



January 11, 2006

**United States  
Department of  
Agriculture**

Food and  
Nutrition  
Service

3101 Park  
Center Drive

Alexandria, VA  
22302-1500

**SUBJECT:** Final WIC Policy Memorandum #2006-4  
Vendor Cost Containment Interim Rule

**TO:** Regional Directors  
Supplemental Food Programs  
All Regions

This policy memorandum supplements the guidance provided to State agencies on January 4, 2006, regarding the significance of the Temporary Restraining Order (TRO) issued on December 29, 2005, by the United States District Court for the District of Columbia, for the implementation of the WIC Vendor Cost Containment Interim Rule, published in the *Federal Register* on November 29, 2005, at 70 FR 71708.

### **State Agency Responsibility to Comply with the Statutory Requirements**

All provisions of section 203(e)(10) of the Child Nutrition and WIC Reauthorization Act of 2004 continue to apply to all State agencies and vendors. Section 246.12(g)(4)(i)(D) of the Interim Rule is intended to implement the statutory requirement that State agencies must ensure that above 50-percent vendors do not result in higher costs to the program than if participants had transacted their food instruments at regular vendors. As required by the TRO, the Food and Nutrition Service (FNS) will not take any enforcement action up through February 9, 2006, under this provision of the Interim Rule against California, Arkansas, Texas, Florida, Kansas, Oklahoma and Puerto Rico, for payments made under the WIC Program to the current members of the National Women, Infants, and Children Grocers Association (the individual vendors of this trade association have elected to remain anonymous but have been identified to counsel), Nutritional Food Distributors, Inc., County Food Services, Inc., and Dillard Foods, Inc.

### **Recouping Excess Payments from Vendors**

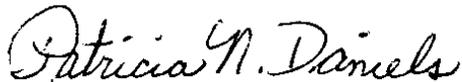
With respect to the methodologies that State agencies may employ in order to ensure that they meet the overall cost neutrality requirement in section 17(h)(11)(A) of the Child Nutrition Act of 1966 (42 U.S.C. 1786(h)(11)(A)), State agencies are advised that FNS will not approve a request for certification for a State agency that plans to recoup monies that were paid to vendors who redeemed food instruments within the maximum allowable levels.

This issue surfaced during the course of the TRO proceedings and we acknowledge that the Interim Rule could be interpreted as allowing this practice. Thus, we are clarifying our position that FNS will not permit a State agency to recoup any payment to a vendor that is within the established maximum allowable reimbursement level for that vendor, either in whole or in part, for cost containment purposes. (This does not preclude a State agency that utilizes a post-payment food instrument edit system from making price adjustments in accordance with 7 CFR 246.12(h)(3)(viii) of the WIC regulations and recouping amounts above the established maximum allowable reimbursement rate applicable to the vendor.) If a State agency determines that its current maximum allowable reimbursement levels do not achieve the statutorily required cost neutrality, then the State agency should revise the competitive price range, if necessary, and reduce the maximum allowable reimbursement levels.

**Summary**

With the qualifications discussed above, all State agencies should continue moving forward in their efforts to implement the WIC vendor cost containment requirements. As indicated in the TRO, all State agencies are still obligated to comply with the provisions of section 1786(h) of the Child Nutrition Act of 1966.

This memorandum is effective immediately.



PATRICIA N. DANIELS  
Director  
Supplemental Food Programs Division