

# ITCA WIC Vendor Sanctions

Effective October 1, 2015

Pursuant to USDA federal regulations, ITCA is required to sanction contracted WIC vendors that have violated WIC Program federal regulations, the Vendor Contract, the Vendor Manual and/or WIC Program policies and procedures. Sanctions for violating WIC Program requirements include termination, disqualification, civil money penalties, administrative fines, monetary claims, or a combination of sanctions. ITCA may sanction vendors regardless of whether the violations were intentional or unintentional. Two incidents of the same violation within the same contract period listed for B1 through B5 in the ITCA Vendor Sanction Schedule below is considered a pattern. For violation B6, a pattern can be established during a single review of the vendor's redemption records during an inventory audit.

Vendor violations and/or sanctions incurred during preceding contract periods may impact future vendor authorization in subsequent contract periods. Also, violations of the WIC Program that occurred during the previous contract period may be carried over and used as a basis for imposing sanctions on the vendor in the following three year contract period, including but not limited to termination, disqualification, civil money penalties, administrative fines, monetary claims, criminal prosecution and/or the denial of an application for a WIC vendor contract during subsequent contract periods.

ITCA distinguishes between sanctions levels as follows:

- Federal Mandatory Sanctions required by USDA regulations; and
- ITCA Administrative Sanctions, which are comprised of "Critical Administrative Sanctions" and "Administrative Sanctions".

ITCA will send the vendor a single written warning letter after the first incident of a violation when the issuance of a warning letter is indicated in the ITCA Vendor Sanction Schedule, below. A written warning letter may not be issued to the vendor if ITCA, in its sole discretion, determines that a warning letter could compromise an ongoing investigation. ITCA does not issue any form of warning (written or otherwise) for subsequent violations beyond the first one. ITCA reserves the right, in its sole judgment, to continue an ongoing investigation of a violation beyond the number of incidents that would normally result in a sanction, as indicated in the ITCA Vendor Sanction Schedule below.

If, during the course of a single investigation, ITCA determines that the vendor has committed multiple violations, ITCA will disqualify the vendor for the period corresponding to the most serious mandatory violation. If two or more different types of violations are documented during the same investigation, ITCA reserves the right to continue its investigation in order to document

additional incidences of the more serious violation(s), to determine whether the greater sanction (e.g., a longer disqualification period) should be imposed. However, ITCA retains the right to impose a sanction on any of the violations documented during its investigation.

For purposes of the ITCA Vendor Sanctions Schedule, the term “food instruments” refers to both regular WIC checks and fruit and vegetable checks (FVCs). The term “clients” refers to WIC Program participants, parents, caregivers, and/or proxies. All references to “days” or “years” refer to calendar days or calendar years.

## ITCA VENDOR SANCTIONS SCHEDULE

<b>A. Mandatory Sanctions under Federal Regulations</b>		
<b>Sanction Code</b>	<b>Violation Description</b>	<b>First Incident</b>
A-1	Convicted of trafficking in WIC food instruments or FVCs or selling firearms, ammunition, explosives, or controlled substances (as defined in Section 102 of the Controlled Substances Act (21 USC § 802)) in exchange for WIC food instruments.	Termination of Contract and permanent disqualification
A-2	Buys or sells WIC food instruments or FVCs for cash (trafficking)	Termination of contract and 6 year disqualification
A-3	Sells firearms, ammunition, explosives or controlled substances (as defined in Section 102 of the Controlled Substances Act (21 USC § 802)) in exchange for food instruments.	Termination of contract and 6 year disqualification
A-4	Sells alcohol, alcoholic beverages or tobacco products in exchange for food instruments.	Termination of contract and 3 year disqualification

<b>B. Mandatory Sanctions Under Federal Regulations</b>			
<b>Sanction Code</b>	<b>Violation Description</b>	<b>First Incident</b>	<b>Second Incident</b>
B-1	Charges the WIC program more for supplemental foods than non-WIC customers or charges the WIC program more than the current price posted on the shelf or item. Note: Any overcharge, even \$.01, is considered a violation.	Warning letter	Termination of Contract and 3 year disqualification
B-2	Charges the WIC program for supplemental food not received by the client.	Warning letter	Termination of Contract and 3 year disqualification
B-3	Receives, transacts, and/or redeems food instruments outside authorized channels, including the use of an unauthorized store location.	Warning letter	Termination of Contract and 3 year disqualification
B-4	Provides credit, including rain checks, or non-food items, other than alcohol, alcoholic beverages,	Warning letter	Termination of Contract and 3 year

	tobacco products, cash, firearms, ammunition, explosives or controlled substances, as defined in 21 USC §802, in exchange for food instruments.		disqualification
B-5	Provides unauthorized food items in exchange for food instruments, including charging for supplemental food provided in excess of those listed on the food instrument.	Warning letter	Termination of Contract and 1 year disqualification

<b>B. Mandatory Sanctions under Federal Regulations</b>			
<b>Sanction Code</b>	<b>Violation Description</b>	<b>First Incident</b>	
B-6	A pattern ** of Claiming reimbursement for the sale of an amount of a specific supplemental food item that exceeds the store’s documented inventory of that supplemental food item for a specific period of time.	Termination of Contract and 3 year disqualification	
***"Pattern" is defined as 2 occurrences of the same violation			

<b>C. Critical Administrative Sanctions</b>			
<b>Sanction Code</b>	<b>Violation Description</b>	<b>First Incident</b>	<b>Second Incident</b>
C-1	Fails to provide access to vendor premises and/or in any manner hinders or impedes authorized WIC personnel from conducting an on-site education, monitoring, inventory audit, or investigation visit.	Warning letter	1 year disqualification and Termination of Contract
C-2	Provides false, inconsistent, or misleading information on the WIC Price/Stock Survey, infant formula purchasing information, infant formula invoices, vendor application, or any other form or document requested by ITCA.	Warning letter	1 year disqualification and Termination of Contract
C-3	Is assessed a civil money penalty for hardship by SNAP.	Warning letter	Disqualification for the period of time for which the vendor would otherwise have been disqualified by SNAP and Termination of Contract
C-4	Fails to maintain inventory records or other records required by ITCA for a period of 3 years and 5 months after termination or expiration of the Vendor Contract.	Warning letter	1 year disqualification and Termination of Contract
C-5	Allows the return of food purchased with WIC food instruments in exchange for cash, credit or non-	Warning letter	1 year disqualification and Termination of

	food items.		Contract
C-6	Fails to enter the purchase price on the food instrument at the time of purchase and in the client's presence.	Warning Letter	1 year disqualification and Termination of Contract
C-7	Charges the WIC Program sales tax on WIC purchases.	Warning letter	1 year disqualification and Termination of Contract
C-8	Fails to provide requested information such as invoices, tax forms or price information by due date established by ITCA.	Warning letter	1 year disqualification and Termination of Contract
C-9	Sells milk, cheese or eggs, not identified on the Food Item Declaration Form submitted to ITCA when stock was available or selling the replacement item at higher prices than the declared brand price for milk, cheese or eggs, when declared items were out of stock.	Warning letter	1 year disqualification and Termination of Contract
C-10	Fails to pay administrative fines, collections, claims, or overcharges in full by due date established by ITCA.	Warning Letter	1 year disqualification and Termination of Contract

<b>D. Administrative Sanctions</b>					
<b>Sanction Code</b>	<b>Violation Description</b>	<b>First Incident</b>	<b>Second Incident</b>	<b>Third Incident</b>	<b>Fourth Incident</b>
D-1	Fails to meet the minimum stocking requirements of WIC approved foods.	Warning Letter	\$200 Fine	\$400 Fine	1 year disqualification
D-2	Does not allow client to pay the difference between the value of the fruit and vegetable check and the actual cost of the fruit and vegetables being purchased.	Warning Letter	\$100 Fine	\$200 Fine	1 year disqualification
D-3	Fails to display the current price of an authorized WIC food item on the item, shelf or nearby sign.	Warning Letter	\$100 Fine	\$200 Fine	6 month disqualification
D-4	Fails to display the allowed WIC authorized shelf labels for store/house (declared) brand of milk, cheese and eggs.	Warning Letter	\$100 Fine	\$200 Fine	6 month disqualification
D-5	Fails to give a receipt to clients for all WIC purchases or receipt does not have the word "WIC" printed or written on receipt.	Warning Letter	\$100 Fine	\$200 Fine	6 month disqualification
D-6	Allows the purchase of less than the total amount of infant formula as specified on the food instrument.	Warning Letter	\$200 Fine	\$400 Fine	1 year disqualification
D-7	Uses the WIC logo or the acronym "WIC" without written approval from ITCA and USDA.	Warning Letter	\$500 Fine	\$1,000 Fine	1 year disqualification
D-8	Requires the purchase of all items listed on a check or prevents the purchase of all food items listed on the check. Note: This does not apply to infant formula checks. For infant formula checks, All formula listed on the check <i>must be</i> purchased.	Warning Letter	\$100 Fine	\$200 Fine	1 year disqualification

### **Disqualifications from Other Programs**

Being disqualified from SNAP will result in disqualification from the ITCA WIC Program. The term of the disqualification shall be identical to, and may begin at a later date than, the SNAP disqualification. The disqualification is not subject to administrative review under the ITCA WIC Program. Prior to imposing a disqualification, participant access will be considered. If the ITCA WIC Program determines that a participant access hardship would result, a civil money penalty will be imposed in lieu of disqualification.

Being disqualified from another WIC Program for a mandatory sanction (violations A-1 to A-4 and B1-B6 above) will result in disqualification from the ITCA WIC Program. The term of the disqualification shall be identical to, and may begin at a later date than, the other WIC Program's disqualification. If the ITCA WIC Program determines that a participant access hardship would result, a civil money penalty will be imposed in lieu of disqualification.

### **Civil Money Penalty**

Except for violation A-1 above, if ITCA determines that disqualification of a vendor would result in inadequate client access, a civil money penalty may be imposed in lieu of disqualification. Civil money penalties will be calculated following the method in 7CFR §246.12(l)(1)(x). A civil money penalty will not be imposed in lieu of disqualification for third or subsequent sanctions for mandatory sanctions. If the vendor does not pay, or pay in accordance to the authorized installment payment plan or only partially pays a civil money penalty assessed in lieu of disqualification, ITCA must disqualify the vendor for the length of the disqualification corresponding to the most serious violation for which the civil money penalty was assessed.

### **Second Mandatory Sanction**

If a Vendor has been previously sanctioned for a violation of any of the Mandatory Sanctions listed at Sanction Code A-2 through B-5 of the Vendor Sanction Schedule (regardless of contract term) and this results in a disqualification period or civil money penalty and the Vendor commits a second violation for any of the Mandatory Sanctions stated herein which results in a disqualification period or civil money penalty, then the disqualification period or civil money penalty (up to the maximum) for the second violation will be doubled.

### **Third or Subsequent Mandatory Sanction**

If a Vendor has been previously sanctioned two or more times for a violation of any of the Mandatory Sanctions listed at Sanction Code A-2 through B-5 of the Vendor Sanction Schedule (regardless of contract term) and these sanctions resulted in a disqualification period or civil money penalty and the Vendor commits a third violation for any of the Mandatory Sanctions stated herein which results in a disqualification period or civil money penalty, then the disqualification period for the third and all subsequent violations will be doubled. Note: There is no option of a civil money penalty for third and subsequent violations.

### **No Voluntary Withdrawal or Nonrenewal of Contract**

ITCA will not accept voluntary withdrawal or use nonrenewal of the vendor contract as an alternative to any disqualification.

### **Criminal or Civil Prosecution**

A Vendor who commits fraud or abuse in the WIC program may also be subject to civil or criminal prosecution under applicable federal, state, or local laws. Under federal law, those who have willfully misapplied, stolen, or fraudulently obtained program funds valued at \$100 or more will be subject to a fine of not more than \$25,000 or imprisonment for not more than five years or both. If the value of the willfully misapplied, stolen, or fraudulently obtained program funds is less than \$100, the penalties are a fine of not more than \$1,000 or imprisonment of not more than one year or both.

### **Change of Business Entity**

A change in ownership does not eliminate any violation or sanctions that occurred before the change in ownership. If a Vendor changes ownership at the same location (i.e., through a change in business entity or the addition or deletion of partners, associates, or principals), any violations that occurred under the previous contract will carry over to the new contract and may be used for determining sanctions, including termination and/or disqualification. Such changes in ownership may include, but are not limited to, a change from a sole proprietorship or partnership to a corporation where the previous individual owner(s) or one or more partner(s) remain as an officer or shareholder of the new corporation.

### **Termination/Denial/Disqualification**

Vendors may appeal a denial of authorization, an administrative fine, a termination, a disqualification, or a civil money penalty according to the most recent ITCA WIC Program Policy and Procedure Manual Fair Hearing procedures. However, as stated above, termination and disqualification based on a SNAP disqualification is not subject to administrative or judicial review.

For those cases where a Vendor has timely appealed a termination or termination and disqualification action, the Vendor may be allowed to continue acting as a WIC vendor during the appeal process and all provisions of the WIC Vendor Contract will continue to apply, including sanctions for noncompliance, throughout the appeal period and until a formal decision is made by the ITCA Fair Hearing Officer.

Vendors who are terminated and disqualified may re-apply for a WIC Vendor Contract after their disqualification period ends. The Vendor must meet all current requirements for a WIC Vendor Contract including the selection criteria and limiting criteria.