

8.04 Civil Money Penalty

POLICY:

As an alternate sanction, a civil money penalty may be assessed against Vendors in lieu of disqualification in order to emphasize the seriousness of WIC Program compliance and to allow the Vendor to continue to serve an otherwise uncovered participant group.

PROCEDURE:

A. Determination of Eligibility for a Civil Money Penalty

Under special circumstances, the State Agency may choose to waive disqualification of an abusive or non-compliant Vendor. The State Agency is **not** required to offer a civil money penalty to a Vendor in the process of disqualification for major offenses while maintaining a disqualification on a Vendor who had accumulated a number of minor offenses.

1. A civil money penalty will **only** be offered to a Vendor in lieu of disqualification when inadequate participant access would otherwise occur (**see Policy 8.03 - Inadequate Participant Access**).
2. Determination of eligibility of a Vendor for a civil money penalty will be made by the State Agency prior to the notification of disqualification so that the Vendor will be made aware of any alternative at the time of notification.
3. The State Agency must assure that a Vendor selected to pay a civil money penalty can be monitored successfully.
4. The potential for inadequate participant access must be examined each time a Vendor is disqualified through a review and documentation of the authorization status of all Vendors within a ten (10) mile distance of the disqualified Vendor as well as a review and documentation of any geographical barrier(s) which would restrict participant access.
5. When a determination of an inadequate participant access occurs in an area where the only Vendors are either serving a disqualification period or in the disqualification process, the following criteria will be used to determine which Vendor is first offered the civil money penalty:
 - < The Vendor whose disqualification was derived from the lesser violation (i.e. a vendor that allows substitution within category is less abusive than a vendor who overcharges); or
 - < If the first criteria yields a tie, the Vendor with the least time remaining in the disqualification period.
6. When the candidate for a civil money penalty is already serving a disqualification, the option will be offered to that Vendor to return to the WIC Program. The re-authorization will occur only after corrective action is taken and the payment of a civil money penalty for which the vendor is currently serving a disqualification has been made to the State Agency. The dollar amount of the payment will be determined as in all other cases, but

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prorated to reflect the time remaining in the disqualification period.

B. **When a Civil Money Penalty Will Not be Offered**

Regardless of inadequate participant access, a civil money penalty **will not** be offered when the disqualification is based on:

- < A Vendor is convicted of trafficking in food stamps or WIC drafts;
- < A Vendor is convicted of selling firearms, ammunition, explosives, or, controlled substances (as defined in Section 102 of the Controlled Substances Act (21 U.C.S. 802)) in exchange for food stamps or WIC drafts;
- < A Vendor has been disqualified or received a civil money penalty for two or more sanctions that are federally mandated (**See Sanction Listing**);
- < A Vendor has been assessed a civil money penalty from the Food Stamp Program in lieu of disqualification;
- < A Vendor's refusal to be monitored or refusal to supply the WIC Program with supplier invoices;
- < A Vendor's refusal to accept mandatory training;

C. **Written Notice of Disqualification Action**

The State Agency will send the Vendor a written notice of the disqualification action including:

- < The cause(s) for the disqualification;
- < The effective date of the action;
- < The Vendor's right to appeal;
- < The procedures to be followed to file an appeal; and
- < Notification that the State Agency has decided to offer a civil money penalty in lieu of disqualification and that they will be contacted to schedule a conference to discuss the offer.

D. **Vendor Conference to Discuss a Civil Money Penalty**

1. The State Agency will contact the Vendor to schedule a conference to offer the alternative of the civil money penalty in lieu of the disqualification.

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2. The conference will cover the following:
 - < The amount of the civil money penalty;
 - < The method of payment of the penalty available to the Vendor; and
 - < Discussion of all compliance issues, not just those brought about by the disqualification.
3. The Vendor will be advised of the following during the conference:
 - < That acceptance/payment of the civil money penalty settles all past compliance issues, but does not relieve the Vendor of its obligation to document the resolution of the identified problem(s) or protect the Vendor from future sanctions or disqualification for continued non-compliance;
 - < That a civil money penalty does not relieve the Vendor of financial liability for previous compliance issues such as outstanding overcharge recoveries or payments due for sale of unauthorized foods. Such outstanding liabilities must be paid in addition to the civil money penalty;
 - < That the past violations settled by the civil money penalty may be considered, at the discretion of the State Agency, if additional violations of the same nature occur in the future;
 - < That the Vendor has fifteen (15) days after the conference to accept the civil money penalty in lieu of disqualification; and
 - < That this civil money penalty settlement does not prohibit further WIC investigations.

E. Calculating a Civil Money Penalty

1. The State Agency will calculate all civil money penalties using a standard formula.
2. The penalty will not exceed \$11,000.00 per violation and \$44,000.00 per investigation, even if the formula indicates that a higher penalty is warranted.
3. The formula is as follows:
 - < Step 1: The State Agency shall determine the average monthly redemptions for the most recent six (6) month period ending with the month immediately preceding the month during which the notice of administrative action is dated; then
 - < Step 2: Multiply the average monthly redemptions by 10% (.10); then
 - < Step 3: Multiply the product from Step 2 by the number of months the store would have been disqualified.

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< **Example:** A Vendor receives notification of a one (1) year disqualification in October 20___. A money penalty in lieu of disqualification would be calculated as follows:

September	\$ 4,650
August	\$ 4,075
July	\$ 5,120
June	\$ 5,580
May	\$ 4,890
April	\$ 4,990
	<u>\$29,305</u> - 6 = \$4,884.17 x 10 % = \$488.42
	$\$488.42 \times 12 \text{ months} = \underline{\$5,861.04}$

F. Payment of a Civil Money Penalty

1. The State Agency will determine the method of a civil money penalty payment by one of the following:

< A lump sum payment of the civil money penalty which must be received on or before the date that the disqualification was to be effective; or

< By installment payments in which the following conditions must be met:

- (a) The first payment must be received by the State Agency on or before the date that the disqualification was to be effective; and
- (b) Subsequent installment payments which will be of equal amounts, the total number of which cannot exceed one half the number of months of the alternative disqualification, and must be received at the State Office by the fifteenth (15th) of the prior month to maintain eligibility for the coming month; and

A Vendor who does not make any installment payment by the due date will be notified by the State Agency that the civil money penalty balance is due within ten (10) days or the disqualification action will be enforced.

2. All payments (lump sum or installment) must be made by certified check or money order to:

West Virginia WIC Program
Room 519
350 Capitol Street
Charleston, WV 25301-3717

3. All payments must include the Vendor's name and authorization number.

4. A Vendor who does not pay, only partially pays, or fails to timely pay a civil money payment including installment payments will be disqualified for the length of the disqualification period corresponding to the violation for which the civil money penalty was assessed.