



October 15, 2008

Mr. Robert Eadie
Chief, Policy and Program Development Branch
Child Nutrition Division, FNS, USDA
3101 Park Center Drive, Room 640
Alexandria, VA 22302-1594

Re: Request for Public Comments for Use in Preparing for 2009 Reauthorization of the Child Nutrition Programs and the Special Supplemental Nutrition Program for Women, Infants and Children; 73 Fed. Reg. 29107 (May 20, 2008)

Dear Mr. Eadie,

The Food Marketing Institute (FMI)¹ welcomes the opportunity to provide input to the U.S. Department of Agriculture (USDA) in preparation for the 2009 Reauthorization of the Child Nutrition Programs and the Special Supplement Nutrition Program for Women, Infants, and Children (WIC). FMI applauds USDA's intention to use this process for to achieve three important goals: (1) strengthening program management and improving nutrition services; (2) ensuring that all eligible persons have access to program benefits; and (3) advancing technology and innovation.

FMI and the food retailers and wholesalers that FMI represents fully agree with the important mission of the WIC program. Our members are pleased to assist in the administration of WIC benefits, however, we have several concerns that we urge USDA to address in the reauthorization process. Despite the best efforts of the WIC program, we believe the processes of store authorization, customer check-out and retailer reimbursement are unnecessarily complex. Simplification as outlined below will improve efficiency and service to WIC recipients and help USDA achieve the goals stated above. Therefore, we respectfully request that the Agency consider the issues below and address them thru the reauthorization process.

¹ FMI conducts programs in research, education, industry relations and public affairs on behalf of its 1,500 member companies — food retailers and wholesalers — in the United States and around the world. FMI's U.S. members operate approximately 26,000 retail food stores in the United States. FMI's retail membership is composed of large multi-store chains, regional firms and independent supermarkets.

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Retailer Authorization:

- WIC recipients benefit from a broad selection of retail locations at which to shop. Therefore, the number of stores participating in the WIC program should not be limited. To ensure that the federal policy in this regard is followed, USDA should adopt language that prohibits states and counties from limiting the number of otherwise qualified vendors. Additionally, we would encourage USDA to utilize a standardized and expedited procedure for current WIC license holders to obtain licenses for additional locations.
- The following additional measures would also streamline the process and, therefore, improve access for WIC participants. First, USDA should standardize the WIC application process for vendors across the 50 states and territories. Second, multi-store operators should be able to designate their corporate headquarters as the primary contact for all of their individually licensed stores. Third, the application should be available on the Internet to reduce paperwork and cost for everyone involved in the program -- retailers and state WIC agencies alike.
- When stores change ownership, service to WIC recipients is interrupted if there are delays in the licensing process. Indeed, some of our members report a delay of as long as nine to twelve weeks for a new license, even though the new owner is authorized at locations and the current location was licensed under the WIC program with the previous owner. These delays have a significant impact on WIC customers who can no longer purchase products at the store where they had historically shopped. Compounding the problem, many WIC recipients have limited transportation, so finding another store authorized to accept their WIC benefits may be problematic.

To avoid the licensing delays, USDA should establish a standardized interim WIC license that could be provided to qualified applicants in every state, after a change in store ownership or for a new store opening, while the application is being reviewed. Although the 2004 WIC Reauthorization law requires states to “have procedures for accepting and processing vendor applications outside of the established time-frames, if the State agency determines there will be inadequate access to the program,”² retailers continue to face extended delays particularly during a change in ownership. An interim WIC license would help to smooth the transition for WIC recipients and qualified retailers alike.

Retail Operations:

- WIC Retail Advisory Panels have been very helpful in each state where they are being utilized by helping to increase communication and to address operational issues on an

² 42 U.S.C. 1786(f)(1)(C)(ii)

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ongoing basis. Congress recognized the value of these panels in the 2004 Reauthorization law and included language in the Report that “strongly urges the Department to require State agencies to establish vendor advisory panels as a mechanism for strengthening ongoing communication and collaboration between State agencies and the retail vendor community that provides supplemental foods.”³ USDA should follow the strong recommendation of Congress and require or incentivize states to institute retail advisory panels. .

- Training store personnel often involves significant expense for both the WIC offices and the retailer. For example, WIC offices must notify stores, conduct multiple training sessions, follow up with stores that missed training, and process paperwork to send in to the WIC offices. Some of these administrative burdens could be alleviated using one or both of the following recommendations. First, states can establish training programs that would allow vendors the opportunity to administer WIC training at the store level by their own trainers. Vendors could send a designated individual to state training sessions and take the information back to other stores to train the rest of the store personnel. These “train the trainer” programs are already used in a variety of contexts -- including food safety -- with a great deal of success. Second, states should develop online training portals. On-line training can be done far more efficiently and with much lower administrative expense than in-person training. USDA should consider both of these approaches as they attempt to reach their goals thru the reauthorization process.
- Pricing changes need to be handled more efficiently. When manufacturers increase prices and notify the states, they often do not get into the system efficiently. We encourage USDA to adopt processes that will ensure that information is available more efficiently.
- Under the current system, states inconsistently address the situation that arises when the price of the fruits and vegetables selected by the WIC recipient exceeds the value of the cash voucher for produce. Some states allow the recipient to pay the difference, some only allow the recipient to purchase an amount up to the value of the voucher, and some allow the recipient to pay the difference up to a certain amount. WIC recipients should be permitted to pay the difference if their purchase exceeds the value of the voucher.
- FMI urges USDA to become more attuned to changes in packaging and traditional package size. Retailers support the goals of the WIC program to deliver proper nutrition to recipients, but some prescriptions call for products in non-traditional sizes that are difficult to find and more expensive than the traditional sized packaged. USDA should require States to accept a range of sizes and weights up to the maximum allowance. This will

³ Senate Report 108-279, page 52

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ensure that WIC recipients have access to a wider variety of choices and help to reduce expense for the program.

- WIC shelf tags are an important mechanism for telling WIC recipients which foods are eligible for purchase thru the WIC program. However, particularly with the addition of fresh fruits and vegetables to the WIC program, it is very difficult for retailers to guarantee that a shelf tag is present for every single WIC eligible item. The addition of fresh fruits and vegetables to the WIC program along with other changes in the WIC food package will help encourage participants to make even more healthy choices; retailers endorse this approach. However, the new package has increased the number of eligible items from several hundred to several thousand and ensuring a shelf tag is present for every single item is extremely difficult and may deter some retailers from providing WIC customers a useful guide. Accordingly, USDA should recognize and permit good faith efforts made by retailers to provide the information to WIC recipients; USDA should not penalize retailers who mistakenly neglect to provide a shelf tag for a few WIC eligible items.

Reimbursement:

- USDA should establish a standard reimbursement procedure that should be adopted by all state WIC programs, as well as standardized WIC checks and vouchers. The use of different types of instruments leads to confusion and mistakes.
- USDA should establish its ceiling prices for cost containment purposes 30 to 60 days in advance to allow retail vendors to set prices knowing if they are in compliance. States should also be required to publish the maximum allowed price list for individual WIC products. This information is especially necessary today with rapidly fluctuating commodity prices. As retailers set prices based on market factors, including nearby competitors, and given the small percentage of WIC participants in the overall customer base, the likelihood that retailers will alter prices because they have information on the maximum WIC price is minimal.

Penalties:

- The 2004 Reauthorization law improved the vendor sanction system by requiring vendors to be notified after each alleged violation and before the next compliance visit to allow vendors the opportunity to correct the problem. The statute includes a small exception that permits state agencies not to notify the vendor if “the agency determines that notification would compromise an investigation.”⁴ State agencies should be directed not to use the exception to swallow the rule: while we certainly would not want to disrupt the ongoing

⁴ 42 U.S.C. 1786(f)(26)

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investigation of serious violations, state agencies should not use this provision as a reason not to notify a vendor for every problem that may be found.

- Penalties should be tied to the length of the original contract/authorization. The history of the store should not be considered beyond the contract/authorization period.

Electronic Benefits Transfer (EBT)

- WIC point of sale transactions using traditional forms of tender, such as coupons, have historically been time-consuming, confusing and costly for all involved in the WIC program, from the administrators to the customers and retailers. Electronic delivery can greatly improve these problems, but it would be unfair for USDA to expect retailers to fully fund electronic delivery without regard to cost. Indeed, the 2004 Reauthorization law recognizes this potential inequity and states, “the Secretary may not impose, or allow a State agency to impose, the costs of any equipment, system, or processing required for electronic benefit transfers on any retail store authorized to transact food instruments, as a condition for authorization or participation in the program.”⁵ Any additional costs imposed on WIC authorized retailers for electronic delivery would adversely impact prices for all consumers. Moreover, added costs would likely reduce vendor participation in rural or urban stores that are so important to the customers they serve. Accordingly, and given the benefit that EBT can provide to all segments of the WIC community, we urge USDA to pursue the use of EBT, but to do so in a manner that does not require retailers to pay for it.
- The 2008 Farm Bill prohibits the application of interchange fees on SNAP EBT transactions and specifically states that “no interchange fees shall apply to electronic benefit transfer transactions.”⁶ Similar language should be included in statute with regard to the WIC program to discourage contractors who may be only trying to profit off of this important program and may provide the state with inaccurate information on the about of "rebate" they may receive on interchange fees collected. States must first consider that the federal government will look for any rebate on administrative costs to be returned to them and not retained by the states. Interchange fees tacked on to WIC vendors will lead to higher costs for retailers, state WIC agencies, and ultimately WIC clients in the way of higher food prices without any added benefit to the WIC client.

⁵ 42 U.S.C. 1786(g)(12)

⁶ 7 U.S.C. 2016(i)(12)

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Thank you for the opportunity to share our recommendations for the upcoming reauthorization. We look forward to working with you as this process continues.

Sincerely,

A handwritten signature in black ink that reads "Deborah R. White". The signature is written in a cursive style with a long horizontal stroke at the beginning.

Deborah White
Senior Vice President &
Chief Legal Officer

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