



FEB 24 1999

United States
Department of
Agriculture

Food and
Consumer
Service

3101 Park
Center Drive

Alexandria, VA
22302-1500

SUBJECT: Final WIC Policy Memorandum #99-4
Strengthening Integrity in the WIC Certification Process

TO: Regional Directors
Supplemental Food Programs
All Regions

I. PURPOSE

The purpose of this policy memorandum is to highlight and strengthen national program policy regarding integrity in the WIC certification process through existing regulatory requirements as well as through new legislative requirements mandated by Public Law 105-336 enacted October 31, 1998. Many State agencies use a variety of measures to ensure integrity in the certification process and will find that they already comply with the provisions of this policy memorandum. Those State agencies that are not already in compliance must immediately begin implementation of the certification integrity issues addressed in this policy memorandum in light of the October 1, 1998, effective date for the Public Law 105-336 provisions.

The two new requirements necessary to implement provisions of Public Law 105-336 are as follows:

- Applicants not certified under adjunctive eligibility provisions must present documentation of income at certification.
- Applicants must present proof of residency at certification.

The existing regulatory requirements which are being reemphasized are as follows:

- To be certified as adjunctively income eligible for WIC, applicants must present documentation of current eligibility in one of the three allowable adjunct programs as evidence of income eligibility for WIC.
- To be certified as automatically income eligible for WIC, applicants must present documentation of current eligibility in other means-tested programs.
- Applicants must present proof of identity at certification; participants must present proof of identity at subsequent certification and at food or food instrument issuance.
- State agencies must develop systems that detect and deter the receipt of dual benefits.

AN EQUAL OPPORTUNITY EMPLOYER

Implementation of this policy memorandum will necessitate State agencies taking appropriate action to educate applicants as to the type of documents they are required to bring to certification appointments to help determine eligibility. Practical approaches being used by some State agencies include reminders at food instrument pickup and messages on appointment reminders through mail, auto dialers or WIC help lines. Such actions ensure that applicants come to certification appointments with appropriate documents to facilitate the certification process.

For purposes of this policy memorandum, the term "applicant" refers to the individual for whom WIC benefits are being sought. The term "participant" refers to the individual currently receiving WIC benefits.

II. BACKGROUND

Due to increased scrutiny and growing national interest on issues of integrity in the WIC Program, managers of the WIC Program at all levels are reexamining existing procedures and committing to increased management controls in the certification process.

As the WIC Program has grown over the years, there has been increasing emphasis on ensuring that only persons who are both income eligible and at nutritional risk receive WIC benefits. This concern is shared by Congress, the Department of Agriculture, and the WIC community. The U.S. General Accounting Office (GAO) report entitled, "Food Assistance: A Variety of Practices May Lower the Costs of WIC," released in September 1997, documents that more effort is needed to strengthen integrity. The report disclosed that some State agencies did not require applicants to provide proof of State residency while others did not require proof of identity at certification or at the time of food instrument issuance. While many State agencies required documentation of income, State policy sometimes allowed it to be waived. A few States agencies did not require documentation of income or allowed income documentation procedures to be determined individually by the local WIC agencies. The report concluded that Federal requirements pertaining to certification should be strengthened.

Given these integrity and accountability concerns, Public Law 105-336 was enacted which requires applicants to present documentation of either (a) family income or (b) participation in one of the adjunct programs--Food Stamps, Medicaid or Temporary Assistance for Needy Families. This new legislation also requires State agencies to implement systems to identify individuals who are participating in WIC at more than one site.

III. PROOF OF RESIDENCY AND PARTICIPANT IDENTITY

Section 203(e) of Public Law 105-336 added Section 17(f)(23) to the Child Nutrition Act of 1966 (CNA) (42 U.S.C. 1786(f)(23) to require each WIC State agency to implement a

system to identify individuals who are participating at more than one site under the program. Program regulations already require State agencies to have systems in place to detect dual participation. In addition, current regulations require applicants to reside within the jurisdiction of the State (except for Indian State agencies) and that local agencies check an individual's identity at certification and when issuing food or food instruments. However, the regulations are not specific on how to meet these requirements. This policy memorandum serves to notify State agencies that proof of residency and identity are a necessary part of systems to detect dual participation and of the appropriate means to satisfy these requirements.

A. Proof of Residency

Section 246.7(c)(1) of the WIC regulations provides that all State agencies except Indian State agencies require applicants to reside within the jurisdiction of the State. Indian State agencies may establish a requirement for applicants to reside within their area of legal jurisdiction. State agencies also may establish a local service area residency requirement. However, by regulation, length of residency cannot be a prerequisite to receiving WIC benefits. FNS Instruction 803-1 provided that self-declaration of residency was sufficient to meet the regulatory residency requirements. However, self-declaration of residency is no longer an adequate means to prevent and detect dual participation in light of the added emphasis on detecting dual participation provided by Public Law 105-336. As a result, this memorandum, by requiring proof of residency, supersedes FNS Instruction 803-1, issued April 1, 1988, which permitted self-declaration of residency.

Proof of residency should be implemented in a manner that does not constitute a barrier to any applicant, particularly to a person who is mobile, such as a homeless person, a person in the military, or a migrant. It entails establishing the location or address where an applicant routinely lives or spends the night. For WIC purposes, it has no durational or formal legal aspect and need not represent a legal residence.

B. Proof of Identity

In addition, to further prevent dual or fraudulent participation or issuance of benefits, State agencies are reminded that Section 246.7(l)(2) of WIC regulations requires that local WIC agencies check the identity of each applicant at certification and of each participant when issuing food or food instruments. For women participants with authorized proxies, this includes checking the identification of the proxies. For child or infant participants, this includes checking the identity of the parent, guardian or proxy picking up food or food instruments.

C. What Constitutes Reasonable Proof

In order to meet the intent of these legislative and regulatory requirements, State and local agencies must require applicants to present reasonable current documentation of personal identity and residency. Acceptable forms of proof of residency could include current utility bills, rent or mortgage receipts for lodging/housing, or a State/local document that can only be obtained through proof of current State or local residency. As per Section 246.7(1)(2) of WIC regulations, for an infant or child applicant, an immunization record, birth certificate, or other records that the WIC State agency considers adequate to establish identity shall be considered acceptable, as reflected in State agency guidance. For women applicants, optimal forms of proof of identity are a photo identification such as a current passport or driver's license, but acceptable forms include a work or school identity card, a health benefits or social services program card, pay stubs, a voter registration card, or other records that the State agency considers adequate. Persons seeking subsequent certification may use their WIC identification card for proof of identity. At State agency option, visual personal recognition by WIC staff at issuance of food or food instruments or subsequent certifications may be allowed once initial proof of identity and residency have been established.

When a WIC participant moves from one State to another, a valid Verification of Certification (VOC) card represents proof of nutritional risk and income eligibility. However, State agencies still need to subject the VOC card holder to a review of her identity and residency for enrollment in the system of the new WIC provider. The provisions of Section E. below, pertaining to "Applicants With No Proof of Identity and/or Residency," may be particularly relevant to VOC card holders.

D. Documenting Proof for Each Applicant

State agencies must require local agencies to record their determination of residency and identity. State or local agencies may wish to photocopy the actual documentation and place it in the applicant's case file. However, where State agencies deem this impractical, they must require that a notation be placed in the applicant's case file as to the type of documents (e.g., current driver's license, pay stubs, etc.) that were viewed which validated residency and identity. This notation may consist of simply checking off an appropriate annotated box on a form (paper or electronic). State agencies must establish appropriate protocols to facilitate and standardize the process among local agencies. These protocols and relevant forms must be reflected in the State agency's Policy and Procedure Manual.

E. Applicants with No Proof of Identity and/or Residency

An applicant with no proof of identity and/or residency, such as a victim of theft, loss, or disaster, a homeless individual, a migrant, or a person holding a VOC card, must sign a statement attesting to his/her identity and residency. In the situation where such a statement is used as the applicant's proof of identity and/or residency, the WIC staff must place in the applicant's case file the statement and a brief notation explaining why the applicant could not produce proof of identity and/or residency. State agencies must develop appropriate protocols to facilitate and standardize this process among local agencies, which may involve standard forms and documents. The State agency should also develop follow-up procedures to secure proof of identity and/or residency. These procedures and accompanying forms/documents must be included in the State agency's Policy and Procedure Manual.

F. Efforts to Detect Dual Participation

Public Law 105-336 prompts us to reemphasize existing requirements to safeguard against dual participation. The new law reiterates existing WIC legislation and reinforces Section 246.7(l)(1)(i) and (ii) of program regulations. These regulations require each WIC State agency to implement a system to prevent and detect dual participation including within each local agency and between local agencies. Further, in States where WIC and CSFP operate in the same area, or where an Indian State agency operates WIC in the same areas as a geographic State agency, the regulations require that written agreements be entered into between the State agencies to prevent and detect dual participation.

In addition, WIC State agencies have the option to serve applicants outside their usual area such as shared areas or common borders. For example, an individual that lives in an adjoining State could be served by WIC in the State in which they receive health care. In such cases, however, WIC agencies must enter into written agreements to detect and prevent dual participation.

IV. INCOME ELIGIBILITY DETERMINATION

Section 203(a)(2) of Public Law 105-336 added Section 17(d)(3)(D) to the CNA to require that an individual (except for those deemed adjunctively income eligible) seeking initial certification or subsequent certification for participation in the WIC Program must provide documentation of family income, with limited exceptions such as for 1) an individual for whom the necessary documentation is not available; or 2) an individual,

such as a homeless woman or child, for whom the agency determines the requirement would present an unreasonable barrier to participation. Section 203(a)(3) of Public Law 105-336 added Section 17(d)(3)(E) which requires documentation of adjunct eligibility. The following interprets the legislation for practical application in WIC clinics.

A. Adjunct Income Eligibility and Documentation

1. Adjunct Provisions

Public Law 105-336 requires that an individual seeking certification or subsequent certification for participation in WIC must provide documentation of adjunct eligibility. This legislative requirement reinforces Section 246.7(d)(2)(vi)(A) of WIC regulations which implements provisions of previous legislation enacted in 1989 (P.L. 101-147) that provided for adjunct income eligibility on the basis of an applicant's or certain family members' current eligibility to receive Food Stamps, Medicaid, or Temporary Assistance for Needy Families (TANF)--previously known as Aid to Families with Dependent Children. By law, persons and/or certain family members certified as eligible to receive benefits under any these programs at the time of their application to WIC are adjunctively income eligible for WIC, and consistent with Section 246.7(d)(2)(vi)(C) of WIC regulations, are not subject to the income guidelines used for traditional WIC income eligibility certification discussed below in Section IV. C. Traditional Income Eligibility Screening. Because these programs generally document income, their use for WIC adjunct income eligibility determination purposes helps strengthen the integrity of the WIC eligibility determination process without undue burden to WIC. To the extent feasible, State agencies may wish to attempt to first certify an applicant on the basis of these adjunct provisions, as they are designed to expedite eligibility determinations, both for the applicant, as well as the WIC clinic.

2. Proof of Adjunct Eligibility

Proof of adjunct income eligibility based on enrollment/eligibility in one of the three programs noted above must be confirmed at the time of application as required by current regulations and further reinforced by Public Law 105-336. When confirming an applicant's income eligibility for WIC on the basis of his/her own or a family member's current certification to receive benefits from one of these adjunct programs, State agencies are reminded that self-declaration has never been sufficient. Section 246.7(d)(2)(vi)(A) of the WIC regulations requires documentation of eligibility for such programs. Such documentation must accurately represent current eligibility for participation in such a program. For food stamps, this may mean documenting membership in a family receiving

benefits. Acceptable documentation could include a notification letter that identifies the respective program and the person's period of eligibility. We are aware that at least one WIC State agency has successfully negotiated with its food stamp counterpart to have all household members listed in the "Notice of Eligibility" letter. Documentation may be presented by the applicant, or alternately, the local clinic staff may use online or telephone access to adjunct programs to check an applicant's adjunctive eligibility. If documentation is not easily accessible, guidance in C.3. below, "*Applicants Lacking Necessary Income Documentation at Certification Appointment*," offers a variety of options.

A Medicaid card with magnetic stripe or other electronic access provided to recipients, or an Electronic Benefit Transfer (EBT) card for food stamps and/or TANF, does not alone serve to verify current enrollment for purposes of establishing WIC adjunctive income eligibility.

B. Automatic Income Eligibility for Means-Tested Programs Other Than Food Stamps, Medicaid and/or TANF

In accordance with Section 246.7(d)(2)(vi)(B) of the WIC regulations, State and local agencies may continue to accept an applicant's documented participation in certain other means-tested programs as evidence of income eligibility for WIC. This is known as "automatic" income eligibility. Automatic income eligibility is applicable only if the programs: 1) routinely require documentation of income, and 2) have income guidelines at or below those of WIC. This ensures that persons being deemed income eligible for WIC on the basis of automatic income eligibility are only those who would have ordinarily been determined income eligible using WIC's traditional income screening processes discussed in Section IV. C. below. A Federal program meeting these requirements is the Food Distribution Program on Indian Reservations.

At a minimum, documentation must show the participant's period of eligibility in an appropriate means-tested program. Again, acceptable documentation may include a notification letter that identifies the respective program and the person's period of eligibility.

C. Traditional Income Eligibility Screening

If an applicant is not adjunctively or automatically income eligible or the clinic worker is unable to substantiate adjunctive or automatic income eligibility with information provided, traditional income eligibility screening is required. State and local agencies are reminded that both family size and income levels are

critical components of the income eligibility screening process. State agencies should review and, where necessary, strengthen the certification interview process to assure adequate prompts are used to elicit correct and complete economic unit size and income information from applicants. For example, a local agency certifier could ask the names of family members and their financial relationship to the applicant, their income sources, and financial arrangements they have with the persons with whom they live. This would assist in establishing a full understanding of the size of the economic unit and its financial resources. Both family size and income must be recorded in the applicant's case file.

Section 246.7(d)(1) of the WIC regulations allows local health care income guidelines for free and reduced price health care to be used to determine WIC income eligibility. However, State agencies are reminded that Section 246.7(d)(2)(iii) further requires that such application of guidelines does not result in families, as defined below, with gross incomes above 185 percent of poverty, being rendered eligible for program benefits. The use of the State or local health care definition of "income" is not intended to extend income eligibility for WIC to those who otherwise would not meet WIC's income guidelines.

1. Family/Economic Unit Size

For WIC purposes, "family" is defined in Section 246.2 of the WIC regulations as a group of related or **nonrelated** individuals who are living together as one economic unit (except that residents of a homeless facility or an institution are not considered as members of a single family). Family members share income and consumption of goods and/or services. As stipulated in FNS Instruction 803-3, Rev. 1, for purposes of the WIC Program, the terms "economic unit" and "family" can be used interchangeably, (although "economic unit" is probably the more appropriate terminology because it correctly conveys that familial relationship is not relevant to the determination of WIC family size and income).

It is reasonable to assume that persons (other than those living in institutional settings and homeless facilities) living in the residences of others, whether related or not, are likely to be receiving support and some commingling of resources which renders them members of the economic unit with which they live. However, it is possible to establish that more than one economic unit lives under one roof through appropriate questioning which helps to make a reasonable determination that there is general economic independence of the units, i.e., that financial resources and support are retained independently. For example, a pregnant woman who is sharing an apartment with her sister may be determined to be a separate economic unit from her sister if the certifier can reasonably establish that she has a source of income and is paying her proportionate share of household, living and personal expenses.

In accordance with Section 17(d)(2)(C) of the CNA (as amended by P.L. 103-448, enacted November 2, 1994), when counting the number of persons in a family, it is important to note that a pregnant woman and her unborn child(ren) must be counted as two (or more) persons for determination of economic unit (unless the applicant has a religious or cultural objection which precludes this). In addition, in accordance with FNS Instruction 803-3, Rev. 1, a foster child is considered an economic unit of one as long as he/she remains the legal responsibility of a welfare or other agency. The payments made by the welfare agency or from any other source for the care of that child are considered to be the income of that foster child. An adopted child, or a child for whom a family has accepted legal responsibility, is counted in the size of that family.

Further guidance on family/economic unit size calculations can be found in FNS Instruction 803-3, Rev. 1, issued April 1, 1988.

2. Income Determination

Under Public Law 105-336, an applicant's income may no longer be self-declared; it must be documented. This provision took effect October 1, 1998. State and local agencies may take the further step of requiring verification of income or other eligibility information as authorized by Section 246.7(d)(2)(v) of WIC regulations. Income generally means gross cash income earned or received by all members of the economic unit. Further guidance on what constitutes income for WIC eligibility determination purposes can be found in regulations under Section 246.7(d)(2)(ii) through (iv). In addition, FNS Instruction 803-3, Rev. 1, elaborates on income determinations, including on the use of current versus annual income. To assure full understanding of the new documentation requirement, a clear distinction is made between the terms "self-declaration," "documentation," and "verification." The implications of each of these are discussed below:

a. Self-Declaration - No Longer an Option

"Self-declaration" means the reporting of income by an applicant without written documentation substantiating the information. This is no longer a permitted practice, except as specified below.

b. Documentation - Required

- (i) "Documentation of Income" means presentation of written documents, such as current pay or unemployment benefits stubs, earnings statements, W-2 Forms with the corresponding income tax return, or other appropriate documents sufficient for establishing the current family income level of

the entire economic unit. Documentation substantiating reported income for all members of the economic unit must be available.

(ii) As stated in Section 246.7 (d)(2)(ix) of the WIC regulations, valid VOC cards may serve as documentation of income eligibility for transferring participants and for instream migrant farmworkers and their family members. If a VOC card reflects that a migrant farmworker's certification period has expired, the VOC card may still serve as income documentation if the VOC card reflects that an income determination was made within the past 12 months.

c. Verification - Encouraged for Questionable Cases

(i) "Verification" means a process whereby the information presented, such as pay stubs, is validated through an external source of information other than the applicant. Such external sources include employer verification of wages, local welfare office verification, etc.

State agencies must use their discretion in deciding when it is appropriate to verify, the information to verify, and the methods to use; and the need for applicant consent for such verification.

(ii) Section 246.7(d)(2)(v) of the WIC regulations authorizes (but does not require) the State or local agency to require verification of the information which it determines necessary to confirm income eligibility for Program benefits (i.e., amount and source of income and number in family). FNS Instruction 803-3, Rev. 1, provides additional guidance on verification of income. FNS encourages verification of any questionable information.

3. Applicants Lacking Necessary Income Documentation at Certification Appointment

State agencies should establish guidelines to minimize the occurrence of the situation where applicants who do have proof of income fail to bring it to the clinic for review. For example, local WIC staff should routinely and clearly communicate to applicants the kinds of information they need to bring to their certification appointments. Nevertheless, for "walk-in" applicants and other applicants who do not bring necessary documentation to their

certification appointment, State agencies may establish policies based on a number of options. These options, which also may be applied when the applicant fails to bring proof of adjunct or automatic income eligibility, include:

- The local agency may inform the applicant of the necessary documents that are needed; make a new certification appointment within the timeframes for meeting certification processing standards; and certify only with income documentation.
- The local agency may, if determined that an applicant meets all other eligibility criteria, screen for income eligibility based on self-declaration and, provide one month of food benefits and require that appropriate income documentation be brought in within 30 days. If the applicant fails to provide the documentation within the 30-day time limit, or provides the documentation and is found to be over WIC's income limit, the individual shall be determined ineligible. These cases should be treated as initial determinations. Thus, while the applicant must be given an opportunity to appeal this action, the WIC agency is not required to provide the 15-day advance notice of this action as generally required for actions affecting program participation. In addition, the individual may not receive WIC benefits while awaiting the fair hearing decision. Should the applicant return within the 30-day time period with the documentation and be found eligible, the applicant should be certified for the certification period beginning with the month benefits were initially provided.

4. Applicants with No Proof of Income

Public Law 105-336 provides for limited exemptions for situations which pose unreasonable barriers to participation. The House Report accompanying Public Law 105-336 reinforces that income documentation is required except in limited circumstances. To accommodate congressional intent, the following serves as guidance for instances where an applicant is in a situation unlikely to yield written documentation of income, such as for a homeless woman, child, migrant farmworker or person who works for cash. The State agency may, if it determines that requiring such an applicant to provide income documentation would present an unreasonable barrier to participation, allow the applicant to self-declare income, accompanied by the applicant's signature on a statement specifying why he/she cannot provide documentation

of income. State agencies have the option to further require that such an applicant obtain a written statement from a reliable third party that has knowledge of the applicant's income. Reliable parties might include staff of a social service agency, church or legal aid society, or employers.

5. Applicants Reporting Zero Income

Given WIC's definition of family size, which is a group of related or unrelated persons sharing financial and other resources, applicants declaring a zero income should be prompted to describe in detail their living circumstances and how they obtain basic living necessities such as food, shelter, medical care and clothing to properly apply WIC rules pertaining to family size and income. For example, an unemployed pregnant woman with no personal income living with a friend who is providing shelter, water, electricity and food to her in return for her care of the friend's two children may unwittingly and honestly report zero income as a family of two (the woman and her unborn child). In this example, the applicant should have been further prompted by a certifier to describe her situation more fully to draw a proper conclusion that she should be counted as a part of the larger economic unit, that is, a family of five with an income that is the friend's income. In cases where it is established that an applicant is truly with minimal or no resources, WIC agencies can offer invaluable links to crucial sources of aid and assistance.

D. How Proof of Income Eligibility Should Be Documented

State agencies must require that local agencies maintain a record of documentation used to establish an applicant's income eligibility. State or local agencies may wish to photocopy the actual documentation and place it in the applicant's case file. However, where State agencies deem this impractical, they must require that a notation be placed in an applicant's file of the specific type(s) of document that was viewed. This procedure applies whether an applicant is certified under adjunct, automatic, or traditional income eligibility determination processes. This notation may consist of checking off an appropriate annotated box on a State agency developed form (paper or electronic). Both income and family size must be recorded. When a certifier is satisfied that an applicant is legitimately reporting zero income, the applicant's signature on the application form will suffice as documentation.

V. SUMMARY

This policy memorandum supersedes FNS Instruction 803-1, WIC Program Certification: Residency Requirements, by incorporating all its provisions, except self-declaration of residency, which is preempted by this policy memorandum.

Implementation of the safeguards set forth in this policy memorandum will strengthen integrity in the income eligibility process by minimizing the potential for fraud and abuse of the Program and assuring optimal delivery of available benefits.



PATRICIA N. DANIELS

Director

Supplemental Food Programs Division