

Vendor Selection and Limiting Criteria**Policy No. VM-100.02**

Effective Date: October 1, 2016

No. of Pages: 13

Policy

The State agency must authorize a sufficient number and distribution of vendors in order to ensure the lowest practicable food prices consistent with adequate participant access to supplemental foods and to ensure effective State agency management, oversight, and review of its authorized vendors. The State agency may establish criteria to limit the number of stores it authorizes. The State agency must apply its limiting criteria consistently throughout its jurisdiction.

Purpose

The WIC program is funded by federal tax dollars. Because of this, serving as an authorized WIC vendor is a public trust. Vendor authorization is the process by which the State Agency assesses, selects, and enters into agreements with stores that apply or subsequently reapply to be authorized as WIC vendors. Authorization to participate in the program as a vendor is a privilege, not a right. As a steward of public funds, Georgia WIC must balance the need for participant access with the duty to obtain the lowest fair prices for WIC foods and to prevent fraud.

Procedures**I. Number and Distribution of Authorized Vendors**

The Georgia Women, Infants and Children Program shall not discriminate against an applicant or vendor on the basis of race, color, national origin, age, sex, handicap, disability or other impermissible basis as set forth in applicable state or federal law. Federal regulations require that Georgia WIC establish standards for vendor authorization to secure a sufficient number and distribution of vendors that will ensure reasonable participant access and permit effective management of the program. Georgia WIC may establish criteria to limit the number of stores it authorizes as long as the limiting criteria are applied consistently.

The primary method of regulating the number of authorized vendors is through the use of a vendor-to-participant ratio. The vendor-to-participant ratios are determined prior to each application/authorization period. For vendor authorization, exceptions to the vendor-to-participant ratio conclusions may be considered under the following circumstances:

- A. The need to ensure that each food instrument issuance clinic site in the state has an authorized vendor within a 10 mile radius.

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- B. The need to provide adequate service to participants in a population center of at least ten (10) individuals who have no access to an authorized vendor within a 10 mile radius of the population center.

- C. The need to provide adequate service to participants when circumstances make it necessary. Those circumstances may include, but are not limited to, the following:
 - 1. New clinic site opening;
 - 2. Participant caseload increases;
 - 3. New participant population center recognized;
 - 4. Store closings, either voluntary or due to catastrophe;
 - 5. Problems with WIC Program compliance;
 - 6. Problems caused by non-compliance with Food Stamp regulations.

II. Selection Criteria and Continuing Compliance with Selection Criteria

The selection criteria represent the minimum requirements to be considered for authorization as a Georgia WIC vendor. All applicants¹ and vendors must meet or exceed all of the selection criteria at the time of authorization and maintain compliance throughout the agreement period. Vendors are also required to adhere to any changes in the selection criteria made by Georgia WIC during their agreement period, or face termination. Georgia WIC may reassess any authorized vendor at any time during the vendor's agreement period using the selection criteria in effect at the time of reassessment, and must terminate the agreement of any vendors that fail to meet the current criteria.

Georgia WIC will deny an application or terminate the vendor agreement if it is determined that the applicant provided false information in connection with the application.

During the application process, Georgia WIC may request additional information that must be provided within the time period specified in the request.

¹ An applicant is defined as: anyone deemed associated with the ownership, management or operation of the applicant entity, including owners, officers, partners and, stockholders, registered agents, the immediate family of owners, officers, or partners. Any facts leading the agency to suspect that an applicant or vendor has a business or close personal connection with a WIC vendor that has a sanction history will be thoroughly investigated.

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All requested information must be provided in order to process the application. This includes, but is not limited to, Bill of Sale, Articles of Incorporation, Driver's License or State issued ID card, Social Security card, food sales, etc. Applications will not be processed until all information is received by Georgia WIC. Vendor applications that are held pending receipt of additional information will expire ten (10) days after the date of the written request for information.

Failure or difficulty in meeting any of the selection criteria may be used as just cause for denial of a vendor application for authorization. Applicants who are denied authorization may reapply after the expiration of the appropriate denial period.

Exception to WIC Limiting and Selection Criteria

The Georgia WIC Program reserves the right to make exceptions to (waive) the limiting and/or vendor selection criteria to address inadequate participant access to supplemental foods. However, competitive pricing and meeting the minimum WIC approved food stocking requirements are *not* waivable, per federal regulations.

Inadequate Participant Access

Federal regulations require that the State Agency ensures that all WIC participants have adequate access to purchase their WIC food items. By ensuring adequate access to authorized vendors, the Program assists WIC participants in meeting their nutritional goals. Participant access is not defined as participant convenience or preference. Inadequate participant access would cause a hardship to participants. Denial based upon the selection criteria may be waived (see "Exception to WIC Limiting and Selection Criteria"). The Georgia WIC Program will review participant access on a case-by-case basis. Inadequate participant access occurs when the distance between authorized WIC vendors is ten (10) miles or more.

Note: Should an applicant location be identified as an area where there is inadequate participant access, it does not absolve an applicant from the responsibility to comply with the terms of the application process as outlined, as a condition of authorization.

The established selection criterion for authorized WIC vendors is as follows:

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- A. Complete, Accurate and Truthful Information and Documents All applicants and vendors must provide complete, accurate and truthful information and supporting documents during the application process or whenever requested. If it is later discovered that an applicant or vendor has misrepresented or omitted material information or documents, the application will be denied or the vendor agreement will be terminated. Failure to submit any documents or information requested by Georgia WIC within the required time frame will also result in a denial of the application or termination of the vendor's agreement.
- B. Previous Sanction or Violation History with SNAP or WIC Program Applicants who have pending or current Terminations or Disqualifications (or were assessed Civil Money Penalties in lieu of Disqualification) that have not expired will not be authorized. Applicants who were assessed a Civil Money Penalty in lieu of Disqualification will not be authorized during the time period corresponding to the original Disqualification. Similarly, vendors who submit new applications after violations have been identified (during the course of an audit, investigation, etc.) or who may be awaiting the outcome of an appeal will not be authorized. If it is later determined that an applicant had unexpired sanctions at the time of authorization, the vendor agreement will be terminated immediately.
- C. Previous Applicant History An applicant's prior application history with the program will be reviewed. Applicants whose information or documents are inconsistent with a previously submitted application or applicants who have engaged in serious fraudulent conduct or misrepresentation in connection with a previous application will be thoroughly investigated and will be denied if it is determined that the previous circumstances still exist. An applicant whose denial period has not expired may not be considered for authorization until after the denial period has expired and a new application has been submitted.
- D. Competitive Prices All applicants and vendors are required to submit and maintain prices that are at, or lower than, other vendors currently participating in the program.

Applicant – The prices, for the products listed on the application, will be reviewed and compared against the maximum prices allowed in the proposed Peer Group for vendors currently participating in the program. If a prospective vendor's prices are more than ten (10) percent higher than the maximum prices of actual vendors in the applicant's proposed Peer Group on more than three (3) items – the applicant will be notified that its pricing is not competitive and the applicant may receive technical assistance. Applicants will be given one (1) additional

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opportunity to re-submit prices after the initial notification. Upon the second submission, those applicants failing to submit prices that are lower than the allowable maximums will be denied authorization.

If this is a cost plus 10% store, the final price must be submitted on the price list as well as posted on the shelf or on signage in the aisle. This is the pricing that is used to determine competitiveness.

Authorized vendor – Vendors are required to submit and maintain prices that are at, or lower than other vendors currently participating in the program, within their designated peer group. Vendors must submit shelf pricing each quarter, at a minimum. If a vendor's prices are more than ten (10) percent higher than the maximum prices of others in its Peer Group on more than three (3) items – the vendor will receive a written notification that its pricing is not competitive. WIC vendors are required to maintain competitiveness during the entire agreement period. Vendors may be assessed at any time and those whose prices remain non-competitive for three (3) additional assessments, the vendor agreement will be terminated for a period of twelve (12) months.

A cost plus 10% store must post the final price on the shelf or on signage in the aisle. Pricing must be submitted for all WIC eligible items sold or anticipated being sold at the store location.

- E. Acquisition of permit as a vendor in the Supplemental Nutrition Assistance Program (SNAP) and Compliance with the Supplemental Nutrition Assistance Program (SNAP) Regulations. All vendors and applicants must acquire and maintain authorization as a SNAP retail provider. All applicants and vendors must adhere to the SNAP program rules and must remain in good standing. Information submitted by the SNAP program will become a part of an applicant or vendor file and communication from the SNAP program that indicates a vendor's non-compliance with its rules and regulations will form the basis for a denial or removal from Georgia WIC Program. Applicants and vendors with a history of non-compliance with SNAP's rules and regulations will be denied or removed from the Program. Also, Georgia WIC will not authorize or reauthorize any applicant once the program has been notified that a retailer has been assessed a Civil Money Penalty (CMP), disqualified or terminated by SNAP. Failure to maintain a SNAP permit for any reason whatsoever, including terminations due to voluntary withdrawal or for non-redemption will result in a denial or termination from Georgia WIC unless necessary to ensure participant access. Retailers who have been assessed a Civil Money Penalty from SNAP will also be denied or

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terminated from Georgia WIC. Pharmacies and military commissaries are exempt from this requirement.

- F. Length of Time as a SNAP Retailer and Previous Grocery Industry Experience
All applicants, except pharmacies and military commissaries, must demonstrate a minimum of twelve (12) months experience as a retail grocer. All applicants must also have a minimum of twelve (12) consecutive months of retail sales history as a vendor under the SNAP Program. Experience can be shown by documentation such as a SNAP vendor permit, Federal/State tax records, or other documentation as the program may request. For those applicants who do not have the required history under the SNAP program, Georgia WIC may consider a waiver upon a written request showing the required SNAP history at another location under common ownership.
- G. Business Integrity. All new applicants and vendors must demonstrate business integrity. Georgia WIC will consider business integrity and history of the following: owners, corporate officers, partners and affiliates, or the immediate family of owners, corporate officers, or partners. Georgia WIC will also consider the business integrity and history of anyone involved in the operation of the business or the corporate entity, including managers, stockholders or registered agents. Any of the foregoing people that have a history of fraud, embezzlement, trafficking or has engaged in any activity that Georgia WIC deems to be indicative of a lack of business integrity will not be authorized. This includes but is not limited to the following:
1. Criminal conviction or civil judgments during the past six years against the applicant, the applicant's owners, officers or managers for any activity indicating a lack of business integrity such as fraud, antitrust violations, embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, receiving stolen property, making false claims, or obstruction of justice.
 2. Official records of removal from other federal, state or local programs will also be considered.
- H. Business Integrity/Background Checks. All new applicants will be subject to background checks to determine the applicant's business integrity as part of the screening process. Georgia WIC may rely on an investigation using outside sources or upon information already known in a vendor or applicant's file. For each of the following people, entities or locations - owners, corporate officers, partners and affiliates, or the immediate family of owners, corporate officers, or partners and anyone involved in the operation of the businesses or the corporate

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entity, including managers, stockholders or registered agents, the below information must be disclosed:

Criminal records (current charges and/or past convictions or forfeited collateral for any crime).

1. Official records of removal from other Federal, State, or local programs including whether above mentioned people or corporation ever had a license denied, withdrawn, or suspended or been fined for license violations, such as, business, pharmacy or health licenses. This includes instances where there has been a relinquishment of a license or voluntary withdrawal from a program.
 2. Judicial determinations in civil litigation reflecting adversely on the integrity of the above mentioned people, corporation, or affiliate(s).
 3. Evidence of attempt to circumvent disqualification from WIC or SNAP a civil monetary penalty imposed for violations of WIC or SNAP.
 4. Evidence of prior fraudulent behavior of the above mentioned people, corporation, or their managers.
 5. Other evidence reflecting the business integrity history of the above mentioned people, corporation, or affiliate(s).
 6. Previous involvement with any business who has submitted an application (regardless of subsequent authorization) to the WIC or SNAP program and the outcome of such application.
 7. Previous violation history or Above-Fifty Percent assignment of the retailer.
- I. Minimum Inventory of WIC-Approved Foods. Each vendor is required to stock and maintain daily the minimum inventory of approved WIC foods as well as a substantial amount of non-WIC foods. The inventory must be in the store or the store's stockroom. All WIC minimum inventories must be within the expiration dates during the application process, including the pre-authorization visit. Expired foods do not count towards minimum inventory and is a sufficient ground for denying the application. Note: All observed concerns with sanitation and food safety will be immediately reported to the Georgia Department of Agriculture and may result in an application denial.

The minimum inventory requirements can be found at <http://dph.georgia.gov/vendor-information>. Pharmacies and military commissaries are exempt from minimum inventory requirements. The vendor must carry other foods outside of the WIC minimum inventory and WIC approved foods. It is expected that all applicants will meet and maintain minimum inventory requirements after the date stated on their application and at all times after the

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pre-approval visit is conducted. Applicants who have not met their minimum inventory requirements after their pre-approval visit has been conducted may make a written request for a second visit. Applicants must provide detailed reasons and corroborating evidence to support their reasons at the time the request is made. Requests will be granted for those who can show that: (1) sufficient merchandise was ordered but the supplier (due to no fault on the part of the retailer), was unable to deliver the merchandise; or (2) sufficient merchandise was in stock within forty-eight (48) hours of the visit but through unexpected customer purchases were depleted before the pre-approval visit; or (3) merchandise became damaged or destroyed after delivery; or (4) for other reasons beyond the control of the retailer.

- J. Authorization Training. A vendor applicant must attend training and pass the post-training evaluation with a score of 80 or above. Georgia WIC will provide an initial training session in an interactive format prior to authorization, and at least once every two or three years thereafter during the corresponding vendor re-authorization period. Georgia WIC will provide vendors with at least one alternate date on which to attend interactive training. Attendance at training will be documented, a checklist of items discussed must be signed by the vendor and a Post Vendor Training Evaluation test will be given. A passing score of eighty (80) points or higher is required to become authorized. Vendor applicants cannot attend the initial authorization training session until an application for authorization has been submitted and the vendor has registered to attend.

Upon request, the Georgia WIC Program will provide language assistance or accommodation to ensure meaningful access to training for vendor applicants and vendors with a language barrier or a disability.

- K. Pre-approval visits. Only those vendor applicants that pass initial screening will receive on-site pre-approval visits from Georgia WIC representatives to verify the information listed on the application and inventory. For non-corporate vendors, pre-approval visits will not be conducted until the vendor has attended training and passed the evaluation with a score of 80 or above. For corporate vendors, only one authorized representative from the store is required to attend training. At least one (1) pre-approval visit is required for each applicant to verify the items listed on the application. The first pre-approval visit will be conducted at the date and time announced by the Georgia WIC staff. Georgia WIC reserves the right to follow up on any items in the application or observed on site at any time during the application process and may conduct additional visits to the applicant's store

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as required without notice. Failure to cooperate with Georgia WIC during the pre-approval process will result in application denial.

- L. Re-Scheduling Announced Pre-approval visits. In the event that an applicant suspects that they may not be prepared for their announced pre-approval visit, they may re-schedule the visit twice during the application process. The applicant must contact the Georgia WIC office IMMEDIATELY to prevent denial of the application by calling 1-866-814-5468 or (404) 657-2900. The vendor will only be allowed to change this date twice—but must be completed within a thirty day period or the application will expire and be denied.
- M. Non-Profit Vendor. Non-profit vendors are not authorized in Georgia.
- N. Required Minimum Store Hours. To ensure adequate access to food items for participants, the store (with the exception of military commissaries and pharmacies) must be open for business at least eight (8) hours per day, six (6) days per week, and must be open during the hours specified on the Vendor Application. In the event an applicant or vendor's hours are changed, they must notify Georgia WIC within twenty (20) days of the change. Military commissaries and pharmacies must be open for business at least five hours per day, five days per week. There should be no barriers to participant entry to the store during opening hours (e.g. required store membership or controlled access or entry to the store).
- O. Suitable Store Location. For new stores applying to Georgia WIC for the first time, the minimum square footage requirement for vendors is 3,000 square feet of continuous retail food sales space open to the public, excluding all administrative and storage space.

Note: Not all areas of an applicant or vendor's store are counted towards the minimum square footage requirement. The square footage areas that are not "continuous retail food sales space open to the public" and are used for other purposes that are irrelevant to the purpose of the Georgia WIC Program will not be considered as a part of the minimum square footage requirement.

See Federal Regulations 7 C.F.R. § 246.12, which states: "Retail food delivery systems are systems in which participants, parents or caretakers of infant and child participants, and proxies obtain authorized supplemental foods by submitting a food instrument or cash-value voucher to an authorized vendor." The program utilizes grocers as part of its retail food delivery service.

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No portion of the store may be located inside of a separate building, nor may any portion be located inside of a facility that is not food retail in nature (e.g. suite on the upper floors of an office building, inside of a community center, daycare, floral shop, etc.). The applicant must provide proof of a lease for at least a three-year period, or proof of ownership of the store location. There must be a store sign to identify the store with the name of the business clearly marked.

- P. Licensed by the Georgia Department of Agriculture. Each store must have a valid Retail Food Sales Establishment License in the current owner's name and be in compliance with all state, municipal, and local sanitation standards. A current Health certificate must be posted in the store. Pharmacies and military commissaries are exempt from this requirement. Stores that are on the border of Georgia and another state must have a comparable food sales establishment license from that other state's Department of Agriculture. Note: All observed concerns with sanitation and food safety will be immediately reported to the Georgia Department of Agriculture.
- Q. Compliance with Georgia WIC Program Policies and Procedures. For existing vendors, any violations found during the re-authorization process may result in denial of the application for re-authorization. Vendors and applicants will be required to comply with all federal and state WIC policies.
- R. Store Acquisition. Georgia WIC will not approve or continue the authorization of a store location that was sold or assigned to circumvent an unexpired sanction, claim or civil money penalty. Nor will Georgia WIC approve or continue the authorization of a store location that was later transferred to anyone involved in the ownership, operation, management or corporate structure (including registered agent) of location with unexpired sanctions, claims or civil money penalties.
1. The transfer or sale of a retail location with unexpired sanctions, claims or civil money penalties will be closely investigated before the location is authorized. In the event a vendor purchases or acquires a retail outlet that was in the process of being disqualified or which was disqualified from the WIC Program at the time of acquisition, the vendor's application for that outlet location shall not be considered until Georgia WIC makes a determination that the sale was a bona fide, arms-length transaction and that no one involved in the ownership, management, operation or corporate structure (including registered agents) will remain involved in the newly purchased store. If it is later determined that the applicant failed to abide by this provision, the vendor will be immediately terminated and subject to a claim.

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2. Ownership transfers of an authorized location to anyone related to the ownership, management or operation² of vendor retail outlet having unexpired sanctions, claims or civil money penalties at the time of the transfer is prohibited. It if is later determined that there was a failure to abide by this provision, the vendor will be immediately terminated and subject to a claim.
- S. Above 50% Criterion. All applicants, except pharmacies and military commissaries, will be assessed to determine whether they derive, or have the potential to derive, more than fifty (50) percent of their eligible food sales revenues from WIC food instruments. Vendors that meet the above 50% criterion will not be authorized unless denial of authorization for that applicant would result in inadequate participant access.
- T. Infant Formula Suppliers. All vendor applicants are required to purchase infant formula solely from the suppliers selected and approved by Georgia WIC. The Program does not allow vendors to purchase infant formula from other program vendors. Only purchases from the approved list of manufacturers, distributors and wholesalers will be permitted. Records of infant formula purchases must be maintained for a minimum of three (3) previous years plus the current year (or until any pending investigations are closed). In the event of an investigation, only purchase invoices from those permitted suppliers will be considered as legitimate. The list of authorized manufacturers, distributors and wholesalers are posted on the Georgia WIC vendor website. The program may also require vendors to supply the program with written permission to confirm their infant formula purchase history with suppliers.
- U. WIC Acronym and Logo. A WIC vendor or applicant may not use the WIC acronym, the WIC logo, or close facsimiles thereof, in total or in part, either in the official name in which the vendor is registered or in the name in which it does business. The WIC vendor or applicant may not use the WIC acronym, the WIC logo, or close facsimiles thereof, in total or in part, in an unauthorized manner on packages, product labels, proprietary materials including pamphlets and brochures, or in any form of marketing, promotional material or advertisement of the store.

² A person associated with the ownership, management or operation of the applicant/vendor entity, includes owners, officers, partners and, stockholders, registered agents, the immediate family of owners, officers, or partners. Any facts leading the agency to suspect that an applicant or vendor has a business or close personal connection with a WIC vendor that has a history of violations will be thoroughly investigated.

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- V. Purchase Invoice Receipts. Vendor Applicants must submit, upon request, purchase invoice receipts, bills of lading or recent invoices that show the purchase of items intended for sale in their stores. Failure to submit the requested documentation within the time frame stated in the request will result in denial of the vendor application.
- W. Automatic Clearing House (ACH) Application. Vendors who are authorized for participation in Georgia WIC will receive an ACH enrollment form. Vendors will have five business days from the date of receipt of the form to enroll. Failure to enroll in ACH within the allotted timeframe will result in termination of the vendor agreement.
- X. Provision of Incentive Items. Georgia WIC will not authorize or continue the authorization of a vendor that advertises, promises, provides, or indicates an intention to provide prohibited incentive items to customers. Incentives include, but are not limited to, free or complimentary gifts, home delivery of foods, store memberships, and other free or discounted services.
- Y. Pharmacies. A vendor who is placed in the Pharmacy Peer Group is only permitted to redeem special infant formulas and medical foods as specified on the Georgia WIC vendor website. All Pharmacy peer group vendors must be licensed and remain in good-standing with the Georgia State Board of Pharmacies to provide prescription drugs and special medical foods in Georgia. Pharmacies are not required to maintain a SNAP permit, nor are they required to undergo an Above Fifty-Percent assessment.

Authority

7 C.F.R. § 246.12(g)

7 C.F.R. §246.3(e)

7 C.F.R. § 246.4(a)(14)(ii)**Definitions/Supporting Information**

VM-100.05 Number and Distribution of Vendors

VM-100.01 Vendor Application and Authorization Process

VM-110.01 Vendor Training

VM-100.04 Vendor Peer Group Criteria

Contact Information

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