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See attached Appendix in the Appendices folder

Attachments: (Word file)

1. Appendix: Civil Rights Complaint of Discrimination Form
2. Appendix: Brief Overview (Civil Rights Complaint Form for Program Use Only)
3. Appendix: Authorization for Release on Information
4. Appendix: Participant Abuse Form
5. Appendix: Fair Hearing and Complaint
6. Appendix: Civil Rights Complaint Log Form

I. CIVIL RIGHTS



POLICY

It is the policy of the Guam WIC Program that no client or participant, applicant, or other interested parties shall be discriminated against on the basis of race, color, national origin, gender, age, or disability.

The Child Nutrition Act, Section 17, as amended, defines the purpose of the WIC Program as a program that provides benefits specifically to pregnant, breastfeeding and postpartum women, infants, and children up to a specific age limitation. The eligibility determination according to age and sex is not a violation of Civil Rights Law. The priority criteria in determining applicant's nutrition risk are also be justified.

A. ADMINISTRATION

1. Staff to coordinate, implement, conduct training and enforce Civil Rights

The Management Analyst III of the Quality Assurance Section is responsible to coordinate, implement, conduct training and enforce civil right efforts. In the absence of the Management Analyst III, the Program Coordinator IV is the designated alternate.

a. The State agency's methods used to inform and update clinic staff of their obligations under civil rights rules, regulations and instructions are the following:

1. The State agency will ensure that newly hired employee(s) will received the New Employee Civil Rights training within 30 days of their effective start date.
2. Updates for all WIC employees are coordinated during the monthly in-service training.
3. Memos and updates: Any updated information; instructions from Region Office are disseminated to the staff through memorandum and/or during the monthly In-service training.
4. Presentations by civil rights coordinator. The Management Analyst III is tasked to conduct the annual Civil Rights Training to all WIC's staff.
5. Presentations by staff other than WIC Program: Presenters from other entities relating to Civil Rights will be invited to present any pertinent information regarding Civil Rights.



b. The State agency will ensure the State and Local clinic staff completes the current year's annual Civil Rights training course online in the AZ TRAIN website (<https://aztrain.org/DesktopShell.aspx>) and submit a copy of the "Certificate of Completion" to the WIC Quality Assurance Section for filing. State agency will inform the State and Local Clinic staff of the availability of the course.

c. The Civil Rights training includes the following areas:

- a. Collecting and using racial/ethnic data.
- b. Effective public notification system.
- c. Complaint procedures.
- d. Compliance review techniques.
- e. Resolution of noncompliance, including development of an action plan.
- f. Requirements for reasonable accommodation of person with disabilities.
- g. Requirements for language assistance
- h. Conflict resolution
- i. Customer Services

2. State agency maintains a copy of the following materials on file:

- a. FNS Instruction 113-1
- b. Title VI (1964), 7 CFR 15
- c. Title IX, Education Amendments, 7 CFR 15a (sex discrimination)
- d. Section 504, Rehabilitation Act of 1973, 7 CFR 15b
- e. Racial/Ethnic data collection policy and reporting requirements
- f. Age Discrimination Act of 1975, 7 CFR 15c (draft)
- g. American with Disabilities Act, 28 CFR Part 35
- h. Civil Rights Restoration Act of 1987

Civil Rights Compliance Training

The Guam WIC Program informs staff personnel of their obligations under Title VI of the 1964 Civil Rights Act, USDA Civil Rights Regulations (7 CFR Part 15), and FNS Instruction 113-1, through Civil Rights compliance training.

Procedures:

- Provide training for WIC Local clinic employees on an annual basis.
- Civil Rights compliance training to includes:
 - 1) Collecting and using racial/ethnic data.
 - 2) Effective public notification systems.
 - 3) Complaint procedures.
 - 4) Compliance review techniques.
 - 5) Resolution of noncompliance, including development of an action plan.



- 6) Requirements for reasonable accommodation of persons with disabilities.
- 7) Requirements for language assistance.

3. Persons with Disabilities**Policy:**

The Guam WIC Program will not deny a person with disability access to program benefits.

Procedures:

- a. If a WIC clinic is not accessible to a person with disability, WIC staff must make other arrangements to service this individual.
- b. The WIC staff may arrange to meet the person with disability at his/her home or at another accessible meeting place for the certification visits. Anthropometric and hematological data may be obtained from the person's physician with consent of the applicant, or the requirement for this data may be waived if it is impossible to obtain the data.
- c. Once certified, arrangements must be made to provide on-going nutrition education and referral to other services to the person with disability. This may be done by a home visit by the WIC staff or through coordination of these methods.
- d. WIC food instruments may be provided on-site to an authorized representative, be mailed to the participant, or be delivered to the participant during a home visit.

4. Civil Rights File

The Guam WIC Program has a Civil Rights file maintained with all pertinent information pertaining to the coordination and enforcement of Civil Rights. The Civil Rights file is maintained and located in the Quality Assurance section of the Guam WIC Program; however, each clinic site is provided with a copy of the USDA'S FNS Instruction 113-1, which covers Civil Rights compliance and enforcement in the WIC Program.

B. PUBLIC NOTIFICATION REQUIREMENTS AND NONDISCRIMINATION NOTIFICATION**Policy:**

The Guam WIC Program ensures that public notification regarding nondiscrimination in the WIC Program reaches all participants and potential participants, particularly minorities, through the materials used for public information, public education, or public



distribution and in an appropriate language.

1. Public Notification

a. Local clinics are required to provide the nondiscrimination policy statement and instruct on civil rights complaint procedures to all clients. Clinics shall:

1. Include the use of such forms of communication letters, leaflets, brochures, bulletins, newspapers, internet, radio and television announcements to disseminate program information and applicable Civil Rights requirements to the general public with emphasis on minorities and minority organizations.
2. Distribute information to the public to inform participants and applicants, particularly minorities, women, and grassroots organization, of any significant location of WIC clinics, as well as hours of service. WIC clinic sites that have reached maximum participation may choose to further inform potential applicants of appointment opening at other clinic sites or the waiting lists and of the priority system for filling vacant slots as they arise.
3. Use photographs and other graphics to display participants of different race, color, national origin, gender, age, or disability on program-related information, which conveys the message of equal opportunity.
4. Provide information and other materials such as applications, eligibility criteria, and procedures for delivery of benefits in languages other than English, as needed.
5. Include the USDA's nondiscrimination statement in full on all materials produced by USDA and its agencies for public information, public education or public distribution. This statement lists all prohibited bases and should be in English and in languages appropriate to the local population. The USDA'S nondiscrimination statement is as follows:

In accordance with federal civil rights law and U.S. Department of Agriculture (USDA) civil rights regulations and policies, this institution is prohibited from discriminating on the basis of race, color, national origin, sex (including gender identity and sexual orientation), disability, age, or reprisal or retaliation for prior civil rights activity.

Program information may be made available in languages other than English. Persons with disabilities who require alternative means of communication to obtain program information (e.g., Braille, large print,



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audiotape, American Sign Language), should contact the responsible state or local agency that administers the program or USDA's TARGET Center at (202) 720-2600 (voice and TTY) or contact USDA through the Federal Relay Service at (800) 877-8339.

To file a program discrimination complaint, a Complainant should complete a Form AD-3027, USDA Program Discrimination Complaint Form which can be obtained online at: <https://www.usda.gov/sites/default/files/documents/USDA-OASCR%20P-Complaint-Form-0508-0002-508-11-28-17Fax2Mail.pdf>, from any USDA office, by calling (866) 632-9992, or by writing a letter addressed to USDA. The letter must contain the complainant's name, address, telephone number, and a written description of the alleged discriminatory action in sufficient detail to inform the Assistant Secretary for Civil Rights (ASCR) about the nature and date of an alleged civil rights violation. The completed AD-3027 form or letter must be submitted to USDA by:

mail:

U.S. Department of Agriculture
Office of the Assistant Secretary for Civil Rights
1400 Independence Avenue, SW
Washington, D.C. 20250-9410

fax:

(833) 256-1655 or (202) 690-7442

email:

program.intake@usda.gov

This institution is an equal opportunity provider.

6. If the material/media is too small to permit the full statement to be included, the material/media will, at a minimum, include the statement, in print size no smaller than the text that:

“This institution is an equal opportunity provider.”

7. Display an FNS-approved nondiscrimination poster in prominent places, such as clinic waiting rooms, warehouse distribution centers, and other facilities frequented by participants and applicants.
8. An appropriate staff, volunteers or other translation resources are available to serve participants or applicants.



9. Make available program regulations and guidelines to the public upon request. Upon initial visits, give applicants specific program information, which is pertinent to their participation in the program.
10. Provide participants and applicants access to Civil Rights information. Materials to be provided include procedures for filing complaints, program specifics, and rights and responsibilities of participants and applicants.
11. The nondiscrimination statement is included on WIC application form.

b. Local clinics are required to display the USDA nondiscrimination poster “And Justice For All,” or an FNS-approved substitute at the clinic waiting rooms; food instruments issuance offices and where group/individual nutrition education is given.

c. Local clinics inform the general public; grassroots/community organizations that deal with potentially eligible minorities; and applicants/participants the following information:

1. Availability of program benefits
2. Location of clinics operating WIC Program and telephone numbers
3. Hours of services of clinics operating WIC Program
4. Rights and responsibilities
5. Nondiscrimination policy
6. Civil Rights complaint procedure
7. Eligibility criteria for participation

d. The Local clinics inform advocacy/minority organization and the general public of the benefits frequently through the following form of communication:

1. Media (newspaper, radio and television announcements)
2. Brochures and leaflets
3. Participants and applicants
4. Clinic bulletin boards.

2. Nondiscrimination Notification

a. The Local clinic provides applicants/participants:

- Key information, such as applications and materials describing eligibility criteria and procedures for delivery of benefits, in appropriate languages other than English in areas where a significant number or proportion of the eligible population is not English-speaking, and using inclusive language.



All rights and responsibilities listed on the certification form are read to or by the applicant and participants in the appropriate language and using inclusive language.

- Appropriate bilingual staff volunteers or translation resources are available to serve applicants and participants where a significant number or proportion of the eligible population is not English-speaking
- All rights and responsibilities listed on the certification form are read to by the applicants and participants in the appropriate language, or if the participant is sight or hearing impaired and requires assistance.

b. **The Local clinic provides WIC Program materials and translators in the following languages English; Asian/Pacific (Chamorro/Filipino/Chuukese/Pohnpeian).**

C. COMPLIANCE REVIEW AND MONITORING ACTIVITY

1. Compliance Review

a. **The State agency monitors and reviews three clinics annually to ensure that they are in compliance with the Civil Rights laws and regulations.**

Procedures:

1. The observation of waiting areas for segregation.
2. The observation of waiting areas and clinic facilities for accessibility to individuals with disabilities.
3. The presence of an FNS-approved nondiscrimination poster prominently displayed will be noted.
4. The observation of staff and participants/applicants interactions to see if individuals are treated in a nondiscriminatory manner regardless of race, color, national origin, gender, age, or disability.
5. The observation of procedures for participants/applicant's intake to ensure that participant/applicants are served on appointment or first-come/first-served basis.
6. Applicants are given specific program information on initial visits pertinent to their participation in the program.
7. To ensure that participants and applicants have access to Civil Rights information, the following materials: procedures for filing complaints,



complaint form, and rights and responsibilities of participants and applicants, are provided.

8. A review of the racial/ethnic make-up of individuals found to be ineligible for program services to see if a disproportionate number of minorities are being denied program benefits.
9. Observation that the presence of the WIC Program Procedures for Filing a Discrimination Complaint is posted in places easily seen by the applicants and participants.
10. Review that case records have not been coded by racial/ethnic origin.
11. Review that the local clinic has conducted Civil Rights training for its staff.
12. Review that the nondiscrimination statement is being included on all printed materials such as applications, pamphlets, forms, or any materials distributed to the public.
13. Review that racial/ethnic data is being collected by actual count and maintained on file for 3 years.
14. Review those Civil Rights complaints are being handled in accordance with procedures outlined in Section XI, FNS Instructions 113-1.
15. Review that program information is being provided to grassroots organizations or similar minority groups upon request.
16. Review that all past substantiated Civil Rights problems or noncompliance situations have been corrected at the local clinics.
17. Review that photographs and other graphics on program materials display participants of different races, color, national origins, ages, sexes, and disability convey the message of equal opportunity.

b. The State agency reviews all of its local clinics for civil rights compliance with the nondiscrimination laws and regulations when it does its review.

2. Monitoring Activity

- a. The State agency uses the following means to ensure that local clinics operate in a nondiscriminatory manner:**



- Review of the racial/ethnic enrollment and/or participation data
- Review of denied applications
- Review of complaints

b. The State agency checks for any nondiscriminatory manner on the local clinic applications.

1. Corrections are made on all past substantiated civil rights problems or non-compliance situations.
2. Civil Rights Assurance is included in the State-Federal Agreement.
3. A description of the racial/ethnic makeup of the services area is included in the application.
4. Monitoring of clinic sites for civil rights includes a description of the racial/ethnic makeup of the clinic site to assess compliance.
5. State agency provides the clinic site with appropriate staff, volunteers, or other translation resources in areas where a significant proportion of non-English or limited English speaking persons reside.
6. Inclusive language is used with developing program materials.

c. The State agency reviews the Local clinics on Civil Rights compliance.

1. Civil Rights training are conducted annually for clinic staff.
2. Project area displays the USDA nondiscrimination poster, "And Justice For All," or an FNS approved substitute.
3. Program information has been provided to applicants, participants, and grassroots organizations or similar minority groups.
4. Nondiscrimination policy statement and civil rights complaint procedures are included on all printed materials such as applications, pamphlets, forms, or any other materials distributed to the public.
5. Racial/ethnic data is collected by actual count and maintained on file for 3 years.



6. Civil Rights complaints are referred to the State agency and handled in accordance with the procedures outlined in FNS Instruction 113-1 by the State Agency.
7. The State agency ensures that local clinic has corrected all past substantiated civil rights problems or noncompliance situations.
8. Case records include racial/ethnic data.

D. DATA COLLECTION AND REPORTING**Policy:**

The Guam WIC Program State agency ensures that racial/ethnic participation data for the Guam WIC clinic are collected and reported.

1. Data Collection

- a. Procedures:
 1. The clinic sites collect actual participation data on women, infants, children and racial/ethnic categories at each clinic site. Participants will be asked to self-identify their racial group only after it has been explained, and they understand that the collection of this information is strictly for statistical reporting requirements and has no effect on the determination of their eligibility to participate in the program. If a participant declares that he or she does not want to self-identify then visual identification shall be used to determine a participant's racial/ethnic category.
 2. Enter actual participation data into the Guam WIC information system at the point of certification.
 3. Input racial/ethnic participation data for monthly report, which reflect the Monthly Enrollment and Participation Report (WIC Report 301). The State agency prints the report.
 4. Documentation for the racial/ethnic data shall be on file and maintained for three years at the State Office.
 5. Data shall be maintained under safeguards, which will restrict access of records to authorized personnel.



6. Case records include racial/ethnic data.
- b. **The State agency maintains a civil rights file, which retains collected racial/ethnic data for three years.**

The Information System Section of the Guam WIC Program maintains and collects the Civil Rights files on racial/ethnic data.

Racial/ethnic data is collected by actual count and maintained on file for three (3) years.

2. Determination of participant's racial/ethnic category

Local clinics determine a participant's racial/ethnic category by requesting all participants to self-identify their racial/ethnic (after explaining the reason for collection of such information and that such information will not affect their eligibility status) and through visual identification/sight assessment.

E. COMPLAINT HANDLING

Policy:

The Guam WIC Program does not discriminate against any client or participant, applicant, or other interested parties on the basis of race, color, national origin, gender, age, or disability.

1. Complaint Procedure:

- a. If a participant or an applicant believes he/she has been discriminated against on the basis of race, color, national origin, gender, age, or disability, he/she has the right to file a complaint of discrimination.
- b. WIC Program applicants and participants are informed where they may file a complaint of discrimination.
- c. Immediately provide the "Civil Rights Complaint of Discrimination Form" to the individual.
- d. Inform the individual that he/she may send or file his/her complaint(s) to:
 - To file a program complaint of discrimination, complete the USDA Program Discrimination Complaint Form, AD-3027, found online at <https://www.usda.gov/sites/default/files/documents/USDA-OASCR%20P-Complaint-Form-0508-0002-508-11-28>



17Fax2Mail.pdf, or at any USDA office or write a letter addressed to USDA and provide in the letter all of the information requested in the form. To request a copy of the complaint form, call **(866) 632-9992**. Submit your completed form or letter to USDA by:

mail:

U.S. Department of Agriculture
Office of the Assistant Secretary for Civil Rights
1400 Independence Avenue, SW
Washington, D.C. 20250-9410

fax:

(833) 256-1655 or (202) 690-7442

email:

program.intake@usda.gov

- Persons with disabilities who require alternative means of communication for program information (e.g. Braille, large print, audiotape, American Sign Language, etc.) should contact the Agency (State or local) where they applied for benefits. Individuals who are deaf, hard of hearing or have speech disabilities may contact USDA through the Federal Relay Service at **(800) 877-8339**. Additionally, program information may be made available in languages other than English.
- State agency shall inform the applicant and participant that they can file their complaints directly with the USDA (who in turn forward them directly to the FNS HQ Civil Rights Division), directly with the FNS HQ Civil Rights Division, their State Agency. However, the State Agency must then forward their complaint either directly to the FNS HQ Civil Rights Division or the U. S. Department of Agriculture.

- e. If the individual requests for assistance in writing the form, you must help the individual in writing his/her complaint.
- f. If the individual is unable to mail his/her completed complaint form to USDA, then you must accept the completed form and forward the next day to the Quality Assurance Section for mailing.
- g. Inform the individual that he/she has 180 days of the alleged discriminatory action to file a complaint.
- h. Inform the individual that the Office of Civil Rights has 90 days upon receipt to process the complaint.



- i. Complainants do not have to use the complaint form to file a discrimination complaint. It is necessary, however, that the information be sufficient to determine the identity of the agency or individual towards which the complaint is directed, and to indicate the possibility of a violation. Anonymous complaints shall be handled as any other complaint.
- j. Verbal Complaints. In the event a complainant makes the allegations verbally or through a telephone conversation and refuses or is not inclined to place such allegations in writing, the person to whom the allegations are made shall write up the elements of the complaint for the complainant on the Civil Rights Complaint Form (See Appendix). Every effort shall be made to have the complainant provide the following information:
 1. Name, address, and telephone number of the complainant or other means of contacting the complainant.
 2. The specific location and name of the entity delivering the service or benefit.
 3. The nature of the incident or action that led the complainant to feel discrimination was a factor, or an example of the method of administration which is alleged to have a discriminatory effect on the public or potential and actual participants.
 4. The basis on which the complainant feels discrimination exists (race, color, national origin, gender, age, or disability).
 5. The names, titles, and business addresses of person who may have knowledge of the discriminatory action.
 6. The date(s) during which the alleged discriminatory actions occurred, or if continuing, the duration of such action.
- k. If you have any questions regarding these procedures you may contact the Quality Assurance Section, Guam WIC Program.

2. Civil Rights Discrimination Complaint Form

The Local clinics shall provide applicants, participants and staff, the “Civil Rights Complaint of Discrimination Form” for acceptance of a discrimination complaint. (See Appendix)

3. Timeframes for disseminating discrimination complaint



The State agency must maintain a discrimination complaints log. The log shall identify each complaint by name, race, or national origin, the basis of complaint, the nature of the complaint, the date it was filed and the date it was forwarded to FNS for processing. The participants have one hundred eighty (180) days to file a discrimination complaint. The local clinics may hold the discrimination complaint for twenty-four (24) hours upon receipt before forwarding to the State Office. The State agency has five (5) days to forward the discrimination complaint to FNS. FNS has ninety (90) days to respond/resolve to Guam WIC State agency. All complaints shall be mailed to: Civil Rights Director, USDA Food and Nutrition Service, 90 Seventh Street, Suite 10-100, San Francisco, CA. 94103.

F. PARTICIPANT RIGHTS AND OBLIGATIONS

The State agency requires Local clinic ensures that each applicants and participants or their parents or caretakers read and fully understand their rights and obligations as a participant enrolled in the WIC program. If the applicants; participants, or their parents; or a caretaker does not understand their rights and obligations, such rights and obligations will be read to them in a language that they understand.

The following guidelines are used to instruct clients on the Guam WIC Program participant rights and obligations:

1. PARTICIPANT RIGHTS

a. The WIC program is open to all persons regardless of race, color, age, sex, nation origin or disability. If you wish to file a discrimination complaint: complete the USDA Program Discrimination Compliant Form,(AD-3027) found online at:

<https://www.usda.gov/sites/default/files/documents/USDA-OASCR%20P-Complaint-Form-0508-0002-508-11-28-17Fax2Mail.pdf>
and at any USDA office, or write a letter addressed to USDA and provide in the letter all of the information requested in the form. To request a copy of the complaint form, call (866) 632-9992. Submit your complete form or letter to USDA by:

1. Mail: U.S. Department of Agriculture
Office of the Assistant Secretary of Civil Rights
1400 Independence Avenue, SW
Washington, D.C. 20250-9410
2. Fax: (833) 256-1665 or (202) 690-7442: or
3. Email: program.intake@usda.gov.

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- b. You may appeal any decision made by the local clinic regarding your eligibility for the Program. Write to: Administrator, BNS, DHPSS, 15-6100 Mariner Ave., Barrigada, Guam 96913
- c. The WIC Program will make health services and nutrition education available to you either by directly providing these health services or telling you of another place you can go to receive these health services. You are encouraged to use these services.
- d. You have the right to know within twenty (20) days from the day you requested service whether you may participate in the WIC Program. (10 days for pregnant women and infants 0-6 months)
- e. You have the right to be told in writing why you were found ineligible.
- f. You have the right to be told in writing why you are being taken off the Program and must be fifteen (15) days before being taken off.
- g. You have the right to receive eWIC EBT card the same day that you are found eligible.
- h. You do not have to pay any money for application to WIC or its services.

2. PARTICIPANT OBLIGATIONS

- a. The foods are prescribed to keep you healthy. Do not sell your eWIC EBT card. Do not take foods back to the grocery store to get money for them or exchange them for other foods.
- b. The foods are chosen to fit your needs. Do not buy foods that are not listed on your eWIC EBT card .
- c. You should answer all questions asked about income, medical and diet history truthfully.
- d. The eWIC EBT card are to be picked up at a certain time. If you keep your appointments you will be sure of getting the prescribed foods. Failure to pick up your eWIC EBT card for three (3) consecutive months will result in your removal from the WIC Program.
- e. It is against the law to receive an eWIC EBT card from more than one (1) WIC clinic. If you do, you will be dropped from one the clinics and may be suspended from the other. Willful participation in more than one clinic



at the same time to receive dual benefits constitutes fraud and violators may be subject to prosecution under local and federal law.

G. CONFIDENTIALITY

POLICY

As defined in CFR 7 246.26 (d), the State Agency shall restrict the use or disclosure of information obtained from program applicants and participants to:

Persons directly connected with the administration or enforcement of the program, including persons investigating or prosecuting violation in the WIC Program under Federal, State or local authority.

Representatives of public organizations designated by the chief State health officer, which administer health or welfare programs that serve persons categorically eligible for the WIC Program. The State agency shall execute a written agreement with each such designated organization.

- Specifying that the receiving organization may employ WIC Program information only for the purpose of establishing the eligibility of WIC applicants and participants for health or welfare programs, which it administers and conducting outreach on WIC applicants and participants for such programs, and
- Containing the receiving organization's assurance that it will not, in turn, disclose the information to a third party, and

The Comptroller General of the United State for audit and examination authorized by law.

The exception to this policy is where the information is strictly for statistical purposes and no individuals are identified as defined in 7CFR 246.26(b).

Procedure:

1. If information is requested regarding a participant, complete the Release of Information Form. Have the applicant, participant and/or parent/caretaker sign and date the form. Information cannot be released without this form.
(See CR Appendix)
2. If an individual calls the WIC clinic to ask if an individual is enrolled in the program, or to obtain information regarding them, the WIC clinic personnel shall inform the caller that such information is confidential and therefore cannot be released.



3. If an individual calls the WIC clinic to confirm an appointment and the WIC staff has reason to question the identity of the caller, the WIC clinic personnel will confirm that this is indeed the person enrolled in the program.

Methods of confirmation may include the following:

- a. Verification of birth date.
- b. Date of the last visit to the WIC clinic.
- c. Type of food package received.

4. WIC clinic personnel are not to call participant, applicant and/or parent/caretaker regarding verification of eWIC EBT card numbers or food benefits that was/were not marked on the food benefits. The State agency shall telephone the clients for such verification(s).

H. PARTICIPANTS CONDUCT

POLICY

All adult participants and/or parent/caretakers have an obligation to conduct themselves in an appropriate manner while in the WIC clinic or using the eWIC EBT card at an approved vendor. Any person who is excessively abusive or poses a threat or danger to the WIC staff or other participants may be refused participation in the WIC Program. Any person who exhibits unacceptable behavior while at an approved WIC vendor is subject to the vendor's rules on conduct of patrons and will be reported to the State Agency for disciplinary action.

1. Any incident involving abusive or dangerous behavior of a WIC participant, applicant and/or parent/caretaker towards WIC staff, other participants, applicants and/or parent/caretakers shall be immediately reported to the WIC Director (BNS Administrator).
2. The WIC Director (BNS Administrator) will attempt to obtain all versions of the incident from all parties involved. A written report shall be made.
3. The Director of Public Health and Social Services shall send a letter to the person reiterating the incident and depending upon the severity of the incidents, either counsel the individual that any further incidents involving inappropriate behavior may result in suspension from participation. The letter shall also inform the person of their right to appeal through the Fair Hearing Procedure.
4. If the incident involved a WIC approved vendor, vendors shall complete the Participant Abuse Form. For vendors, some example of participant abuse include:



- a. Returning WIC foods to a store to exchange for cash or other foods.
- b. Exchanging WIC infant formula for non-approved formula or cash.
- c. Attempting to redeem a WIC food item for non-WIC items.
- d. Being abusive towards store employees.
- e. Attempting to redeem a WIC food item that is post-dated.

The Vendor Participant Abuse Form includes:

- a. Date
- b. Customer name or WIC I.D. Number
- c. Food Instrument Number
- d. Incident involved
- e. Store's Name
- f. Contact person
- g. Telephone number

I. NO AID REDUCTION

The value of benefits or assistance received under the WIC Program shall not be considered as income or resources of participants or their families for any purpose under Federal, State or local laws, including but not limited to, laws relating to taxation, welfare or public assistance program.

J. FAIR HEARING FOR PARTICIPANTS

1. Availability of Hearing

The State agency shall provide a hearing procedure through which any individual may appeal a State agency action which may result in a claim against an individual for repayment of the cash value of improperly issued benefits or results in the individual's denial of participation or disqualification from the program. (See "Fair Hearing Procedure for Guam WIC Program, page II, CR, 23 on this section)

2. Hearing System

The State agency shall provide a fair hearing for an individual requesting from the local clinics.

3. Notification of Appeal Rights

At the time of a claim against an individual for improperly issued benefits or at the time of participation denial or disqualification from the Program, the State agency shall inform each individual in writing of the right to a fair hearing, or the method by which a hearing may be presented personally or by a representative such as a relative, friend, legal counsel or other spokesperson. Such notification is not required at the expiration of a certification period.



4. Request for Hearing

A request for a hearing is defined as any clear expression by the individual, the individual's parent, caretaker or other representative, that he/she desires and opportunity to present his/her case to a higher authority. The State agency shall not limit or interfere with the individual's freedom to request a hearing.

5. Time limit for Request

The State agency shall provide an individual sixty (60) days from the date the State agency mails or gives the participant or applicant the notice of adverse action.

6. Denial or Dismissal of Request

The State agency shall not deny or dismiss a request for a fair hearing unless:

- a. The request is not received within the sixty (60) days time limit;
- b. The request is withdrawn in writing by the appellant or a representative of the appellant;
- c. The appellant or representative fails, without good cause, to appear at the scheduled hearing, or;
- d. The appellant has been denied participation by a previous hearing and cannot provide evidence that circumstances relevant to program eligibility have changed in such a way as to justify a hearing.

7. Continuation of Benefits

Participants who appeal the termination of benefits within fifteen (15) days advance adverse action notice period provided by 246.7 (j)(6) must continue to receive Program benefits until the hearing official reaches a decision or the certification period expires, which ever occurs first. This does not apply to applicant denied benefits at initial certification, participants whose certification periods have expired, or participants who become categorically ineligible for benefits. Applicants who are denied benefits at initial certification, participants whose certification periods have expired, or participants who become categorically ineligible during the certification period may appeal the denial or termination within the timeframes set by the State agency in accordance with paragraph (e) of 246.9, but must not receive benefits while awaiting the hearing or its results.

8. Rules of Procedures

The State agency shall process each request for a hearing under uniform rules of procedure and shall make these rules or procedures available for public inspection and copying.

Procedure:



XI. CIVIL RIGHTS

- a. A request for the hearing must be made within sixty (60) days from the adverse action was mailed or given to an applicant or participant.
- b. Advance notice of the fair hearing to be conducted will be mailed or given to the applicant or participant fifteen (15) days prior to the start of the fair hearing.
- c. A fair hearing must be implemented within three (3) weeks of the State agency receiving the request.
- d. The notice for the rules of conduct at the fair hearing will be mailed or given to the applicant or participant fifteen (15) days prior to the start of the fair hearing and enclosed with the notice of time and place.
- e. The rights and responsibilities of the appellant at the fair hearing will be mailed or given to the applicant or participant fifteen (15) days prior to the start of the fair hearing and enclosed with the notice of time and place.

9. The Hearing Official

An assigned staff of the Department of Public Health & Social Services Public Appeals Hearing Office shall conduct hearings. The hearing official shall:

- a. Administer oath or affirmations required by Guam.
- b. Ensure that all relevant issues are considered
- c. Request, receive and make part of the hearing record, all evidence determined necessary to decide the issue being raised.
- d. Regulate the conduct and course of the hearing consistent with due process to ensure and orderly hearing.
- e. Order, where relevant and necessary, and independent medical assessment or professional evaluation form a source mutually satisfactory to the appellant and the State agency.
- f. Render a hearing decision, which will resolve the dispute.

10. Conduct of the Hearing

The State agency shall ensure that the hearing is accessible to the appellant and is held within three (3) weeks from the date the State agency received the request for a hearing. The State agency shall provide the appellant ten (10) days advance written notice of the time and place of the hearing and shall also provide the appellant or representative an opportunity to:

- a. Examine prior to and during the hearing, the documents and records presented to support the decision under appeal.
- b. Be assisted or represented by an attorney or other persons.
- c. Bring a witness(es).
- d. Advance arguments without undue interference.
- e. Question or refute any testimony or evidence; including an opportunity to confront and cross-examine adverse witnesses.
- f. Submit evidence to establish all pertinent facts and circumstances in the case.



11. Fair Hearing Decisions

- a. Decisions of the hearing official shall be based upon the application of appropriate Federal law, regulations and policy as related to the facts of the case as established in the hearing record. The verbatim transcript or recording of testimony and exhibits, or an official report containing the substance of what transpired at the hearing, together with all papers and requests filed in the proceeding, constitute the exclusive record for final decision by the hearing official. The State agency shall retain the hearing record in accordance with §246.25 CFR and make these records available for copying and inspection to the appellant or representative at any reasonable time.
- b. The decision by the hearing official shall summarize the facts of the case, specify the reasons for the decision and identify the supporting evidence and pertinent regulations or policy. The decision shall become part of the record.
- c. Within forty-five (45) days of the receipt of the request for the hearing, the State agency shall notify the appellant or representative in writing of the decision and the reasons for the decision.
 - If the decision is in favor of the appellant and benefits were denied or discontinued, benefits shall begin immediately.
 - If the decision concerns disqualification, as soon as administratively feasible, the local clinic shall terminate any continued benefits, as decided by the hearing official.
 - If the decision regarding repayment of benefits by the appellant is in favor of the agency, the State agency shall resume its efforts to collect the claim. The decision of hearing official is binding.
 - The State agency shall make all hearing records and decisions available for public inspection and copying, however, the name(s) and address(s) of participants and other members of the hearing shall be kept confidential.

12. Judicial Review

If a State level decision upholds the agency's action and the appellant expresses an interest to pursue a higher review of the decision, the State agency shall explain the right to pursue judicial review of the decision.

K. FAIR HEARING PROCEDURES FOR THE GUAM WIC PROGRAM

1. YOU CAN ASK FOR A FAIR HEARING



- a. If you think you are being taken off the WIC Program unfairly.
- b. If you have been told you do not meet the requirements and you believe that is unfair or inaccurate.

2. **WHAT IS A FAIR HEARING?**

In a fair hearing, you are given the chance to tell your reasons why you think you were not treated fairly by the WIC Program. You tell your reasons to a person who is NOT a part of the WIC Program. This individual will make a decision that is fair and will notify you and the WIC Program of his/her decision.

A request for a fair hearing must be made within sixty (60) days from the date the adverse action was mailed or given to an applicant or participant.

3. **HOW DO I ASK FOR A FAIR HEARING?**

You may request a fair hearing from the Guam WIC Program office by calling (671) 475-0295/0296 or visit the WIC office, or you may request a hearing orally or in writing. WIC staff will assist you with your request and will provide you a copy of the Guam WIC Program Fair Hearing form and be instructed to write the:

Department of Public Health and Social Services Public Appeals Hearing Office
155 Hesler Place
Hagatna, Guam 96910

If you are unable to put the complaint in writing, the WIC staff will do this for you.

A fair hearing shall be held within (3) weeks from the date of your request. You will be notified at minimum ten (10) days advance written notice of the time and place of the hearing, and shall enclose an explanation of the hearing procedure with the notice.

You may bring a friend, a member of your family, or legal counsel with you to present your positions or arguments.

Before the Fair Hearing, make sure you clearly understand the explanations given to you by our WIC staff as to why you did not meet the WIC requirements or the explanation given for taking you off the WIC program.

Bring witnesses.

Advance arguments without undue interference.

Question or refute any testimony or evidence, including an opportunity to confront and cross-examine adverse witnesses.



Submit evidence to establish pertinent facts and circumstances in the case.

4. WILL I STILL GET CHECKS?

Participants who appeal the termination of benefits within the fifteen (15) calendar days of the written notification of termination of benefits shall continue to receive Program benefits until the hearing official reaches a decision or the certification expires, whichever occurs first. This does not apply to applicants denied benefits at initial certification, participants whose certification period has expired or participants who becomes categorically ineligible for benefits. Applicants who are denied benefits at initial certification period (or whose certification period expires) may appeal the denial or termination, but shall not receive benefits while awaiting the hearing.

5. WHEN WILL I KNOW THE DECISION?

You will receive a decision and the explanation for the decision in writing within forty-five (45) days from the day you requested for the fair hearing.

L. CLAIMS AGAINST PARTICIPANTS

Procedure:

- a. If the State agency determines that food benefits have been improperly issued under the Program as the result of a participant, guardian, or caretaker intentionally making a false or misleading statement or intentionally misrepresenting, concealing, or withholding facts the State agency shall recover, in cash, from such participant, guardian, or caretaker an amount that the State agency determines is equal to the value of the over issued food benefits.
- b. The State agency shall send a written demand letter for initiating collection action on the over-issued food benefits.
- c. The demand letter shall inform the participant, guardian or caretaker of the amount owed, the reason for the claim, and the period of time the claim covers. The letter will also inform the participant, guardian or caretaker that they have sixty (60) days to appeal the amount of the claim, and that they have the right to a fair hearing.
- d. The letter shall inform the participant, guardian or caretaker of their right to request negotiation for any repayment schedule.
- e. The letter shall also provide a space for the participant, guardian or caretaker to indicate their preferred method of payment and for the signature of the participant, guardian or caretaker.



- f. The letter will be sent to the mailing address stated on the certification form and will be sent via certified mail.
- g. All collection efforts will be suspended if:
 - a. The participant, guardian or caretaker cannot be located.
 - b. The cost of further collection action is likely to exceed the amount that can be recovered.
- h. If the State agency has sent at least one (1) demand letter for claims under \$100, at least two (2) demand letters for claims between \$100 and \$400, and at least three (3) demand letters for claims more than \$400, further collection action will be suspended when the cost of further collection is likely to exceed the amount that can be recovered.

M. PENALTIES

In accordance with section 12 (g) of the National School Lunch Act, whoever embezzles, willfully misapplies, steals or obtains by fraud any funds, assets or property provided under section 17 of the Child Nutrition Act of 1966, as amended, whether received directly or indirectly for USDA, or whoever receives, conceals or retains such funds, assets or property for his or her own interest, knowing such funds, assets or property have been embezzled, willfully misapplied, stolen, or obtained by fraud shall, if such funds, assets or property are of the value of \$100 or more, be fined not more than \$25,000 or imprisoned not more than five (5) years, or both, or if such funds, assets or property are the value of less than \$100, shall be fined not more than \$1,000 or imprisoned for not more than one (1) year, or both.