

Vendor Authorization

- I. **Vendor Authorization** – Vendor authorization is the process by which the State Agency evaluates, selects, and enters into agreements with retailers that apply or subsequently reapply to be authorized as WIC vendors. ~~(7 CFR 246.12(h))~~.
- II. The State Agency must determine if a vendor is expected to meet the more than fifty percent (50%) criterion.
 - a. The State Agency shall ask each vendor applicant whether it is expected that more than fifty percent (50%) of its monthly revenue from the sale of food items will be derived from redemption of WIC checks. If the answer is “yes,” no further assessment is necessary. The vendor will not be authorized on the Utah WIC program. If the answer is “no,” the State Agency shall conduct an assessment to determine whether the vendor applicant may be authorized. The State Agency shall assess the vendor using additional sale or inventory questions, on-site preauthorization visits, data sources, and other methodologies to make the determination. Failure of a vendor applicant to provide documentation or falsification of documentation requested by the State Agency shall result in denial of the application. If the State Agency determines that the vendor may be authorized, the on-site preauthorization visit ~~(required in the WIC Program regulations at 7 CFR 246.12(g) (4))~~ shall be used to confirm that the new store is not expected to meet the more than fifty percent (50%) vendor criterion.
 - b. The vendor applicant cannot be dependent upon WIC authorization before the store can open. The vendor applicant cannot expect to accept WIC checks as the primary form of payment for the sale of food items. The vendor must have designated at a minimum, greater than fifty percent (50%) of the shelf space to the sale of non-WIC foods.
 - c. The State Agency shall monitor all newly-authorized vendors to assure that they have been properly evaluated as a potential above-50% vendor. Such monitoring shall include a comparison of WIC and Supplemental Nutrition Assistance Program (SNAP/Food Stamp Program) redemption data and/or a review of WIC redemptions to total food sales with six (6) months from the date of authorization. At authorization, the State Agency shall notify vendors in writing of this assessment and the requirement to provide proper written documentation of their total food sales.
 - d. The State Agency will terminate newly authorized vendors that are subsequently determined to have greater than 50% of their total food sales (including infant formula) in WIC redemption. The State Agency will terminate the agreement with a thirty (30) day notification if it determines

that a vendor has greater than 50% of their total food (including infant formula) sales in WIC check redemption in any month or year during the agreement period. Vendors terminated for greater than 50% of their total food sales (including infant formula) in WIC redemption cannot reapply for authorization for ninety (90) days after the termination date.

- III. The State Agency will maintain an open enrollment period to accept applications throughout the agreement period with the exception of the last three (3) months of the agreement period. Vendor applications during this time period will only be processed if there is inadequate participant access to the program, including a case in which a previously authorized vendor sells a store under circumstances that do not permit timely notification to the State Agency of the change of ownership.
- IV. **Vendor Peer Groups** (Public Law 108-265, Section 203(e), 17(h)(11)(A)): ~~The vendor agrees that their place of business must be accessible to all WIC participants and the general public for transactions other than WIC, and The vendor will be classified as one of the following~~ into a vendor peer groups based on program definitions. A vendor cannot qualify for more than one peer grouping and will be assigned the most compatible peer grouping based on the criteria outlined below as a result of the analysis of these criteria. To ensure that the vendor peer groups remain effective (7 CFR 246.12(g)(4)(ii), the State Agency will assess its peer grouping methodology at least every three (3) years and make adjustments as necessary.
 - a. The State agency must inform all vendors of the criteria for peer groups, and must inform each individual vendor of its peer group assignment. The State agency must inform all vendors of the criteria for peer groups through direct correspondence and/or designated in their individual Utah WIC Vendor Agreements.
 - b. When classifying a vendor initially into a peer group, the criteria will include: 1) Square Footage; 2) number of Cash Registers; 3) Ownership Structure (Type Store Structure- Sole Proprietor/Partnership/Corporation; 4) Supplemental Nutrition Assistance Program (SNAP/Food Stamp Program) sales volume for stores on the Supplemental Nutrition Assistance Program (SNAP/Food Stamp Program); and 5) Geography (Remote Rural/Rural/Slightly Urban/Urban/Metro Market Edge/ Metro Market Center.
 - c. Peer group assignment for authorized vendors without initial sales data will be re-evaluated at six (6) months after the initial assignment but will now include: 1) Food sales (Supplemental Nutrition Assistance Program (Food Stamp Program) eligible foods including infant formula.

- d. Peer grouping designation will be based on the analysis evaluation most consistent with the weighting of all assigned criteria.
- e. Vendors in outlying zip code locations, which incur documented excessive shipping or fuel costs by the distributor or other objective means, ~~are exempt from the other criteria and~~ may be adjusted.
- f. ~~All authorized vendors will receive peer group review on a yearly basis.~~

V. Vendor Limiting & Selection Criteria

- a. **Vendor Limiting and Selection Criteria** – The Utah WIC Program will authorize an adequate number of vendors in order to provide access to acquire WIC food items and provide a vendor population that is cost-effective and can be efficiently managed by the State and local WIC agencies. Any vendor that is rejected cannot reapply for application of Limiting or Selection Criteria for thirty (30) days. Application documentation and records are valid for thirty (30) days from the on-site preauthorization visit.
- b. **Vendor Limiting Criteria** – Vendor limiting criteria is established by the State agency to determine the maximum number and distribution of vendors it authorizes. ~~pursuant to 7 CFR 246.12(g) (2) of the Federal Register.~~
 - i. When a vendor requests application for participation, the State Agency will examine the following Vendor Limiting Criteria to determine if the vendor is needed for the clinic service area prior to authorization:
 - ii. **Participant/vendor zip code ratio limitation:** If the participant/vendor ratio is less than 200:1 for matching participant/vendor zip codes, ~~in Cache, Weber, Davis, Salt Lake and Utah Counties or less than 50:1 for matching participant/vendor zip codes in the remaining counties,~~ the Utah WIC program will not authorize new vendors within the zip code location unless the vendor is eligible for a limiting criteria exception.
 - iii. **Limiting Criteria Exceptions:** Exceptions to the zip code participant/vendor ratio are: 1) Military Commissaries; 2) if there is not active WIC vendor within twenty (20) miles; 3) the pricing of all WIC foods required to be stocked at the applicant vendor are within 3 standard deviations of the average prices of the peer group of the lowest peer group vendor in the zip code location. If a store is authorized under this exception, the state agency will ensure that

subsequent price increases do not rise to levels that would make the store ineligible for authorization.

- iv. Out of state vendors which are needed for participant access may be considered for authorization on the program.
- c. **Vendor Selection Criteria** – Vendor selection criteria means the criteria established by the State agency to select individual vendors for authorization. ~~consistent with the requirements in 7 CFR 246.12(g) (3) of the Federal Register.~~
 - i. Having completed the Vendor Limiting Criteria, the vendor is now in a position to be evaluated for selection to the Utah WIC Program. The vendor agrees to an on-site preauthorization evaluation and training by an authorized Utah WIC **vendor** coordinator.
 - ii. The State agency will assign the on-site-pre-authorization visit to a local agency **or state agency vendor** coordinator who has the responsibility for the evaluation and training. The authorized Utah WIC **vendor** coordinator has up to thirty (30) calendar days from the vendor request for an on-site pre-authorization evaluation, after the limiting criteria have been applied, to conduct the actual on-site visit. The State agency has up to twenty (20) calendar days from the date the completed on-site pre-authorization evaluation is received at the State Agency until a notification letter is sent regarding authorization or rejection.
 - iii. The vendor agrees to meet or exceed the minimum Selection Criteria in order to be accepted as a Utah authorized WIC vendor.
 - iv. **Competitive price and maximum allowable reimbursement price limitations:** The price of each WIC eligible food item does not exceed three standard deviations (3 SD) of the average cost of the same WIC eligible food in other WIC authorized vendors in the same peer group. ~~(See limiting criteria) (Public Law 108-265, Section 203(e), 17(h) (11) (B) and (C)).~~
 - v. **Minimum variety, quantity, and quality of supplemental foods:** Vendor has on the shelf and in stock the minimum variety and quantity of WIC eligible food items with prices plainly marked on the product or shelf according to the assigned vendor peer group. Vendor has WIC items on the shelf that are not dented, previously opened, markings or stamp of a another store name, out of date items, altered case lot numbers or expiration dates, altered or marked through UPC codes, or items sold as damaged goods. ~~(7 CFR 246.12(g) (3) (i))~~

- vi. **Business Integrity:**
- (1) Unless denying authorization of a vendor applicant would result in inadequate participant access, the State Agency may not authorize a vendor applicant if during the last six years the vendor applicant or any of the vendor applicant's current owners, officers, or managers have been convicted of or had a civil judgment entered against them for any activity indicating a lack of business integrity. Activities indicating a lack of business integrity include fraud, antitrust violations, embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, receiving stolen property, making false claims, and obstruction of justice. The State Agency may add other types of convictions or civil judgments to this list. (7 CFR 246.12(g) (3) (ii)).
 - (2) The state agency may choose not to authorize a vendor, or additional stores by the same owner, who has ever been charged with any of the above crimes.
 - (3) The state agency may conduct background checks of the owners, officers or managers of vendor applicants.
 - (4) The state agency may choose not to authorize a vendor, or additional stores by the same owner, who has ever been disqualified from the Supplemental Nutrition Assistance Program (SNAP/Food Stamp Program); or that has been assessed a Supplemental Nutrition Assistance Program (SNAP/Food Stamp Program) civil money penalty; or is currently under a formal investigation by SNAP.
- vii. **Current Supplemental Nutrition Assistance Program (SNAP/Food Stamp Program) Authorization:** Prior to WIC authorization, the vendor applicant must have applied for SNAP authorization and must provide their FNS/SNAP Number as part of the WIC Vendor Agreement Application. The store must receive SNAP authorization within 30 days of WIC authorization or the official store opening date in order to remain WIC authorized. Unless denying authorization of a vendor applicant would result in inadequate participant access, the State Agency may not authorize a vendor or additional stores by the same owner who is disqualified from the Supplemental Nutrition Assistance Program (SNAP/Food Stamp Program) or that has been assessed a Supplemental Nutrition Assistance Program (SNAP/Food Stamp Program) civil money penalty for hardship and the disqualification period that would otherwise have been imposed has not expired. (7 CFR 246.12(g) (3) (iii))
- viii. **Sale of a store to circumvent a WIC Sanction:** The State Agency may not authorize a vendor applicant if the State Agency determines the store/business has been sold to circumvent a WIC sanction. These criteria will include: 1) opening a different store under a new name to

circumvent a sanction; 2) selling the store to a relative by blood or marriage to circumvent a sanction; or 3) selling the store to an individual or organization for less than the fair market value to circumvent a sanction. ~~(7 CFR 246.12(g)(6))~~

- ix. **Current WIC disqualification and sanctions:** The State Agency may not authorize a vendor applicant if the State Agency determines if: 1) any vendor has been disqualified from Utah or any other State Agency/ITO WIC Program for two (2) or more years as a result of a disqualification activity by the vendor, one of its current employees whose duties include handling WIC checks, or owners, officers, directors, or partners; 2) any vendor who has requested a termination from the Utah WIC Program with an outstanding reimbursement for overcharge or Program administrative cost; 3) any vendor has failed to take requested action by the Utah WIC Program within thirty (30) days after notification by certified letter, or failure to provide requested data or records, or failure to allow monitoring of the vendor, or failure to attend or complete required training sessions.

- x. **Hours of operation, store cleanliness:** The vendor agrees that their place of business must be accessible to all WIC participants and the general public for transactions other than WIC. The time frame of business operation and hours are appropriate for participant access: The vendor provide food sales on a year-round basis (excluding holidays or Sundays); be open a minimum of 8 hours of operation per day; a minimum of 2 hours must be A.M.; five (5) days a week; except for military commissaries. During the WIC pre-authorization site visit, the vendor will be examined for the following: floors clean and in good repair, swept, and free from dirt, filth and/or excess rubbish; no evidence of insects and/or rodents within the store premises; garbage or refuse within the store premises are covered; no evidence of thawing and then refreezing of foods (cans of frozen juice stuck together); foods properly stored and/or refrigerated; freezer and cooler temperatures meet minimum requirements; and no evidence of food spoilage or out dated products.

- xi. **Amount of WIC Food Transactions:** All vendors must have, as a minimum, at least fifty percent (50%) of their shelf space designated to the sale of non-WIC food items and non-WIC food transactions must be at least fifty percent (50%) of total food sales (including infant formula). The State Agency may request invoices to substantiate the foods that have been purchased for sale.
 - a. The vendor applicant cannot currently own one or more WIC authorized stores (including states outside of Utah) where WIC food sales (including infant formula) are more than fifty percent (50%) of total annual food sales (including infant formula).

- b. The vendor applicant must not currently offer for sale primarily WIC authorized food items (i.e. does not offer a variety of foods in the staple food groups – see Selection Criteria).
- xii. **Purchase of Infant Formula:** Vendors authorized to participate in the WIC Program shall only purchase infant formula from wholesalers, distributors, and retailers licensed and/or registered with the State Tax Commission as a business in the State and in accordance with State law and infant formula manufacturers registered with the Food and Drug Administration that provide infant formula.
- xiii. **Full Service Vendor:** The vendor must provide food sales on a year-round basis (excluding holidays or Sundays); the vendor must stock and provide a variety of foods in each of the following staple food groups on a continual basis: ten pounds of meat, ten pounds of poultry or fish; bread or cereal; fresh vegetables and fruits, dairy (milk, eggs, and cheese), and baby foods (fruits/vegetables and meats). The State WIC Agency may request the percentage of foods to be offered for sale in each category detailed above. (i.e.: dairy 30%; bread or cereal 25%, etc.)
- xiv. **Fixed Location:** The vendor must operate and transact checks at a fixed, retail location.
- xv. **Exceptions to Selection Criteria:** Exceptions to selection criteria may be made if there are no other WIC vendors within twenty (20) miles.

VI. Redemption of Checks Prior to Authorization

- a. Any vendor who attempts to redeem Utah WIC checks prior to receiving the authorization letter and the Utah WIC authorized vendor identification/date stamp will be subject to rejection of the checks and loss of payment plus an additional thirty (30) day waiting period before authorization.

VII. If the Vendor is Authorized

- a. A WIC vendor is authorized after the electronic SharePoint contracting process, including receipt of the signed vendor agreement electronically from Utah Department of Health Finance Director, or designee is received. The State Agency then issues a vendor number, assigns a vendor peer group, and mails (or delivers) the Utah WIC authorized vendor identification number stamp and an approval letter with the peer group assignment. ~~A copy of the approval letter and agreement is sent to the local agency.~~

VIII. Vendors Not Authorized

- a. The State Agency mails a disapproval letter via certified mail stating the reasons for disapproval to the vendor.
- b. State Agency informs Local Agency of the vendor's failure to be authorized by sending a copy of the disapproval letter.
- c. State Agency retains a copy of the disapproval letter, and all evaluation documentation on file.
- d. The disapproved vendor cannot reapply for another evaluation for at least thirty (30) days from the date of the disapproval.