in the District of Columbia WIC Program. During these reviews, a USDA representative may perform routine monitoring visits on authorized WIC vendors to provide comments and recommendations to the State Agency. In turn, the State Agency will share USDA findings and discuss required action steps with the vendor if violations were detected.

**707. Detection of Check Errors:**

All CVCs and WIC checks are processed through the WIC Banking system and will be reviewed for check errors. Checks may be **rejected for non-payment** if they exhibit the following check errors:

- Redeemed outside of valid use dates
- No dollar amount written on check
- Missing signature
- Alteration of food items on check or date
- Alteration of purchase amount conducted incorrectly
- No vendor stamp
- Invalid vendor stamp
- Over the maximum price (also known as the Not To Exceed, or NTE, amount)
- Late deposit (more than 60 days past “first date to use”)
- Encoding error

Rejected CVCs and WIC checks may be paid when resubmitted based on the guidelines found in Section 800 – Revalidation of WIC Checks. Checks rejected for the following reasons may be subject to revalidation:

- Altered amounts completed incorrectly
- Checks over the maximum
- Missing vendor stamp
- Checks reported as stop payment due to lost/stolen status
- Checks printed with an alignment flaw
- Checks processed correctly but rejected by the bank

**708. High Risk Designation and Implications**

DC WIC’s CARES software system generates vendor monitoring reports that detect high-risk vendors. A vendor may be designated as “High Risk” for the following reasons.

1. Based on number of checks rejected for check errors
  - a. “Check error rate” is the ratio of the number of WIC checks rejected for errors to the total number of WIC checks redeemed.
  - b. Check error rates will be assessed each quarter, with high risk criteria being:
    - i. Medium and Large Vendor Peer Group stores: greater than or equal to 1%
    - ii. Small Vendor Peer Group stores: greater than or equal to 1.5%

2. Based on charges over the NTE
  - a. Charges over the NTE occur when 1) purchase amounts exceed the MARL for a given type of WIC check; 2) charges exceed the vendor's shelf prices; 3) charges exceed those charged to other customers.
  - b. Data will be evaluated each quarter, with the following criteria leading to a high-risk designation:
    - i. Medium and Large VPG stores: If the dollar amount of checks rejected is 4% or more of the total paid by the WIC program
    - ii. Small VPG stores: If the dollar amount of checks rejected is 6% or more of the total paid by the WIC program
3. High Mean - Peer group redemption and percentage comparisons:
  - a. A store's average prices are found to be extremely high when compared to other stores in their peer group
  - b. The Flagged Food Instrument (FI) Report determines the MARL for vendor peer groups and provides a monthly summary of each vendor's prices for selected check types compared to other vendors in the peer group
  - c. A store who generates prices 25% or more higher than those of its respective peer group's prices will be deemed high risk
4. Low Variance –
  - a. A store whose WIC check redemption values exhibit an extremely small amount of variation may be deemed high-risk
5. Other high risk criteria:
  - a. Disqualification from another USDA FNS program, such as SNAP
  - b. Complaints reported by WIC Staff or participants related to fraud or civil rights violations, and substantiated by the State Agency
  - c. Receipt of a civil money penalty (see section 713) in lieu of program disqualification

#### Notification of High-Risk Rating:

The State Agency will notify a vendor in writing when an investigation reveals an initial incidence of a violation for which a pattern of incidences must be established in order to impose a sanction, before another such incidence is documented, unless the State agency determines, in its discretion, on a case-by-case basis, that notifying the vendor would compromise an investigation.

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#### **709. How to Prevent Overcharges:**

**Overcharges** are charges in excess of the NTE amount for each type of WIC and CVC check.

Overcharges result from a vendor intentionally or unintentionally charging the State Agency more for authorized supplemental foods than what is permitted under the vendor agreement.

The vendor agreement states that a vendor will charge the WIC Program the current shelf price or less than shelf price (i.e. sale item or coupon item) charged to other customers. It is not an overcharge when a vendor submits a CVC or WIC check for redemption and the State Agency makes a price adjustment to the voucher.

Overcharge information is compiled and analyzed for each vendor on a monthly basis for charges over the NTE amount for the check type, according to vendor peer group.

The following steps must be performed to ensure that the WIC State Agency has current pricing information for WIC-approved food items and special formulas:

- Submit the Quarterly Food Price List for WIC-approved food items (food retailers) to reflect current prices for WIC food items
- Submit the Quarterly Formula Price List for special formulas (pharmacies) to reflect current prices for WIC special formulas
- If substantial changes in prices of WIC food items or special formulas occur after a Quarterly Food or Formula Price List is submitted, update the necessary price list(s) and Submit to the State Agency prior to implementing changes

Following these steps greatly reduces the likelihood of incurring overcharges. If a vendor overcharges the WIC Program, the WIC State Agency will take the following actions:

- The checks will be rejected by the State Agency's bank
- The State Agency's bank will reimburse the vendor for the NTE amount allowed per check type for their respective peer group or price category
- These NTE amounts are paid through an Automated Clearing House (ACH) payment

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## 710. Vendor Claims

The State Agency may issue a claim and bill a vendor for payments already made to the vendor in error, or upon detection of a Program violation that affects payment to the vendor. The State Agency may establish a claim for the full purchase price of each voucher that contained the vendor overcharge or other error.

Other errors (violations) include, but are not limited to:

- Transacting or redeeming CVCs and WIC checks outside the valid dates
- Redeeming unsigned CVCs and WIC checks
- Redeeming CVCs and WIC checks with alterations in the date, food quantity, description, or participant information

When a claim is established, the State Agency will provide the vendor with an opportunity to justify or correct the vendor overcharge or other error. The vendor will have 14 days from the date of State Agency notification to take action on the claim. If satisfied with the justification or correction, the State Agency must adjust the proposed claim accordingly. The State Agency must obtain approval from the U.S. Department of Agriculture Mid-Atlantic Regional Office (MARO) to adjust claims that exceed \$500.00 for CVCs and WIC checks redeemed after the expiration date.

The Vendor will have 30 calendar days to pay the claim. Failure to pay the claim shall result in future payments being withheld to offset the amount of the claim.

**711. State Agency Established Violations and Sanctions:**

The WIC State Agency has established a sanction system as a means to deter vendor abuses or violations. According to the Code of Federal Regulations (CFR), a vendor violation is defined as any intentional or unintentional action of a vendor's current owners, officers, managers, agents, or employees (with or without knowledge of management) that violates the vendor agreement or Federal or State statutes, regulations, policies, or procedures established by the Program.

The sanction system provides a means to monitor the level of abuse by each authorized store, and an objective method for applying penalties and corrective actions when abuse occurs. A vendor will be notified after the first instance that a violation has been observed by the State Agency. The State agency may consider a compliance investigation complete when two compliance buys have been conducted in which no serious vendor violations that would trigger a mandatory sanction are detected.

When the WIC State Agency determines that a pattern of violations (two or more instances of the same violation) is established for any State-established Program violations, a sanction will be applied. The sanction for the first established pattern of violations is an administrative fine. The fine will be doubled if a second pattern of violations is established within the same contract period. The vendor will be subject to disqualification if a third pattern of violations is established.

**Notification of Violations, and Corrective Action Plans (CAPs):**

The State Agency will notify a vendor in writing when a monitoring visit or investigation reveals an initial incidence of a violation for which a pattern of incidences must be established in order to impose a sanction, before another such incidence is documented, unless the State agency determines, in its discretion, on a case-by-case basis, that notifying the vendor would compromise an investigation.

The State Agency will also notify a vendor in writing when a pattern of violations has been established and a sanction is to be imposed, informing them of any administrative fines assessed, how to pay said fines, and of their right to a fair hearing.

These written notifications will include a Corrective Action Plan (CAP) outlining violations observed, and will include space for the vendor to detail how they will resolve these violations through corrective actions. The vendor shall complete the (CAP) within two (2) weeks of communication from State Agency. The vendor must document the corrective actions taken and submit that documentation to the State Agency within 30 days of the submitting the CAP.



State Agency established Program violations are grouped into two (2) categories:

<b>I. Minor Abuses</b>
<p><b>Abuses</b></p> <ol style="list-style-type: none"> <li>1. During WIC transactions, the vendor:           <ol style="list-style-type: none"> <li>a. Does not offer participant the same courtesies offered to other customers; such as honoring coupons and store discounts</li> <li>b. Requires participant to purchase a store brand WIC food item</li> <li>c. Compels participant to buy quantities of food less than what is listed on their WIC check</li> <li>d. Does not allow participant to purchase approved food items listed on their WIC check</li> <li>e. Accepts CVCs / WIC Checks before or after the valid period on the check</li> <li>f. Accepts altered CVCs / WIC checks</li> <li>g. Requests signature <u>before</u> the purchase amount is written on the CVC / WIC check</li> <li>h. Alters CVCs / WIC Checks (other than allowable price corrections)</li> <li>i. Performs price correction incorrectly</li> <li>j. Fails to check the WIC Identification folder</li> <li>k. Fails to provide sales receipt following WIC transactions</li> </ol> </li> <li>2. During Program operations, the vendor:           <ol style="list-style-type: none"> <li>a. Does not submit a Quarterly Food Price List for all WIC food items</li> <li>b. Shelf prices do not match the Quarterly Food Price List</li> <li>c. Does not display shelf labels for WIC approved foods</li> <li>d. Does not keep WIC reference materials on hand in the manager's office or at cash registers</li> <li>e. Does not display WIC decal or sign in a place conspicuous to the public</li> <li>f. Does not store WIC approved foods in adequate temperature range</li> </ol> </li> </ol>
<p><b>Sanctions</b></p> <ul style="list-style-type: none"> <li>• 1<sup>st</sup> pattern: \$500 administrative fine</li> <li>• 2<sup>nd</sup> pattern: \$1000 administrative fine</li> <li>• 3<sup>rd</sup> pattern: Termination of the vendor agreement</li> </ul> <p><b>Note</b> – Failure to make scheduled payments on monetary sanctions will result in termination from the Program. These fines will remain on the vendor's record and must be settled before future authorization in the Program.</p>
<p><b>Corrective Action</b></p> <ul style="list-style-type: none"> <li>• Pay the administrative fine; or termination of the agreement, and/or complete the waiting period; or pay a Civil Money Penalty (CMP) in lieu of disqualification. (See Section 714 for more details on CMPs)</li> <li>• Complete a CAP detailing how the violation will be resolved within two (2) weeks of communication from State Agency (see Corrective Action Plans, page 7).</li> </ul> <p><b>Note</b> – Failure to follow through with the CAP will result in termination from the Program.</p>

## II. Major Abuses

### Abuses:

1. During WIC transactions, the vendor:
  - a. Requires participants to use a separate checkout line
  - b. Does not accept the WIC ID folder as sole proof of identity
  - c. Does not accept other forms of tender for remaining CVC transaction balances
  - d. Does not honor valid CVCs / WIC checks
  - e. Attempts to limit the number of checks a participant spends
  - f. Charges participants a service fee or requires them to pay additional cash for food purchased
  - g. Does not permit participants to redeem CVC / WIC checks without making other purchases
  - h. Suggests participant give away excess food when not all items listed on WIC check are purchased
  - i. Issues participant a "rain check" because a WIC food item was out-of-stock
  - j. Contacts a participant to request they return to the store to rectify a check error
  
2. During Program operations, the vendor:
  - a. Refuses to secure "out of stock" standard infant formula within the required 24-hour period
  - b. Pharmacy vendor fails to supply special formula within the required 48-hour period
  - c. Fails to purchase formula from a DC WIC-approved formula supplier
  - d. Fails to meet minimum stocking requirements for DC WIC authorized foods
  - e. Stocks and sells food items beyond the manufacturer's expiration date
  - f. Fails to comply with WIC monitoring procedures
  - g. Store premises are not maintained in a sanitary condition
  - h. Fails to submit annual copy of state-approved health inspection
  - i. Fails to keep WIC participant information confidential
  - j. Uses WIC acronym and logo in a way that violates the Vendor Agreement (see Section 311)
  
3. Other; the vendor:
  - a. Provides cash to participant for returned WIC food items
  - b. Provides participant with cash back from CVC / WIC check
  - c. Collects sales tax on WIC approved food items
  - d. Seeks restitution from participant for rejected checks not paid by the State Agency
  - e. Discriminates against WIC participants based on sex, race, color, age, disability or national origin (Civil Rights violations)
  - f. Does not ensure that store employees who are WIC participants do not process their own redemption of CVCs / WIC checks
  - g. Fails to cooperate with WIC monitoring procedures

### Sanction:

- 1<sup>st</sup> pattern: \$1000 administrative fine
- 2<sup>nd</sup> pattern: \$2000 administrative fine
- 3<sup>rd</sup> pattern: Termination of vendor agreement

**Note** – Failure to make scheduled payments of monetary sanctions will result in termination from the Program. These fines will remain on the vendor's record and must be settled before future authorization in the Program.

### Corrective Action:

- Pay the administrative fine; or terminate the vendor agreement, and/or complete the waiting period; or pay a Civil Money Penalty (CMP) in lieu of disqualification.
- Submit a CAP within two (2) weeks of receiving written notification from the State Agency.

**Note** – Failure to follow through with the CAP will result in termination from the program.

## 712. Federally Established Violations and Mandatory Sanctions

<b>I. Mandatory Sanctions</b>
<p><b>Description</b> The following violations require mandatory sanctions as established by the Code of Federal Regulations (CFR), per the Food and Nutrition Services (FNS) branch of the United States Department of Agriculture (USDA), which governs the WIC Program. Violations are grouped by applicable sanction.</p>
<p><b>1. Abuses which warrant a 1-year disqualification:</b></p> <ul style="list-style-type: none"> <li>a. A pattern of providing unauthorized food items in exchange for CVCs or WIC checks, including charging for supplemental foods provided in excess of those listed on food instrument</li> <li>b. A pattern of providing prohibited incentive items to customers</li> </ul>
<p><b>2. Abuses which warrant a 3-year disqualification:</b></p> <ul style="list-style-type: none"> <li>a. One incidence of the sale of alcoholic beverages or tobacco products in exchange for CVCs or WIC checks</li> <li>b. A pattern of claiming reimbursement for the sale of a specific item which exceeds the store's documented inventory of that item during that specific period of time</li> <li>c. A pattern of vendor overcharges</li> <li>d. A pattern of receiving, transacting, and/or redeeming CVCS or WIC checks outside of the authorized channels, including the use of unauthorized vendor and/or an unauthorized person</li> <li>e. A pattern of charging for supplemental foods not received by participants</li> <li>f. A pattern of providing credit or non-food items other than alcoholic beverages, cash, firearms, ammunition, explosives, or controlled substances in exchange for CVCs or WIC checks</li> </ul>
<p><b>3. Abuses which warrant a 6-year disqualification:</b></p> <ul style="list-style-type: none"> <li>a. One incidence of buying or selling CVCs or WIC checks for cash</li> <li>b. One incidence of selling firearms, ammunition, explosives, or controlled substances in exchanged for CVCs or WIC checks</li> </ul>

<b>II. Second Mandatory Sanctions</b>
<p><b>Description</b> When a vendor who was previously assessed a sanction for any Federally Mandated violations listed in table I of section 712 receives another sanction for any of these violations, the State Agency must double the second sanction. A CMP may only be doubled up to the limits allowed by the USDA (see section 714.c).</p>

<b>III. Third or Subsequent Mandatory Sanctions</b>
<p><b>Description</b> When a vendor who was previously assessed two or more sanctions for any Federally Mandated violations listed in Table I of section 712 receives another sanction for any of these violations, the State agency must double the third sanction and all subsequent sanctions. The State Agency may not impose CMP in lieu of disqualification for third or subsequent sanctions for violations listed in Table I of section 712.</p>

#### IV. Permanent Disqualification

**Description:**

The State Agency must permanently disqualify any vendor convicted of:

- Trafficking in CVCs or WIC Checks
- Selling firearms, ammunition, explosives, or controlled substances in exchange for CVCs or WIC checks

A vendor is not entitled to receive any compensation for revenue lost as a result of such a violation. The State Agency may impose a CMP in lieu of disqualification if:

1. The vendor can prove that at the time of the violation, they had a policy and program in effect to prevent trafficking
2. The State Agency determines that disqualification of the vendor would result in inadequate participant access

### 713. Vendor Disqualification Information

#### Disqualification based on a SNAP disqualification:

The State Agency must disqualify a vendor who has been disqualified from SNAP. The disqualification must be for the same length of time as SNAP disqualification, may begin at a later date than SNAP disqualification, and is not subject to administrative or judicial review under the WIC Program.

#### Voluntary withdrawal or non-renewal of agreement:

The State Agency may not accept voluntary withdrawal of the Vendor from the Program as an alternative to disqualification for any Federally established violations (see section 711), and must enter the disqualification on the Vendor's record. In addition, the State Agency may not use non-renewal of the vendor agreement as an alternative to disqualification.

#### State Agency established disqualifications:

- The State Agency may determine that disqualification of a vendor would result in inadequate participant access. In this case, the State Agency may impose a Civil Money Penalty (CMP) in lieu of disqualification (see section 714). If the vendor fails to pay the CMP by the terms established by the State Agency, the State Agency will rescind the CMP and the disqualification will be imposed.
- Once the State Agency determines that disqualification is the appropriate sanction, the vendor will have 30 days from receipt of the notice of disqualification to file a fair hearing request (see section 900 for more information)
- During disqualification, participants may not redeem CVCs or WIC checks at these stores
- A disqualified vendor may apply for reauthorization after the disqualification period has ended

**714. Civil Money Penalty (CMP):**

This policy explains the conditions under which the State Agency may assess a CMP against an abusive WIC vendor in lieu of disqualification, and the method to determine the amount of the CMP. These determinations will be made by the State Agency on a case-by-case basis.

If the State Agency determines that disqualification of the vendor would result in inadequate participant access, the State Agency must impose a CMP in lieu of disqualification. The State Agency may not impose a CMP in situations where the vendor has been assessed a CMP in lieu of disqualification by another WIC State Agency. A CMP does not relieve the vendor of financial liability for previous compliance issues, such as outstanding overcharges or payments due for sale of unauthorized foods, etc. Such outstanding liabilities must be paid in addition to the CMP.

**a. When to Offer a Civil Money Penalty:**

CMPs will be offered to a vendor in lieu of disqualification only when the State Agency determines that disqualification of the vendor would result in inadequate participant access (not just an inconvenience or preference). The State Agency will review and document each of its inadequate participant access determinations prior to imposing a sanction or making an authorization decision.

A vendor about to be disqualified may not request a CMP in lieu of disqualification; this decision rests solely on the State Agency's discretion. A CMP shall not be offered to any vendor more than one time during that vendor's contract period. Disqualification would be applied to a second offense. This limitation shall apply separately to each location maintained by the vendor in violation.

The application of a CMP shall rely on the vendor's written acknowledgment of an agreement to resolve, to the satisfaction of the State Agency, all past violations of the Vendor Agreement and other applicable policies and procedures of the WIC Program. If the State Agency determines that the vendor has failed to comply fully with any terms and conditions of the Vendor Agreement, the State Agency may immediately terminate the vendor.

The application of a CMP shall not be construed as a guarantee of continued participation in the WIC Program by the violating vendor, nor shall it be construed to limit the discretion of the State Agency in any degree with respect to the imposition of any other penalty against the abusive vendor.

**b. Civil Money Penalty Procedures:**

1. Once it has been determined that a WIC vendor has committed a pattern of violations for which a disqualification must be imposed, the State Agency will review the case to determine whether disqualification of the vendor would result in inadequate participant access. This review will take place prior to notification of disqualification, so that the vendor will be made aware of any alternative sanction options at the time of notification.
2. If the State Agency determines that a CMP is an appropriate alternative, then the State Agency will schedule a conference with the vendor to review:
  - The amount of the alternative CMP
  - The method(s) of payment available to the vendor
  - All compliance issues, not just those that brought about the disqualification
3. After the conference, the vendor will have 15 days to accept the CMP sanction in lieu of the disqualification.

Acceptance and payment of a CMP does not relieve the vendor of its obligation to document the resolution of any identified problems, nor does it eliminate the possibility of any future sanctions being imposed for non-compliance. Past violations settled by the CMP may be considered if additional violations of the same nature occur in the future.

**c. Calculating the Civil Money Penalty:**

All CMPs issued by the State Agency will be calculated using a standard formula; however, the penalty shall not exceed \$15,306 per abuse, even if the formula indicates that a higher penalty is warranted. The formula is as follows:

Step 1. Determine the vendor’s average monthly redemptions for a 6-to-12 month period ending with the month immediately preceding that during which the notice of adverse decision is dated

Step 2. Multiply average monthly redemptions figure by 10 percent (.10)

Step 3. Multiply the product of Step 2 by the number of months for which the store would have been disqualified. This would be the amount of the CMP provided that the penalty does not exceed \$15,306 for each violation.

*Example:* A vendor is notified of a two-year disqualification beginning on October 1st. A CMP in lieu of a disqualification would be calculated as follows:

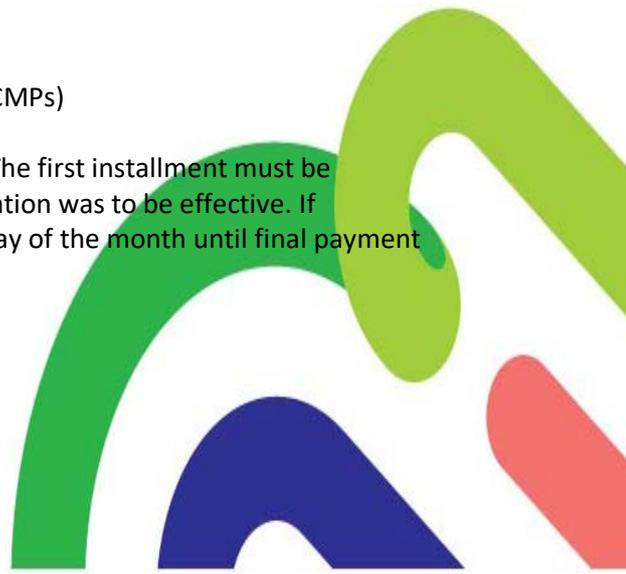
1. WIC Redemptions per month:		2. Average redemptions, calculate 10%:	
September	\$3,500	$\$19,650 / 6 = \$3,275 \times 0.10 = \$327.50$	
August	\$2,900		
July	\$3,100		
June	\$2,800	3. Multiply x # months of disqualification:	
May	\$3,600	$\$327.50 \times 24 \text{ months} = \$7,860.00$	
April	<u>\$3,700</u>		
	\$19,650		

**715. Payment of Civil Money Penalties (CMPs)**

A CMP is an alternative to disqualification that is only used when the State agency determines, in its sole discretion, that disqualification of the vendor would result in inadequate participant access. All CMPs must be paid using the following method as determined by the State Agency:

- A lump sum of the money penalty which must be received on or before the date the disqualification was to be effective
- One payment for the total of the CMP
- Six (6) installment payments of equal amounts (only for CMPs)

All payments must be made by certified check or money order. The first installment must be received by the State Agency on or before the date of disqualification was to be effective. If applicable, subsequent payments must be received on the first day of the month until final payment is received.



All payments must:

Be made payable to:	Be Mailed to:	Include:
DC Treasurer Payments	DC WIC 899 North Capitol Street NE 3 <sup>rd</sup> Floor Washington, DC 20002	- Vendor's Name - Store's WIC ID #

If a vendor fails to make any scheduled installment payment by the due date, the State Agency shall disqualify the vendor for the length of the disqualification period corresponding to the violation for which the CMP was assessed.

#### Exceptions to Calculated Civil Money Penalties:

If a violation warrants permanent disqualification, the amount of the CMP shall be \$15,692.

- When, during the course of a single investigation, the State Agency determines that a vendor has committed multiple violations, the State Agency shall impose a CMP for the most serious violation. The total amount of CMPs imposed for all violations investigated as part of a single investigation shall not exceed \$62,767.

#### **716. Incentive Items Policy:**

Sections 203(e)(13) of the Child Nutrition and WIC Reauthorization Act of 2004, P.L. 108-265, amends Section 7 (h)(14) of the CNA by prohibiting a State Agency from authorizing or making payments to vendors, as described below, to provide incentive items or other free merchandise (except food or merchandise of nominal value), to program participants unless the vendor provides proof to the State Agency that they obtained the incentive items/merchandise at no cost.

1. Vendors may not give away incentive items or other free merchandise unless:
  - a. The store can prove that the items/merchandise were obtained at no cost
  - b. The food or merchandise is of nominal value
    - i. **Nominal Value** = Cost of less than \$2.00 per item
  - c. The State Agency approves of allowable incentive items in writing:
    - i. The vendor must submit a list of incentives, the cost of each item, and documentation indicating the cost of each item
    - ii. The vendor must submit documentation that items of greater than nominal value were provided to the vendor at no cost
    - iii. The State Agency must contact the source stated on the invoice(s) to verify the information
2. Vendors may not circumvent this restriction by selling an incentive item to a WIC participant for less than its cost
3. Vendors may not provide lottery tickets to participants for free or below face value
4. Cash gifts to participants are strictly prohibited
5. Vendors are not permitted to provide services to participants such as transportation, or delivery of supplemental foods

**717. Acceptable Incentive Items:**

- a. Merchandise obtained at no cost to the vendor and provided to participants without charge, subject to documentation
- b. Goods / merchandise of nominal value (per item cost is less than \$2); subject to documentation
- c. Food sales and specials which involve no cost or only a nominal value for the vendor regarding the food items involved AND do not result in a charge to CVC or WIC check
- d. Merchandise or food items involved with a raffle or similar promotion are acceptable if obtained by the vendor at no cost or minimal cost
- e. Sales and “specials” for supplemental foods obtained with WIC checks are acceptable if certain conditions are met. Sales and specials include: reduced prices for a period of time, buy one/get one free or reduced price, free amounts added to an item by a manufacturer
- f. Manufacturer coupons and store loyalty shopping cards. Sales and specials for supplemental foods obtained with CVCs and WIC checks are acceptable if such sales or specials involve no cost or only a nominal value for the vendor regarding the food items involved

