



United States
Department of
Agriculture

Food and
Nutrition
Service

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SUBJECT: WIC Policy Memorandum #2005-3
Price Adjustments, Collections, Fines, and Program Income

TO: Regional Directors
Supplemental Food Programs
All Regions

Regional Directors
Financial Management
All Regions

This policy memorandum clarifies and updates current policy on price adjustments, vendor, participant, and local agency collections, fines, civil money penalties, and program income to reflect amendments to WIC Program legislation and regulations since the issuance of WIC Policy Memorandum #96-3. The REFERENCES section at the end of this memorandum contains a list of the applicable legislation and regulations. This policy memorandum supersedes the following:

- 1) WIC Policy Memorandum #96-3, "Collections, Fines and Program Income," issued December 26, 1995;
- 2) FNS Instruction 814-1, "WIC Program—Establishment and Collection of Claims," issued December 1, 1989; and
- 3) FNS Instruction 809-1, "WIC Program—Income: Transfer of Recovered Funds," issued October 10, 1982.

DISCUSSION

In this area of program policy, it is essential to establish a common understanding of the meaning of both defined and undefined program terminology. Although some terms have similar constructions, such as "pre-edits" and "prepayments," they are not interchangeable because they have different meanings. This discussion section clarifies the distinctions between the various terms used throughout this policy memorandum in order to establish a common understanding of these terms as well as to ensure consistent implementation of program rules and policies.

Claims vs. Collections

Because vendors, participants, and local agencies do not always pay the claims assessed against them by the State agency, there is a distinction between the term *claim*, which refers to the State agency's assessment, and the term *collection*, which refers to the State agency's receipt of all or a portion of a claim. Whereas all claims must be documented by the State agency, only collections are reported on the FNS-798.

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Collections vs. Program Income

Whereas *collections* are recoveries of grant funds improperly paid to vendors, participants, or local agencies, *program income* refers to income that is generated or earned by WIC in addition to grant funds.

Price Adjustments vs. Vendor Claims

Regulations at 7 CFR 246.12(g)(3)(i) require the State agency to establish *price limitations* to ensure that vendors do not subsequently raise their prices to levels that would otherwise make them ineligible for authorization under the State agency's competitive price vendor selection criterion. The tool used by the State agency to enforce its price limitations is the *price adjustment*, which occurs when the State agency or its bank makes an adjustment to the purchase price of a food instrument to ensure that it complies with the price limitations. Many systems may be used by the State agency to make price adjustments, including but not limited to: 1) maximum price systems, which make price adjustments to food instruments that exceed an allowable maximum price; 2) average price systems, which make price adjustments to food instruments that exceed an average price for food instrument types; and 3) bid systems, which make price adjustments to food instruments that exceed the vendors' bid prices. The State agency must describe the system it uses to make price adjustments in its vendor agreement.

Unlike a price adjustment, a *vendor claim* is a claim for reimbursement made against the vendor for an improper payment due to a *vendor violation*. Many vendor violations may give rise to a vendor claim, including but not limited to: 1) common food instrument errors, such as lack of participant signature; 2) timeframe errors, such as transaction of a food instrument after the specified time period; and 3) incidences of serious vendor violations that may trigger a mandatory sanction, such as vendor overcharges. The State agency must describe the types of vendor violations that result in vendor claims in its vendor agreement and provide vendors with a copy of its sanction schedule.

The main distinction between the terms *price adjustment* and *vendor claim* is whether or not a vendor violates the terms of the vendor agreement. A price adjustment is made in accordance with the terms of the vendor agreement, never results from a vendor violation, always results in a reduction to the purchase price entered on a food instrument, and is never a denial of the entire purchase price of a food instrument. A vendor claim always results from a vendor violation and, depending on the terms of the vendor agreement, may result in a claim for either a portion of the purchase price or the entire purchase price of a food instrument.

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Edits vs. Payments

The term *edit* is used in the banking industry to refer to a review conducted on a check submitted for payment. Bank edits typically include reviewing such items as the signature, amount, and date, prior to making payment on a check. The edit terminology has been adopted for use in the WIC Program to refer to reviews conducted by the State agency or its bank on food instruments submitted by vendors for redemption. The terms *prepayment* and *postpayment* have been used for many years on the FNS-798 to distinguish between vendor claims collected via offsets and those collected via external payments (e.g., business checks, electronic fund transfers, etc.). The distinction between pre-edits/post-edits and prepayments/postpayments is that the *edit* terminology refers to the reviews conducted on food instruments and the *payment* terminology refers to how collections are received and reported on the FNS-798.

Pre-edits vs. Post-edits

Regulations at 7 CFR 246.12(k)(1) require the State agency to implement a system to review food instruments "to ensure compliance with applicable price limitations and to detect questionable food instruments, suspected vendor overcharges, and other errors." In addition to specifying the types of errors that must be reviewed, the regulation provides that "the review may be done either before or after the State agency makes payment on the food instruments." Reviews conducted by the State agency or its bank on food instruments *prior to* redemption (i.e., payment) are known as *pre-edits*. Reviews conducted by the State agency on food instruments *after* redemption are known as *post-edits*.

Prepayments vs. Postpayments

Whether a price adjustment or a vendor collection is considered a prepayment or a postpayment does not depend on *when* it is collected, as the terms may suggest, but on *how* it is collected. If a price adjustment or vendor collection is collected via an offset of a present or future payment, it is a *prepayment*. If it is collected via an external payment (e.g., a business check, etc.) from a vendor, it is a *postpayment*. The prepayment/postpayment terminology is not used on the FNS-798 for participant collections, because the State agency is not allowed to collect participant claims via offsets. Consequently, all participant collections reported on the FNS-798 are postpayments.

PRICE ADJUSTMENTS

The WIC Food Delivery Systems final rule introduced the term *price adjustment*. The purpose of price adjustments is to ensure that payments made to vendors for food instruments comply with the State agency's price limitations. Unlike a vendor overcharge, a price adjustment is not a vendor claim because the vendor has not violated

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the terms of the vendor agreement. Prior to implementing the WIC Food Delivery Systems final rule, the State agency could consider funds collected as a result of price adjustments as vendor collections. This practice is no longer permitted under current regulations.

Assessment of Price Adjustments

Price adjustment means an adjustment made by the State agency, in accordance with the vendor agreement, to the purchase price on a food instrument after it has been submitted by a vendor for redemption to ensure that the payment to the vendor for the food instrument complies with the State agency's price limitations (definition of "price adjustment" in 7 CFR 246.2).

1. *Pre-edit price adjustments* occur when the purchase price on a food instrument exceeds the price limitations established for the vendor and as a result the State agency or its bank makes a price adjustment for a portion of the purchase price of the food instrument *prior to* redemption (i.e., payment).
2. *Post-edit price adjustments* occur when the purchase price on a food instrument exceeds the price limitations established for the vendor and as a result the State agency makes a price adjustment for a portion of the purchase price of the food instrument *after* redemption.

Conversion of Price Adjustments

Funds recovered as a result of price adjustments revert to unspent food funds. Conversion of unspent food funds to nutrition services and administration (NSA) funds must be either pre-approved by FNS according to a plan submitted by the State agency or earned through actual participation increases over the Federally projected participation level and cannot exceed current NSA cost overexpenditures (7 CFR 246.16(f)). Our August 18, 1999, unnumbered policy memorandum, "Guidance for Conversion Plan for Projected Increases in Participation Over Federally Projected Level," outlines the requirements for the plan that the State agency must submit when seeking approval to convert food funds to NSA funds.

Reporting Requirements

1. *Prepayment price adjustments* are either subtracted from the purchase price of food instruments prior to redemption or are collected via offsets of present or future payments made to vendors. Prepayment price adjustments reduce payments made to vendors and therefore result in a reduction of the amount reported under "Gross Outlays" on Line 4 of the FNS-798. Prepayment price adjustments are not reported separately on the FNS-798.

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2. *Postpayment price adjustments* are external payments (e.g., business checks, etc.) received from vendors in response to bills from the State agency for price adjustments. Postpayment price adjustments are reported as "Other Credits" on Line 11 of the FNS-798 along with a corresponding note in the "Remarks" section of the report.

Recordkeeping Requirements

Although program regulations do not specify recordkeeping requirements for price adjustments, the State agency should document price adjustments in a manner that demonstrates compliance with its vendor agreement and maintain adequate documentation to support its FNS-798 submissions and annual closeout (7 CFR 246.25).

VENDOR COLLECTIONS

Vendor collections are funds recovered through the collection of *vendor claims*. In addition to the recovery of improper payments made to vendors, vendor claims include improper payments prevented by the State agency (i.e., funds not paid to vendors as a result of reviews of food instruments prior to redemption). The term "vendor collection" denotes action both before and after payment, depending on the State agency's system for reviewing food instruments. Vendor collections also include State court awards that are restitution for lost food benefits. Regulations at 7 CFR 246.14(e) apply to such awards, which State agencies should account for and report in the same manner as postpayment vendor collections.

Assessment of Vendor Claims

Regulations at 7 CFR 246.12(k) require the State agency to implement a system to review food instruments submitted by vendors for redemption to detect certain food instrument errors. The review may be done either before or after payment has been made on food instruments. The State agency must delay payment or establish a claim when it determines that a vendor violation affects the payment to the vendor. A vendor claim may be assessed for up to the full purchase price of a food instrument. Although the vendor must be provided with an opportunity to justify or correct food instrument errors resulting in vendor claims, the State agency may establish in the vendor agreement that certain errors (e.g., missing signatures, altered purchase prices, etc.) are "fatal errors" and that food instruments containing such errors will not be paid (Question 5 on pages E-4 and E-5 of WIC Policy Memorandum #2002-1, Revision 1, issued June 10, 2003).

1. *Pre-edit vendor claims* occur when due to a vendor violation the State agency or its bank denies payment of all or a portion of the purchase price of a food instrument *prior* to redemption.
2. *Post-edit vendor claims* occur when due to a vendor violation the State agency assesses a vendor claim for all or a portion of the purchase price of a food instrument *after* redemption.

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The State agency may collect vendor claims: 1) by denying payment of all or a portion of a food instrument prior to redemption; 2) by offsetting the claim amount against current or subsequent amounts owed to the vendor; or 3) by receiving payment from the vendor. In addition to assessing vendor claims, the State agency may sanction vendors for vendor violations in accordance with its sanction schedule.

Use of Vendor Collections

Regulations at 7 CFR 246.14(e)(1) allow the State agency to use vendor collections to cover any allowable food or NSA cost. The State agency may use these funds during the *fiscal year*: 1) in which the initial obligation was made; 2) in which the claim arose; 3) in which the funds are collected; or 4) after the funds are collected.

Reporting Requirements

1. *Prepayment vendor collections* are either subtracted from the purchase price of food instruments prior to redemption or are collected via offsets of current or subsequent amounts owed to vendors. Prepayment vendor collections reduce payments made to vendors and therefore result in a reduction of the amounts reported under "Gross Outlays" on Line 4 of the FNS-798. Prepayment vendor collections may be applied to NSA costs by reporting them separately on Line 34 of the FNS-798.
2. *Postpayment vendor collections* are external payments (e.g., business checks, etc.) received from vendors in response to post-edit vendor claims assessed against the vendor by the State agency. Postpayment vendor collections applied to food costs are reported on Line 9 of the FNS-798. Postpayment vendor collections applied to NSA costs are reported on Line 23 of the FNS-798.

A State that contributes food funds to the WIC Program may prorate its vendor collections between its Federal and State WIC Program accounts proportional to each account's expenditure share for total WIC Program food costs. For example, if 10 percent of the State's total WIC Program food costs are paid with State funding, then 10 percent of its vendor collections may be applied to the State's WIC Program account. If FNS determines that the State agency incorrectly prorated its vendor collections, FNS will assess a claim against the State agency for the portion of the Federal share that was erroneously credited to the State WIC Program account. Only the Federal share of vendor collections should be reported on the FNS-798.

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Recordkeeping Requirements

Regulations at 7 CFR 246.14(e)(5) require the State agency to maintain documentation to support the amount and use of its vendor collections. This documentation should include the following: the name of the vendor, the reason for the vendor claim (e.g., a vendor overcharge), the date and amount of the vendor claim, evidence that the vendor had an opportunity to justify or correct the food instrument error resulting in the vendor claim, and the date and amount collected.

PARTICIPANT COLLECTIONS

Participant collections are funds recovered through the collection of *participant claims*. Regulations at 7 CFR 246.23(c) require the State agency to establish a claim against a participant for the full value of program benefits that have been obtained or disposed of improperly as the result of a participant violation. For all participant claims, the State agency must issue a letter demanding repayment and pursue repayment until it determines, in accordance with its established standards, that further collection actions would not be cost-effective. In addition to assessing participant claims, the State agency must sanction participants for participant violations in accordance with 7 CFR 246.12(u)(2).

Assessment of Participant Claims

The State agency must establish participant claims when program benefits have been obtained or disposed of improperly as the result of participant violations. To calculate the amount of a participant claim, the State agency must use either the total purchase price of food instruments or the total post-rebate food cost of program benefits obtained or disposed of improperly (Question 1 on page M-1 of WIC Policy Memorandum #2002-1, Revision 1, issued June 10, 2003).

Use of Participant Collections

Regulations at 7 CFR 246.14(e)(1) allow the State agency to use participant collections to cover any allowable food or NSA cost. The State agency may use these funds during the *fiscal year*: 1) in which the initial obligation was made; 2) in which the claim arose; 3) in which the funds are collected; or 4) after the funds are collected.

Reporting Requirements

Since the State agency is not allowed to collect participant claims via offsets, all participant collections reported on the FNS-798 are postpayments. Participant collections applied to food costs are reported on Line 10 of the FNS-798. Participant collections applied to NSA costs are reported on Line 24 of the FNS-798. A State that contributes food funds to the WIC Program may prorate its participant collections between its Federal and State WIC Program accounts proportional to each account's expenditure

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share for total WIC Program food costs. Only the Federal share of participant collections should be reported on the FNS-798. The value of in-kind services performed as part of a participant's restitution agreement should not be reported on the FNS-798.

Recordkeeping Requirements

Regulations at 7 CFR 246.23(c)(1)(iii) require the State agency to document the disposition of all participant claims. This documentation should include the following: the name of the participant, the reason for and amount of the participant claim, the dates that demand letters were sent, the date and disposition of a requested fair hearing, the date and repayment schedule of a restitution agreement, the dates and amounts of restitution collected, including the performance of in-kind services, and the date that further collection actions ceased due to a cost-benefit analysis.

LOCAL AGENCY COLLECTIONS

Local agency collections are funds recovered through the collection of *local agency claims*. Under 7 CFR 246.19(b), the State agency is responsible for monitoring local agency operations, including financial management systems. If any food or NSA funds provided to a local agency was misused, diverted from program purposes, or lost as a result of thefts, embezzlements, or unexplained causes, the State agency should assess a claim against the local agency, as well as require the local agency to submit a corrective action plan.

Assessment of Local Agency Claims

When program funds have been misused, diverted, or lost as a result of local agency negligence or fraud, the State agency should assess local agency claims in accordance with the local agency agreement. The amount of a local agency claim should be based on the total amount of food and/or NSA funds that were misused, diverted, or lost.

Use of Local Agency Collections

The WIC Reauthorization Act of 2004 (Public Law 108-265) amended Section 17(f) of the Child Nutrition Act of 1966, as amended, to allow the State agency to use local agency collections to cover any allowable food or NSA cost during the *fiscal year*: 1) in which the initial obligation was made; 2) in which the claim arose; 3) in which the funds are collected; or 4) after the funds are collected.

Reporting Requirements

Local agency collections applied to food costs are reported on Line 11 of the FNS-798 along with a corresponding note in the "Remarks" section of the report. Local agency collections applied to NSA costs are reported on Line 25 of the FNS-798 along with a corresponding note in the "Remarks" section of the report. A State that contributes funds

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to the WIC Program may prorate its local agency collections between its Federal and State WIC Program accounts proportional to each account's expenditure share for WIC Program food and NSA costs. Only the Federal share of local agency collections should be reported on the FNS-798.

Recordkeeping Requirements

Regulations at 7 CFR 246.25(d) require the State agency to maintain source documentation to support all of its local agency claims. This documentation should comply with the State and local agency agreements and, at a minimum, include the following: the name of the local agency, the reason for and amount of the claim, the dates that demand letters were sent, the date and disposition of a requested administrative review, and the date(s) and amount(s) of all local agency collections.

FINES AND CIVIL MONEY PENALTIES

Regulations at 7 CFR 246.12(h)(3)(xviii) state: "In addition to claims collection, the vendor may be sanctioned for vendor violations in accordance with the State agency's sanction schedule. Sanctions may include administrative fines, disqualification, and civil money penalties in lieu of disqualification." Whereas vendor claims are recoveries of grant funds improperly paid to vendors, administrative fines and civil money penalties are punitive assessments imposed as punishment for violating law or rules governing program operations. Civil money penalties must be imposed for mandatory vendor sanctions when the State agency determines that disqualification of the vendor would result in inadequate participant access (7 CFR 246.12(l)(1)(ix)). The State agency may impose civil money penalties and fines for State agency-established vendor sanctions. Fines also may be imposed against a vendor by a court as a result of a criminal action. Funds received by the State agency as a result of civil money penalties and fines assessed against vendors and any interest charged in the collection of these penalties and fines are considered program income (7 CFR 246.15(b)).

PROGRAM INCOME

Program income is gross income received by the State or local agency directly generated by a grant supported activity or earned only as a result of the grant agreement during the grant period (7 CFR 3016.25(b)). The following funds are classified as program income: 1) royalties from the sale of printed materials; 2) nominal fees or not-to-exceed costs for reproducing or mailing publications, videotapes, posters, etc.; 3) interest earned on rebate funds for infant formula and other foods; 4) general grants not tied directly to foods purchased but made for inclusion of food items in a State's food package (e.g., Welch's grants); and 5) fines and civil money penalty payments and any interest associated with such fines and penalties.

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Use of Program Income

Regulations at 7 CFR 246.15(b) specify the conditions for the use of program income. The State agency may use its program income for either food or NSA costs incurred in the current fiscal year. With the prior approval of its FNS Regional Office, the State agency may use current program income for the following: 1) costs of the fiscal year immediately preceding the fiscal year in which the program income is received, prior to closeout of such fiscal year; 2) costs of the fiscal year immediately following the fiscal year in which the program income is received; and 3) costs of prior years that have been closed out, in lieu of requesting Federal WIC funds from a prior year account(s).

With prior approval from its FNS Regional Office, the State agency may use program income for purposes that further the objectives of the WIC Program but are not allowable charges to the State agency's WIC Program grant. For example, the State agency may use program income for allowable costs of the Farmers' Market Nutrition Program (WIC Policy Memorandum #2002-5, issued July 5, 2002). The State agency is not permitted to use program income for cost items identified as unallowable under the Federal cost principles (i.e., OMB Circular A-87, etc.). To use program income for costs for which the use of WIC appropriated funds is not permitted, the State agency is responsible for demonstrating to the satisfaction of its FNS Regional Office that the costs in question promote program objectives. Regional Offices should grant authorizations for alternative uses sparingly, as such costs are of lower priority.

Reporting Requirements

The State agency should report expenditures of program income for approved costs on the FNS-798 in the same manner it reports other expenditures. Program income applied to food costs is reported on Line 8 of the FNS-798. Program income applied to NSA costs is reported on Line 22 of the FNS-798.

Recordkeeping Requirements

Although program regulations do not specify recordkeeping requirements for program income, the State agency should document the collection and disposition of program income in a manner that supports its FNS-798 submissions and maintain adequate documentation to support its annual closeout (7 CFR 246.25).

REPORTING PROCEDURES

Increased flexibility in the use of WIC funds heightens the importance of good financial management. The WIC Financial Management and Participation Report, Form FNS-798, facilitates the monitoring and closeout of grants at the State, Regional and National levels. Periodic revisions to the WIC Reporting Guide contain up-to-date instructions for completing the FNS-798, including reporting vendor, participant, and local agency collections and program income.

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REFERENCES

1. The WIC Reauthorization Act of 2004 (Public Law 108-265) included a provision to allow the State agency to use funds collected through claims assessed against local agencies in the same manner that it uses claims collected from vendors and participants. This provision was implemented via WIC Policy Memorandum #2004-3, "Implementation of the Funding Provisions of P.L. 108-265," issued July 22, 2004. In the future, program regulations at 7 CFR 246.14(e) will be amended to reflect this change in program legislation.
2. The WIC Food Delivery Systems final rule (issued December 29, 2000) implemented Section 1786 (h)(11) of the Child Nutrition Act, as amended, by adding new definitions that differentiate between a *vendor overcharge*, which results in a vendor claim, and a *price adjustment*. State agencies no longer may treat funds recovered as a result of price adjustments as vendor collections. The rule also: 1) added a new definition for *participant violation*, which in addition to program participants includes parents and caretakers of infant or child participants and proxies; 2) required the State agency to assess claims for participant violations, which by definition are intentional actions; 3) clarified that participant claims must be assessed for benefits disposed of improperly in addition to those obtained improperly; and 4) provided the State agency with the discretion to enter into repayment schedules and to allow in-kind restitution for the payment of participant claims.
3. The Non-Discretionary Funding Provisions of the William F. Goodling Child Nutrition Reauthorization Act of 1998 final rule (issued December 6, 1999) further expanded the State agency's authority for use of vendor collections to include the fiscal year after such funds are collected. The rule also expanded the State agency's authority for use of participant collections to include the fiscal year in which the claim arose, the fiscal year in which the funds are collected, or the fiscal year after collection.
4. The WIC/Food Stamp Program (FSP) Vendor Disqualification final rule (issued March 18, 1999) required that funds received as a result of civil money penalties and administrative fines be considered program income.

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5. The Implementation of WIC Mandates of Public Law 103-448, the Healthy Meals for Healthy Americans Act of 1994 and Public Law 103-227, the Pro-Children Act of 1994 final rule (issued November 18, 1998) expanded the State agency's authority for use of vendor collections to include the year such funds are collected (implemented via WIC Policy Memorandum #96-3). The rule also made interest earned on advances of program funds subject to the Cash Management Improvement Act, except that interest on rebate funds may be exempted from an interest liability to the Federal government provided that all interest earned on such funds is used for program purposes (implemented via WIC Policy Memorandum #96-3).

/s/

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/s/

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