

PROCEDURES FOR RESPONDING TO A SUBPOENA

The State or local agency, **in consultation with their legal counsel**, must make a determination based on the content of the subpoena and the requested information whether or not to comply with the subpoena and release the information as requested or to attempt to quash the subpoena. In making the determination, the State or local agency must determine whether the information is protected under 7 CFR 246.26 (d) of the WIC Program regulations.

Decisions to release WIC information as requested by a subpoena or to attempt to quash a subpoena must be based on the requirements and restrictions set forth in 7 CFR 246.26 (d) of the WIC regulations, any pertinent State laws, FNS Instruction 800-1, and Policy Memorandum 94-3. Any conflicts identified between Federal and State requirements should be raised with State legal counsel and referred to the Department's Office of the General Counsel, where appropriate.

When the State or local agency, **in consultation with legal counsel**, decides to attempt to quash a subpoena, legal counsel must appear before the court to argue against the release of information as requested by the subpoena. The court must be informed that this decision is based on prohibitions against such disclosures as set forth in Federal law at 7 CFR 246.26 (d).

If the court denies the motion to quash the subpoena and requires the WIC State or local agency to release the requested information, the State or local agency or legal counsel acting on its behalf will attempt to:

- consider the appropriateness of an appeal of the decision;

- ensure information produced is only that which is essential to respond to the subpoena (i.e. provide redacted documents reflecting only the requested WIC information); and

- attempt to negotiate the extent to which the WIC information actually produced becomes public information (i.e. reviewed in camera by the court, limited entry into the public record).

If the motion to quash the subpoena is denied by the court, it is recommended that legal counsel acting on behalf of the State or local agency request the parties reduce to writing the terms of the release of the subpoenaed information so that all parties are in accord as to the use of such information. Ideally, counsel should seek a warrant of attachment or similar court order. A warrant of attachment is a written order by the court based on State law which orders a law enforcement officer to seize specific documents and deliver them to the court, essentially forcing the State or local agency to comply. In this way, there is a record that WIC State or local officials disregarded Federal law protecting the confidentiality of WIC records only after having been compelled to do so by a court.

The State or local agency should advise and consult legal counsel if any formal complaint from or notice of litigation by a Program applicant or participant are received as a result of the State or local agency releasing WIC information in response to a subpoena or search warrant.

In some instances, a State or local agency may be required to release confidential information in response to a subpoena or search warrant. However, if the release of such information is made pursuant to and in keeping with WIC Program regulations, instructions, and policy, that release will not result in FNS or its agents taking adverse action against the State or local agency or any individuals acting on their behalf