

Kansas WIC Compliance Investigation Manual

A national study of WIC vendor practices found program violations of overcharging, failure to maintain minimum stock, food substitutions, and failure to record the purchase prices when completing the sales transaction. Violations cost the WIC program millions of dollars per year. Compliance buys are one way of identifying program abusers.

Compliance buys are a part of Vendor Management and are covert, onsite investigations in which a representative of the Program poses as a WIC client and transacts one or more WIC checks and does not reveal during the visit that he or she is a program representative. Investigators posing as WIC clients provide the vendor with the opportunity to commit the suspected or reported violations. No attempt is made to entrap or otherwise coerce the vendor to violate program regulations. Details of every investigation are carefully documented. Violations identified are categorized as to the severity of the abuse. Sanctions are imposed accordingly.

Program violations which can be observed during compliance buys include:

- Charging sales tax for food purchased with WIC checks
- Charging for foods that were not provided to WIC clients
- Allowing the purchase of non-approved WIC foods
- Allowing a person to receive non-food items in exchange for WIC checks
- Charging more than the shelf price for authorized food items
- Exchanging cash for WIC checks
- Allowing a person to exchange WIC food items for cash or non-approved WIC foods
- Obtaining the client signature prior to filling in the "Total Amount Purchased" box
- Providing rain checks in lieu of food items
- Accepting WIC checks for payment on credit accounts
- Discriminating against WIC clients
- Selling WIC foods past the manufacturer's expiration date on the container
- Failing to maintain minimum stock requirements

Selection of Vendors for Compliance Investigations

Compliance investigations are conducted on a minimum of five percent of authorized vendors each year. Compliance investigations should first be conducted on vendors that are identified as high risk. If less than five percent of vendors are high risk, then the State Agency must randomly select an additional number of vendors to meet the five percent minimum.

A compliance investigation may be considered complete by the State Agency in 1 of 3 ways:

1. determines that a sufficient number of compliance buys have been conducted to provide evidence of program non-compliance,
2. when two compliance buys are conducted in which no program violations are found, or
3. when an inventory audit has been completed.

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If more than five percent of vendors are identified as high risk, the State Agency must prioritize these vendors to perform compliance investigations on those determined to have the greatest potential for program non-compliance and/or loss of funds.

High-risk vendors are identified at least once per year by completing a statistical analysis of checks processed for payment. Local Agencies also contribute to the identification of high-risk vendors by communicating alleged abuses or contractual violations reported by either clients or staff.

During each federal fiscal year, the State Agency will identify vendors for monitoring and compliance investigations. The list of vendors subject to compliance investigations will include the purchasing practices to be attempted. Compliance buys conducted at high risk vendors should be designed to target the abuse/behavior causing the designation of high risk. If, during the first buy, a violation is discovered, the second buy will be conducted using the exact same buy techniques.

Planning Compliance Buy Activities

Investigators who may have a conflict of interest in the outcome of any compliance investigation shall not be used.

The investigator should match a profile of the average WIC client (female and 18 to 35 years of age). Investigators should also match the ethnic backgrounds and bilingual abilities that is necessary to blend in with the vendors' usual clientele. Vehicles driven to the compliance buys should also blend in with the neighborhood.

Cover stories on where the investigator's family lives and works, as well as relevant details such as how long the family has been in the area should be prepared prior to the store visit. The State Agency may assist the investigator in developing case scenarios. There is no reason to volunteer information regarding participation in the program. The investigator will need to be prepared to respond to direct questions asked as well as supply information requested such as a proxy card or other identification. The less spoken during the WIC transaction, the better.

The investigator must completely understand the cover story and all applicable policies and procedures relating to the WIC food delivery process. Prior to conducting a compliance buy, each investigator must complete the required training provided by the State Agency or designee. This will ensure that the individual understands how to use WIC checks at the store.

Training will stress the need for clear and accurate observations while in the store and how to complete all reports. The investigator will be trained sufficiently to be able to note any unexpected violations at the store. While each compliance buy will focus on a specific type of program abuse, the investigator must be alert to other errors occurring during the sales transaction.

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The State Agency will provide instructions on the type of buy(s) to be completed. Types of compliance buys include:

1. **Safe Buy** - Purchase all of the food listed on the WIC check.
2. **Under Buy** - Do not purchase all of the food listed on the WIC check. If the WIC check specifies nine (9) cans of powdered formula, purchase six (6) cans.
3. **Major Substitution Buy** – Attempt to purchase foods that are not approved for the WIC program but the food category is listed on the WIC check. If the WIC check specifies cereal and other foods, select a cereal high in sugar (i.e. Golden Grahams, Fruit Loops) If the WIC check lists 64 oz container of juice, select a sweetened juice (i.e. Hi-C, Hawaiian Punch).

Special instructions for specific transactions may include:

4. Pre-signed WIC check - Attempt to pass a pre-signed WIC check (i.e. a WIC check that is signed before going into the store).
5. Exchange Products – Attempt to exchange food or formula purchased with WIC checks for other items in the store that are not approved by WIC (i.e. meat, diapers etc)
6. Return Product for Refund - Attempt to get a cash refund for food or formula purchased with WIC checks.
7. Outdated WIC check or FVC – Attempt to use a WIC check or FVC outside the printed use dates on the check.

Conducting a Compliance Buy

The State Agency will issue all checks used in the compliance buys. The check numbers and redemption dates of all the checks must be recorded on the compliance buy investigation report. The State Agency will make a photocopy of the checks to be used prior to providing them to the investigator.

A shopping list will be provided to the investigator at the time the WIC checks are furnished. Before entering the store, the investigator should take time to observe general activity in the store. When selecting foods, the item price should be recorded on your shopping list. When ready, take all items to the checkout register and present the check(s) for payment.

The compliance buy should be completed without entrapment. Entrapment is defined as the act of inducing persons to commit a crime not contemplated for the purpose of instituting a criminal prosecution. The mere act of furnishing the suspect the opportunity to commit a crime, where the criminal intent was already present in the suspect's mind, is not ordinarily entrapment. Generally the entrapment forbidden by law depends on whether or not the activity leading up to the violation amounted to putting it in the mind of a person who had no prior inclination to violate and leading them to do it for the first time. If investigators merely provide an opportunity for a suspected violator to continue on a course of criminal conduct, this does not constitute entrapment.

Investigators should make no appeals to sympathy and do nothing that could imply coercion. Do not give any kind of "sob story" to create sympathy. Although the object of the investigation

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is to determine whether or not the store is abusing the program, never demand that the clerk provide unauthorized items in exchange for WIC checks. These behaviors could lead to findings of entrapment.

Try to be passive and let the store employee take the initiative. Let the clerk decide what to do. If the clerk suggests that unauthorized items can also be purchased with checks or in some other way openly suggests abuses of program regulations, go along with it. Do not initiate the abuse other than to put the unauthorized goods on the counter. Attempt to remember all conversation during the transaction. If told by the check-out clerk that, unauthorized items cannot be purchased with the check, return them for the proper foods. Do not give the cashier an argument; this could be considered entrapment. Leave the store if threatened or if other problems occur.

Observe carefully what transpires so the report of the investigation can be completed immediately after leaving the store. Watch for nametags and/or listen for any name that might be called out so the cashier can be identified on the report. Follow any special system used in the store to checkout WIC clients although Federal Regulation prohibits discrimination by a vendor when dealing with WIC clients. Special lines for processing the checks are prohibited, as is any behavior calling attention to the fact that a WIC check is being processed.

Compliance buys are conducted as a series of separate transactions. A minimum of two (2) compliance buys per store will be conducted unless otherwise directed by the State Agency. If, after two separate buys, no violations are found, the compliance investigation of that vendor is over. If violations are found on the second compliance buy, then additional compliance buys are needed to establish a pattern of violations. If subsequent compliance buys are required, a different cashier from the first visit with the violation should be used if possible.

Compliance Buy Investigation Report

Prior to the visit, fill in the store's name and address, and the check numbers and types of checks to be used. As soon as possible after the store transaction, complete the *Compliance Buy Report: Kansas WIC Program*, while the facts are still clear. Precise information about brand names and sizes of the containers (e.g. two 64 oz. cans of Juicy Juice at \$3.99 each) are essential to the validity of the report. A report must be made every time a compliance buy is conducted at a store. Photograph the purchased items and submit the photographs with the report. Use of digital camera is preferred.

The investigator will provide the original copy of the *Compliance Buy Report: Kansas WIC Program* to the State Agency within five (5) days to determine if additional purchases are necessary. The report must be legible.

The State Agency reviews images of the check(s) used in the compliance buy from the contracted banking service. The checks will be compared with the investigative report to detect alterations in quantities, unit prices and check totals.

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Disposal of Items Purchased During Compliance Buys

All items purchased during compliance buys must be donated to food banks or other charitable organizations. Alcoholic beverages purchased should be forwarded to the State Agency where it will be retained as evidence until destroyed or dumped. Cash received for checks must be forwarded to the State Agency where it will be retained for evidence.

Procedure Following Completion of Investigation

After all compliance buys have been conducted and findings of the investigations reviewed, the State Agency will notify the vendor in writing of the outcome of the investigation. If, as a result of the investigation, it is clear that a vendor has engaged in fraudulent activities affecting the WIC program, the State Agency will notify the vendor of sanctioning and/or disqualification from the WIC program and the right to appeal.