



United States
Department of
Agriculture

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Food and
Nutrition
Service

3101 Park
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Alexandria, VA
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SUBJECT: WIC Policy Memorandum #2013-3
Income Eligibility Guidance

TO: Regional Directors
Special Nutrition Programs
All Regions

WIC State Agency Directors
All Regions

I. PURPOSE

The purpose of this policy memorandum is to provide clarification regarding the income eligibility determination and documentation requirements necessary for participation in the Special Supplemental Nutrition Program for Women, Infants and Children (WIC).

II. OVERVIEW

This guidance represents the first chapter of what will eventually be a Certification/Eligibility Handbook that encompasses various aspects of WIC certification, including, but not limited to: income eligibility guidelines, definition of income (including military income), determination of family/household income and adjunctive/automatic income eligibility.

Further, this guidance revises and consolidates existing Food and Nutrition Service (FNS) Instruction 803-3: *Income Eligibility* and WIC Policy Memorandum 99-4: *Strengthening Integrity in the WIC Certification Process*. It also clarifies the number of temporary certifications allowed when an applicant lacks necessary income documentation.

III. BACKGROUND

Federal WIC Program regulations at 7 C.F.R. Part 246.7 establish the guidelines for the WIC certification process including income eligibility determination in accordance with WIC's authorizing legislation, the Child Nutrition Act of 1966 (42 U.S.C. 1771), as amended.

In April 2012, the second National Survey of WIC Participants (NSWP-II) was published. The NSWP-II noted that for some items there is uniformity in State agency policy regarding what items should count as income, but that there is less consistency among State agencies for counting other types of income such as medical, rental, and energy assistance. It also noted that there were variations in State agencies' definitions of "current" income. The NSWP-II reported that most agencies use current income as opposed to income from the previous year.

In February 2013, The Government Accountability Office (GAO) published a report, *WIC Program: Improved Oversight of Income Eligibility Determination Needed*. The report concluded that State and local WIC agencies have considerable discretion in terms of what to include or exclude as income, the time period which that income reflects, and the size of the family used to calculate household income.

To provide more consistency and accountability, this guidance reiterates language in the FNS Instruction that encourages WIC State agencies to define “current income” to refer to all income received by the household during the month (30 days) prior to the date the application for WIC benefits is made, and requires justification of any other definition in the State Plan. If the income assessment is being done prospectively (e.g., the sole support of that family has just been laid off but has been authorized to receive unemployment benefits for the next six months), “current” refers to income that will be available to the family in the next 30 days.

In a case where an applicant lacks necessary income documentation at a certification appointment and the local agency issues a temporary (up to 30 days) certification, this guidance stipulates that under no circumstance may a second, subsequent 30-day certification period be used if the applicant fails to provide the required documentation of income before the temporary certification period expires.

IV. IMPLEMENTATION

WIC State agencies must implement this updated guidance as of the beginning of fiscal year (FY) 2014 (October 1, 2013). Any modifications that must be made to current procedures in order to comply with this guidance must be included in the FY 2014 State Plans, which are due to FNS Regional Offices by August 15, 2013.

State agencies should direct any questions regarding this memorandum to their respective FNS Regional Offices.



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Attachment

INCOME ELIGIBILITY AND DOCUMENTATION IN THE SPECIAL SUPPLEMENTAL NUTRITION PROGRAM FOR WOMEN, INFANTS AND CHILDREN (WIC)

I. PURPOSE

The purpose of this guidance is to provide clarification regarding income eligibility determination and documentation requirements necessary for participation in the Special Supplemental Nutrition Program for Women, Infants and Children (WIC).

II. INCOME ELIGIBILITY GUIDELINES

Federal WIC Program regulations at §246.7(d)(1) allow State agencies two alternatives in establishing WIC income eligibility guidelines (IEGs). States may either:

- Adopt the Federal IEGs for reduced-price school meals under the National School Lunch Act (currently 185 percent of the Federal poverty income guidelines), which are published annually by the U.S. Department of Agriculture in the Federal Register; or
- Establish WIC guidelines that are identical to State or local guidelines for free or reduced-price health care. In this case, the WIC IEGs may not exceed the reduced-price school meal income guidelines (185 percent of Federal poverty income guidelines) or be less than 100 percent of the Federal poverty income guidelines.

The regulatory provision allowing the second option serves to facilitate State agencies' linking their WIC Program income eligibility requirements to the State or local limit(s) for free or reduced-price health care, with certain limitations. This provision is intended to encourage coordination of WIC with health services and to ease the administrative burden of determining eligibility. State agencies choosing the second option may find that free and reduced-price health care guidelines vary within the same local agency, e.g., the maximum level for maternal services may be 100 percent of the Federal poverty income guidelines while the maximum for pediatric services may be 110 percent. Selecting the larger percentage of these two guidelines would be sufficient to establish the local WIC agency's income guidelines, which would be considered "identical" to local health care guidelines.

III. DEFINITION OF INCOME

The definition of income for WIC purposes is set forth in Section 246.7(d)(2) (ii) of the Federal WIC regulations. "Income" means gross cash income before deductions for income taxes, employees' social security taxes, insurance premiums, bonds, etc, and includes the following:

- Monetary compensation for services, including wages, salary, commissions, or fees;
- Net income from farm and nonfarm self-employment;
- Social Security benefits;
- Dividends or interest on savings or bonds, income from estates or trusts, or net rental income;
- Public assistance or welfare payments;
- Unemployment compensation;
- Government civilian employee or military retirement or pensions or veterans' payments;
- Private pensions or annuities;
- Alimony or child support payments;
- Regular contributions from persons not living in the household;
- Net royalties; and
- Other cash income. Other cash income includes, but is not limited to, cash amounts received or withdrawn from any source including savings, investments, trust accounts and other resources which are readily available to the family.

If a State agency chooses to use IEGs identical to those used for State or local free or reduced-price health care, it may also wish to use the corresponding health care definition of income. However, when applying the free or reduced-price health care definition of income, the following exclusions must continue to be allowed:

- The value of in-kind housing and other in-kind benefits, and
- Payments or benefits provided under certain Federal programs as specified by law.

In addition, no expenses due to hardship or other deductions are allowed unless the State agency can demonstrate that a household's gross income before deductions does not exceed the limit for reduced-price school meals.

The definition of income for WIC purposes includes gross cash income earned by any and all members of a family. For purposes of the WIC Program, the terms "household," "economic unit," and "family" can be used interchangeably (although "economic unit" is the more appropriate terminology because it correctly conveys that familial relationship is not relevant to the determination of WIC family size and income).

Cash income also includes student financial assistance, such as grants and scholarships, except those grants and scholarships excluded as income as set forth in Section 246.7(d)(2)(iv)(12) of the Federal WIC regulations, such as Pell Grants, State Student Incentive Grants, and National Direct Student Loans. Two sources of income where questions frequently arise are (1) net income from farm/nonfarm self-employment, and (2) various payments to military service members, such as combat pays, Basic Allowance for Subsistence, Basic Allowance for Housing, and Overseas Continental US Cost of Living Allowance. Further guidance on WIC income eligibility determinations for households that include members of the military can be found at Section 246.7(d)(2)(iv) of the Federal WIC regulations.

A. Self-employed Individuals

Both farm and non-farm self-employed persons are assessed for WIC income eligibility using net income rather than gross income. It can be difficult to capture an accurate reflection of self-employment income throughout the calendar year. Therefore, WIC State agencies are encouraged to use the applicant's most recently completed Internal Revenue Service (IRS) tax returns as a basis for calculating net income for both farm and nonfarm self-employment income. State and local agencies should use the adjusted net income figure indicated on the completed Federal tax return; it is not the responsibility of the local WIC staff to challenge or recalculate that amount.

B. Income Exclusions

Income in WIC means all "gross cash income before deductions." However, income received under a Federal program which is prohibited by legislation from being counted as income for the purpose of establishing eligibility for other Federal programs is not to be considered as cash income to a household. Types of excluded monies or payments, such as stipends paid under the Job Training Partnership Act or royalties paid to certain Native American Tribal members, are listed in Section 246.7(d)(2)(iv) of the Federal WIC regulations. **Only those sources of income**

that are specifically listed in the Federal WIC regulations can be excluded. Loans, not including amounts to which the applicant has constant or unlimited access, from banks or other sources are also excluded since these funds are only temporarily available to the applicant or household member and must be repaid. In-kind benefits, such as military on-base housing or other subsidized housing, medical and dental benefits are services that do not meet the definition of “income” and may not be considered in income eligibility determinations.

IV. DETERMINING FAMILY/HOUSEHOLD INCOME

A. Timeframes for Determining Household Income

Federal WIC regulations (Section 246.7(d)(2)(i)) permit State agencies to instruct their local agencies to consider and compare the income of the family during the past 12 months and the family’s current rate of income to determine which indicator more accurately reflects the family’s status.

There are two exceptions to this provision:

- (1) Persons from families with adult members who are unemployed (including laid-off workers) must have income eligibility determined by their current rate of income, and
- (2) Instream migrant farmworkers (and their families) with expired Verification of Certification (VOC) cards must be considered income-eligible, provided that their income is redetermined once every 12 months (Section 246.7(d)(2)(ix)).

B. Use of Current versus Annual Income

Current WIC regulations do provide State agencies some degree of flexibility in deciding whether to use an applicant’s current or annual rate of income. For example, the family of a striker may have a lower income during the period of the strike (depending on the union benefits and other sources of income), but have an annual income which would exceed the WIC income eligibility guidelines. In this case, the use of current income (while on strike) may be more appropriate. However, in the case of families of self-employed persons, including farmers or seasonally employed workers whose income fluctuates, annual income may be a more appropriate indicator of the need for WIC benefits. Other examples in which the use of annual income is more appropriate include: (1) a family member who is on a temporary leave of absence from employment, such as maternity leave; (2) teachers who are paid on a 10-month basis and

are temporarily on leave during the summer months; and (3) college students who work only during the summer months and/or their school breaks.

Federal WIC regulations do not define “current” income. Therefore, State agencies have historically had flexibility to establish what is to be considered current income. Generally, “current” should mean the most recent income data available to the applicant that accurately reflects the household’s financial circumstances. **To provide more consistency and accountability, State agencies are encouraged to define “current income” as income received by the household during the month (30 days) prior to the date the application for WIC benefits is made. A State agency that uses any other definition of “current income” must submit a justification in its State Plan.** If the income assessment is being done prospectively (i.e., the sole support of that family has just been laid off but has been authorized to receive unemployment benefits for the next six months), “current” refers to income that will be available to the family in the next 30 days.

C. Income Received at Different Intervals

Households may have income from different sources which are paid on different schedules. For example, one member of the household may receive paychecks on a weekly basis while another member of the household is paid on a monthly basis.

1. If a household has only one income source, or if all sources have the same frequency, no conversion of income is required. Compare the income, or the sum of the separate incomes, to the most current IEGs for the appropriate frequency and household size to make the WIC income eligibility determination.
2. If a household reports income sources with more than one frequency, the income must be converted to an annual amount. To annualize income, multiply:
 - Weekly income by 52;
 - Bi-weekly income (received every two weeks) by 26;
 - Semi-monthly income (received twice a month) by 24;
 - Monthly income by 12.
 - Do not round the values resulting from each conversion. Add together all the unrounded, converted values.
 - Compare the un-rounded total to the current annual IEGs for the household size to make the income eligibility determination.

D. Definition of Family, Household and Economic Unit

1. Family/Household/Economic Unit Size

For WIC purposes, "family" is defined in Section 246.2 of the Federal 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.

It is reasonable to assume that persons living in the residences of others (other than those living in institutional settings and homeless facilities), 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 separate source of income and is paying her proportionate share of household, living and personal expenses.

The most important rule to apply to all applicants, including minors, is that an economic unit must have its own source of income. Given this essential element, the local agency must then decide whether the available income is adequate to sustain the economic unit. Adequacy of the income, not whether the unit receives any in-kind benefits, should be the determining factor. In assessing “adequacy of income”, the actual living and support costs for the economic unit in that environment must be considered. State agencies may establish a policy which requires going beyond the test of adequacy of income to a determination of whether the applicant receives any form of support from other persons living under the same roof. That is, the State may require a determination that the purported family unit does, in fact, pay all of its living expenses.

2. Pregnant Women

Section 246.7(d)(2)(vii) of the Federal WIC regulations permits pregnant women to be counted as two or more individuals (according to the number of embryos or fetuses in utero) when household size is determined. Women may request to waive this increase in family size. The same increased family size may also be used for any of the pregnant woman's categorically eligible family members.

3. Income Determination

Applicants must provide documentation of family income at certification, except in limited situations. 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)(D) of the Federal WIC regulations.

a. Required Documentation

(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 returns, or other appropriate documents sufficient for establishing the current income level of the entire economic unit. Documentation substantiating reported income for all members of the economic unit must be provided as part of the WIC certification process, and must be noted in the participant's case file.

(ii) As stated in Section 246.7(d)(2)(ix) of the Federal WIC regulations, valid VOC cards may serve as documentation of income eligibility for transferring participants and for in-stream 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.

b. Applicants with No Proof of Income

Section 246.7(d)(2)(v)(C) provides for limited exemptions from the documentation requirement in situations that pose unreasonable barriers to participation. In instances where an applicant cannot provide written documentation of income, such as that of 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 his/her income. The applicant must sign a statement specifying why he/she cannot provide the documentation of income. State agencies also have the option to require that such an applicant obtain a written statement from a reliable third party who has knowledge of the applicant's income. Reliable parties might include staff of a social service agency, church or legal aid society, or employers.

c. Verification of Income

Section 246.7(d)(2)(v)(D) of the Federal WIC regulations authorizes (but does not require) the State or local agency to require verification of questionable information which it determines necessary to confirm income eligibility for Program benefits (i.e., amount and source of income and number in the family). Verification is 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 and local agencies must use their discretion in deciding when it is appropriate to verify, the information to verify, and the methods to use. Applicant consent for such verification is contained in the rights and obligations statement which is signed by all applicants, parents and caretakers at each certification visit. FNS encourages verification of any questionable information.

4. Applicants Lacking Necessary Income Documentation at Certification Appointment
State agencies should establish guidelines to minimize the occurrence of those situations where applicants may have proof of income but fail to bring it to the clinic for review. For example, local WIC staff should routinely and clearly communicate to potential 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 the necessary documentation to their certification appointments, State agencies may establish policies based on a number of options. These options, which also should 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 it has determined that an applicant meets all other eligibility criteria, screen for income eligibility based on self-declaration via a signed statement from the applicant; provide one month of food or food instruments; 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 for WIC. These cases should be treated as initial determinations. **Under no circumstances can a second, subsequent 30-day certification period be used if the applicant fails to provide the required documentation of income.** Thus, while the applicant must be given an opportunity for a fair hearing 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 as defined in Section 246.7(j)(6) of the Federal WIC Regulations. Should the applicant return within the 30-day time period with the documentation and be found eligible, the applicant should be certified for a full certification period, beginning with the date that WIC benefits were initially provided.

5. Applicants Reporting Zero Income

Given WIC's definition of family size as defined above, applicants declaring 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, in order to apply WIC rules pertaining to family size and income properly. 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 friends' 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 be further prompted by a certifier to describe her situation more fully in order to draw a proper conclusion that she should be counted as a part of the larger economic unit, i.e., 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 referrals to crucial sources of aid and assistance.

E. Documenting Proof of Income Eligibility

State agencies must require that local agencies maintain a record of the documentation used to establish an applicant's income eligibility. State or local agencies should scan digitally or 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. ADJUNCTIVE/AUTOMATIC INCOME ELIGIBILITY

Section 246.7(d)(2)(vi) of the Federal WIC regulations provides for adjunct income eligibility on the basis of an applicant's or certain family members' current eligibility to receive benefits under Supplemental Nutrition Assistance Program (SNAP), Medicaid, or Temporary Assistance for Needy Families (TANF).

A. Adjunct Income Eligibility and Documentation

1. Adjunct Provisions

By law, persons and/or certain family members certified as eligible to receive benefits under any of the above 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 the Federal 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 adjunct 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.

2. Proof of Adjunct Income 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. When confirming an applicant's income eligibility for WIC on the basis of his/her own or a family member's current certifications to receive benefits from one of these adjunct programs, **self-declaration is not acceptable**. Further, a Medicaid card with magnetic stripe or other electronic access provided to recipients, or an Electronic Benefit Transfer (EBT) card for SNAP and/or TANF, does not serve in and of itself to verify current enrollment for purposes of establishing WIC adjunctive income eligibility.

Section 246.7(d)(2)(vi)(A) of the Federal WIC regulations requires documentation of eligibility for such programs. Such documentation must accurately represent **current** eligibility for participation in such a program. For SNAP, this may mean documenting membership in a family receiving benefits. Acceptable documentation includes a notification letter that identifies the respective program and the person's or household's period of eligibility. Documentation may be presented by the applicant, or the local clinic staff may use online or telephone access to SNAP, Medicaid, or TANF to check an applicant's adjunctive income eligibility. If documentation is not easily accessible, Section IV. D. 4. "Applicants Lacking Necessary Income Documentation at Certification Appointment," offers a variety of options.

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

Section 246.7(d)(2)(vi)(B) of the Federal WIC regulations allows State and local agencies 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, i.e., 185 percent of the current Federal poverty income guidelines. One Federal program meeting these requirements is the Food Distribution Program on Indian Reservations (FDPIR).

At a minimum, documentation of automatic income eligibility must show the applicant's period of eligibility in an appropriate means-tested program. As in the case of adjunctive income eligibility, 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 the information provided, traditional income eligibility screening is required. As indicated above, both family size and income levels are critical components of the income eligibility screening process.