1.16 Local Agency Grantee Rights & Responsibilities

POLICY:

The Local Agency (LA) is designated by the State Agency (SA) in accordance with federal and state regulations. In making decisions to initiate, continue, and discontinue the participation of a LA, the SA shall give consideration to the need for Program benefits as delineated in the Affirmative Action Plan.

At the start of each grant period, the SA will complete a required risk assessment (Risk Assessment Form). This assessment evaluates the Grantee's noncompliance risk, considering factors like performance history, goal achievement capability, management systems, audit outcomes, and financial stability. It also confirms the Spending Unit's understanding of its responsibility to oversee the Grantee's activities and performance. The form specifies any award conditions resulting from the risk assessment (e.g., reimbursement-based payments, additional reporting, or project monitoring) and acknowledges potential monitoring tools for high-risk grantees (e.g., training, site visits).

As provided in 2 CFR 200.340, the SA may unilaterally terminate a grant agreement or recover, withhold, or disallow costs of up to 100 percent of the funds made available under the agreement if the LA fails to comply with any term of the agreement. The SA will consider failure to comply with the reporting requirements and/or performance measures of a grant Statement of Work (SOW) to be a material failure to comply with the agreement and a basis for termination. Other factors that may result in termination of a grant agreement include, but are not limited to:

1. LA financial instability and/or insolvency;
2. Repeated financial or program management monitoring findings that are not resolved within a minimum of two CAPs;or
3. Communication and working relationship of the grantee/LA with the SA do not meet the standards required for a successful partnership, such as persistent failure to respond to SA communications, repeated non-attendance at required meetings, or refusal to cooperate with monitoring activities that materially impairs the SA’s oversight responsibilities.

If the SA decides to take action against the LA for noncompliance under this agreement, the SA will provide the recipient written notice of the basis for its determination at least 30 days prior to termination of the agreement in accordance with 2 CFR 200.341. The grant agreement may be cancelled by either party at any time with or without cause, upon thirty (30) days notice in writing, and delivered by certified mail or in person.

In the event that an award is suspended and corrective action is not taken within 90 days of the suspension effective date, the SA may issue a notice of termination in accordance with 2 CFR 200.341. In accordance with 2 CFR 200.343, no costs that are incurred during the suspension period or after the effective date of termination will be allowable, except those that are specifically authorized by the suspension or termination notice or those that, in the opinion of the SA, could not have been reasonably avoided. Within 30 days of the termination date, the LA shall furnish to the SA a summary of progress achieved under the award, an itemized accounting of charges incurred against award funds and cost sharing prior to the effective date of the suspension or termination, and a separate accounting and justification for any costs that may have been incurred after this date.

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In the event of any grant termination, property disposition shall comply with 2 CFR 200.311-200.315. All finished or unfinished documents, data and studies prepared and maintained by the LA shall be disposed of according to the directive of the SA, WV Department of Health, and/or US Department of Agriculture (USDA) in accordance with 2 CFR 200.334 record retention requirements.

If the SA terminates a LA grant agreement, the SA will solicit an alternate, current LA to assume the service area on an emergency basis. This minimizes service disruptions during transition of personnel and assets purchased with federal funds. A competitive Announcement of Funding Availability (AFA) will be issued within 24 months following a needs assessment of the service area. The AFA solicitation will clearly outline the needs of the service area as well as assess respondent financial stability and ability to meet the performance standards of the WV WIC Program.

PROCEDURE:

A. Announcement of Funding Availability (AFA) Process

1. AFA Development and Release

   a. When a LA grant agreement is expiring or has been terminated, the SA shall conduct a needs assessment of the affected service area to determine program requirements, participant demographics, and service delivery needs.

   b. The SA shall prepare the AFA document which includes:

      i. Service area description (counties/regions to be served)
      ii. Funding amount and Federal CFDA number (XX.XXX)
      iii. Project period dates
      iv. Performance objectives and expected activities
      v. Submission requirements and required documentation
      vi. Evaluation criteria and selection process
      vii. Key dates including release date and application deadline

   c. The AFA shall be published through the WV OASIS Vendor Self Service (VSS) Portal and shall remain open for a minimum of 30 calendar days to allow adequate time for prospective applicants to prepare proposals.

   d. The SA shall provide technical assistance to prospective applicants upon request via email to wicinvoices@wv.gov, ensuring all inquiries are documented and responses are provided in a timely manner.

2. Application Submission

   a. All proposals must be submitted electronically through the WV OASIS VSS Portal by the published deadline. Late submissions will not be accepted unless extenuating circumstances are approved in writing by the Operations Division Director.

b. Applicants shall also submit copies of all required grant documents to wicinvoices@wv.gov to ensure timely processing.

c. Required submission documents will be defined within the AFA

3. Application Review and Evaluation

   a. The SA shall convene a review committee.

   b. The review committee shall evaluate all complete and timely applications using the criteria specified in the AFA, which shall include but not be limited to:

      i. Organizational capacity and administrative support capability
      ii. Financial stability and fiscal management systems
      iii. Staffing plan and qualifications (including CPA coverage)
      iv. Service delivery plan and accessibility strategy
      v. Budget appropriateness and cost-effectiveness
      vi. Past performance history (if applicable)
      vii. Ability to meet performance objectives and metrics

   c. Each application shall be scored independently by review committee members, and scores shall be compiled and averaged to determine final rankings.

   d. The review committee shall document the evaluation process, including individual scores, comments, and final rankings, maintaining records in accordance with 2 CFR 200.334.

4. Award Decision and Notification

   a. The SA shall review the review committee's recommendations and make final award determinations based on:
      i. Application scores and rankings
      ii. Organizational capacity to serve the designated area
      iii. Ability to meet WV WIC Program standards
      iv. Funding availability

   b. All applicants shall be notified in writing of award decisions within 30 days of the application deadline closing.

   c. Successful applicants shall receive a preliminary award notice that includes:

      i. Award amount
      ii. Service area assignment

iii. Project period dates
iv. Next steps for grant agreement execution

d. Unsuccessful applicants shall receive notification including feedback on their application and information about future funding opportunities.

5. Grant Agreement Execution and Fund Release

a. Following award notification, the successful applicant shall work with DH Grants Management to finalize the grant agreement, including:

i. Review and approval of all grant exhibits
ii. Completion of any missing or corrected documentation
iii. Execution of required certifications and assurances

b. The grant agreement shall be submitted to DH Grants Management (DHHRGrants@wv.gov) for processing and shall include all required signatures from both the Grantee and the SA.

c. Once fully executed, a counter-signed copy of the grant agreement shall be provided to the Grantee via email.

d. Funds shall not be released until the grant agreement is fully executed. The first payment/reimbursement shall be processed according to the payment schedule outlined in Exhibit D of the grant agreement:

i. Local health department grantees: Quarterly payment schedule (25% per quarter)
ii. Non-profit organization grantees: Monthly payment schedule (8.33% per month)

e. The LA may submit invoices and begin service delivery on the project period start date specified in the grant agreement, provided the agreement has been fully executed.

B. Agreement with the Local Agency

1. The SA will enter into a signed written agreement with each LA, including subdivisions of the SA, which sets forth the LA's responsibilities for Program operations as prescribed in this part. Copies of the agreement will be kept on file at both the State and Local Agencies.

2. Neither the SA nor the LA has an obligation to renew the Agreement.

a. The expiration of an agreement is not subject to appeal.

b. The SA will provide the LA with advance written notice of the expiration of an agreement **(see Policy 1.17, Fair Hearing Policy for Local Agencies)**.

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C. Provisions of Agreement

1. The agreement between the SA and each LA will ensure that the LA:

   a. Complies with all the fiscal and operational requirements prescribed by the SA;

   b. Provides on a timely basis to the SA all required information regarding fiscal and Program administration, including programmatic reporting on performance measures **(see Policy 1.29; Quality Improvement Local Agency Responsibilities);**

   c. Has a Competent Professional Authority (CPA) on the staff of the LA and the capabilities necessary to perform the certification procedures;

   d. Makes available appropriate health services to participants and informs applicants of the available health services;

   e. Prohibits smoking in the space used to carry out the WIC Program during the time any aspect of WIC services are performed;

   f. Has a plan for continued efforts to make health services available to participants at the clinic or through written agreements with health care providers when health services are provided through referral;

   g. Provides nutrition education services, including breastfeeding promotion and support, to participants in compliance with policies set forth by the SA;

   h. Implements a food delivery system prescribed by the SA and approved by USDA Food and Nutrition Service (FNS);

   i. Provides access to fresh, unprepared, locally grown fruits and vegetables to eligible WIC recipients to implement the WIC Farmers Market Nutrition Program (FMNP). The LA will expand awareness and use of local farmers markets. The LA will partner with farmers and farmers markets to maximize redemption of FMNP benefits from June 1 through October 31 each year;

   j. Maintains complete, accurate documentation and current accounting of all Program funds received and expended;

   k. Maintains on file and has available for review, audit, and evaluation all criteria used for certification, including information on the area served, income standards used, and specific criteria used to determine nutritional risk; and

I. Does not discriminate against persons on the grounds of race, color, national origin, age, sex or handicap; and compiles data, maintains records and submits reports as required to permit effective enforcement of the nondiscrimination laws.

D. Local Agency Staffing Standards

1. The LA will assure adequate staff are available to provide Program benefits to participants in the most effective and efficient manner including, but not limited to the functions of nutrition education, certification, monitoring, fiscal reporting and food delivery.
    a. The position-to-participant ratio of 1.0 Full Time Equivalency (FTE) to 290 participants is the standard for determining personnel funding to meet accessibility and utilization expectations.

2. All candidates for hire shall undergo a background check prior to starting employment. The results of an acceptable background check must be on file prior to working alone with WIC applicants or participants. Background checks revealing crimes against women or children, including offenses to the safety and well-being of vulnerable individuals will disqualify a potential employee or result in termination of employment.

3. The LA shall employ a Nutrition Director who meets the qualifications defined by the West Virginia Division of Personnel (WV DOP) to serve as the LA WIC Director or Acting WIC Director. Before hiring, the LA shall submit supporting documentation for the candidate of choice (e.g., resume, transcripts, certifications, continuing education records, etc.) to the SA for review. The SA shall evaluate the candidate against WV DOP minimum qualifications and reserves the right to deny any candidate deemed unqualified. A candidate may not be hired into this role without SA approval.

4. The LA WIC Director will, along with contractual and other required duties:

    a. Act as a designated line of communication and authority between the SA and the LA;

    b. Assure LA compliance with Program policies and procedures; and

    c. The LA's Nutrition Director or designee from the same LA will attend all Operational Quality Improvement Meetings. The travel budget for these quarterly meetings must be included within the detailed line item budget and budget justification to ensure attendance at these meetings if/when designated as in-person.

5. The LA will employ adequate CPA personnel **(**see **Policy 11.02 Competent Professional Authority)** to assure equitable distribution in all WIC clinics served by the Local Agency.

6. The LA will employ Breastfeeding Peer Counselor personnel as determined by the SA (see **Policy 5.20, West Virginia Breastfeeding Program**).

7. The LA will employ adequate clerical personnel to assure equitable distribution in all WIC clinics served by the LA.

8. If budget reductions occur, the LA should consider reducing operational costs (i.e. supplies, rent, travel, etc.) prior to eliminating personnel positions. CPA positions are a priority in providing direct services, and hence are to be the last positions designated for a reduction in force. Decision-making for a reduction in force must comply with WV Administrative Rule procedures outlined in §143-1-12.4.f1-f2.

E. Termination of Agreement

1. Authority and Grounds for Termination

    a. In accordance with 2 CFR 200.340, the grant agreement may be terminated in whole or in part under the following circumstances:

        i. By the SA if the LA fails to comply with any term or condition of the grant agreement, including failure to comply with federal and state statutes, regulations, and the terms and conditions of the award;

        ii. By the SA with the consent of the LA, in which case both parties must agree upon the termination conditions, including the effective date and, in the case of partial termination, the portion to be terminated;

        iii. By the LA upon sending the SA written notification setting forth the reasons for such termination, the effective date, and, in the case of partial termination, the portion to be terminated. However, if the SA determines that the reduced or modified portion of the grant will not accomplish the purposes for which the grant was made, the SA may terminate the grant in its entirety.

    b. Material failures that may result in unilateral termination by the SA include, but are not limited to:

        i. LA financial instability and/or insolvency;
        ii. Repeated financial or program management monitoring findings that are not resolved within a minimum of two CAPs;
        iii. Failure to comply with reporting requirements and/or performance measures of the grant Statement of Work (SOW);
        iv. Persistent failure to respond to SA communications, repeated non-attendance at required meetings, or refusal to cooperate with monitoring activities that materially impairs the SA’s oversight responsibilities;

v. Failure to maintain required staffing levels, particularly the Nutrition Director and CPA positions;
vi. Failure to maintain participant certification accuracy or program integrity;
vii. Material breach of any provision of the grant agreement or applicable policies.

2. Notification of Termination

a. In accordance with 2 CFR 200.341, the SA or LA must provide written notice of termination to the other party. Written notice of termination shall include:

i. The reasons for termination;
ii. The effective date of termination;
iii. In the case of partial termination, the portion of the grant being terminated;
iv. Instructions for closeout procedures and final reporting requirements.

b. For terminations initiated by the SA due to LA noncompliance, the SA will provide written notice at least thirty (30) days before the effective termination date.

c. The notice shall be delivered by certified mail with receipt confirmation.

d. Upon receipt of termination notice, the LA shall immediately cease incurring new obligations, except as specifically authorized in the termination notice.

3. Opportunity to Object, Hearings, and Appeals

a. In accordance with 2 CFR 200.342, upon issuance of a termination notice by the SA, the LA has the right to object and provide information challenging the termination action.

b. The LA must submit any objection in writing within fifteen (15) business days of receipt of the termination notice.

c. The objection must include:

i. Specific factual basis for the objection;
ii. Documentation supporting the LA's position;
iii. Any corrective actions already taken or proposed to address the basis for termination.

d. The SA shall comply with any requirements for hearings, appeals, or other administrative proceedings to which the LA is entitled under any statute or regulation applicable to the grant. Fair hearing procedures are outlined in **Policy 1.17 (Fair Hearing Policy for Local Agencies)**.

e. The termination may be stayed pending resolution of the objection or appeal, at the discretion of the SA, unless immediate termination is necessary to protect program integrity or participant safety.

4. Effects of Suspension and Termination

   a. In accordance with 2 CFR 200.343, no costs incurred during a suspension period or after the effective date of termination will be allowable, except:

      i. Costs specifically authorized by the suspension or termination notice; or
      ii. Costs that, in the opinion of the SA, could not reasonably have been avoided.

   b. Other enforcement actions available to the SA during suspension or upon termination include:

      i. Temporarily withholding payments pending correction of deficiencies;
      ii. Disallowing all or part of the cost of the activity or action not in compliance;
      iii. Wholly or partly suspending or terminating the grant agreement;
      iv. Withholding further awards for the program;
      v. Taking other remedies that may be legally available.

   c. Within thirty (30) days of the termination or suspension effective date, the LA shall furnish to the SA:

      i. A summary of progress achieved under the award;
      ii. An itemized accounting of charges incurred against award funds and cost sharing before the effective date;
      iii. A separate accounting and justification for any costs incurred after the effective date that the LA believes should be allowable.

5. Property Disposition Upon Termination

   a. Real Property: In accordance with 2 CFR 200.311, if real property was acquired or improved with grant funds, the LA shall request disposition instructions from the SA. The SA may require the LA to:

      i. Compensate the SA for the SA’s share of the current fair market value of the property;
      ii. Transfer title to the SA or to an eligible third party designated by the SA;

iii. Sell the property and compensate the SA for the SA's share of the proceeds.

b. Federally-Owned and Exempt Property: In accordance with 2 CFR 200.312, any property owned by the Federal government or designated as exempt property shall be returned to the SA or disposed of as directed.

c. Equipment: In accordance with 2 CFR 200.313, the LA shall request disposition instructions from the SA for all equipment acquired with grant funds. Disposition shall be as follows:

i. For equipment with a current fair market value of $10,000 or less per unit: The LA may retain, sell, or otherwise dispose of the equipment with no further obligation to the SA;

ii. For equipment with a current fair market value exceeding $10,000 per unit: The SA shall provide disposition instructions within 120 days of the termination date. The SA may instruct the LA to:

1. Transfer title to the SA or to an eligible third party designated by the SA;

2. Sell the equipment and reimburse the SA for the SA's share of the current fair market value or sale proceeds, along with copies of receipts/bills of sale;

3. Retain the equipment and compensate the SA for the SA's share of the current fair market value.

d. Supplies: In accordance with 2 CFR 200.314, upon termination, the LA may retain supplies acquired with grant funds if the residual value is $5,000 or less. For supplies with a residual inventory value exceeding $5,000, the LA shall compensate the SA for the SA's share or follow the disposition instructions provided by the SA.

e. Intangible Property: In accordance with 2 CFR 200.315, the LA shall protect intangible property (patents, copyrights, data, software) and provide the SA with access for as long as needed to fulfill Federal requirements. The LA may copyright works developed under the grant, but the SA reserves a royalty-free, non-exclusive license to reproduce, publish, or use the work.

f. Documents, Data, and Studies: All finished or unfinished documents, data, and studies prepared and maintained by the LA shall be disposed of according to the directive of the SA, Department of Health, and/or USDA in accordance with 2 CFR 200.334 record retention requirements.

6. Closeout Procedures & Post-Closeout Adjustments and Continuing Responsibilities

a. In accordance with 2 CFR 200.344-200.345, when the Federal award is terminated in part or its entirety, the SA and LA remain responsible for compliance with the requirements of Closeout and Post-closeout adjustments and continuing responsibilities.

   i. The SA will close out the grant within ninety (90) days after receipt of all required final reports and documentation from the LA.
   ii. The LA shall submit all financial, performance, and other reports required by the terms and conditions of the grant within ninety (90) days of the termination effective date, unless the SA approves an extension.
   iii. The SA shall make prompt payments to the LA for allowable reimbursable costs not covered by previous payments.
   iv. The LA must immediately refund to the SA any unobligated balance of cash advanced or overpayments identified through final reconciliation.
   v. The SA will close out the grant when it determines that all applicable administrative actions and required work have been completed by the LA.

b. Closeout of the grant does not affect:

   i. The right of the SA to disallow costs and recover funds based on a later audit or other review;
   ii. The LA's obligation to return any funds due as a result of later refunds, corrections, or other transactions;
   iii. Audit requirements (2 CFR 200.500-521 & 7 CFR 246.20) and records retention requirements (2 CFR 200.334);
   iv. Property management and disposition requirements;
   v. The SA's right to pursue any other legal remedies.

c. In accordance with 2 CFR 200.334, the LA must retain grant records for a period of three (3) years from the date of submission of the final expenditure report, or longer if:

   i. Any litigation, claim, or audit related to the grant is started before the expiration of the 3-year period, records must be retained until all issues are resolved;
   ii. The SA notifies the LA in writing that records must be retained for a longer period;
   iii. The LA is required to transfer records to the SA or its designee as directed.

d. The LA must continue to protect confidential participant information and comply with all applicable privacy and confidentiality requirements even after grant closeout.

7. Emergency Transition of Services

a. If the SA terminates a LA grant agreement, the SA will solicit an alternate, current LA or qualified organization to assume the service area on an emergency basis.

b. The outgoing LA shall cooperate fully with transition activities, including:
   i. Transfer of participant records and data in accordance with privacy requirements;
   ii. Provision of information regarding vendor relationships and contracts;
   iii. Coordination of equipment and supply transfers as directed by the SA;
   iv. Communication with participants about service continuity;
   v. Participation in transition meetings with SA and incoming Grantee.

c. The emergency transition shall minimize service disruptions to ensure continuous access to WIC benefits for participants.

d. Within 24 months following termination and emergency transition, the SA will conduct a needs assessment and issue a competitive Announcement of Funding Availability (AFA) for the service area in accordance with Procedure Section A.

8. Collection of Amounts Due

a. Any funds paid to the LA in excess of amounts to which the LA is entitled under the terms of the grant shall constitute a debt to the Federal government and the State.

b. If not paid within ninety (90) days of demand, the SA may:

   i. Make reasonable efforts to collect the debt;
   ii. Withhold amounts from future grant payments to the LA;
   iii. Refer the debt to the appropriate State or Federal collection agency;
   iv. Pursue other legal remedies available under State or Federal law.

c. Interest, penalties, and administrative costs may be assessed on overdue debts in accordance with applicable State and Federal regulations.

REFERENCES:

1. WIC Regulations 7 CFR 246.5, Selection of Local Agencies
2. WIC Regulations 7 CFR 246.6, Agreements with Local Agencies
3. WIC Regulations 7 CFR 246.20, Audits
4. 2 CFR 200.208, Specific conditions
5. 2 CFR 200.311-200.315, Property Standards: Federally owned and exempt property, Equipment, Supplies, Intangible property
6. 2 CFR 200.334, Record retention requirements
7. 2 CFR 200.340, Termination

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8. 2 CFR 200.341, Notification of termination requirement
9. 2 CFR 200.342, Opportunities to object, hearings, and appeals
10. 2 CFR 200.343, Effects of suspension and termination
11. 2 CFR 200.344, Closeout
12. 2 CFR 200.345, Post-closeout adjustments and continuing responsibilities
13. 2 CFR 200.500-200.521, Audit Requirements
14. WIC Nutrition Services Standards, Standard 2 Clinic Environment and Customer Service
15. WIC Nutrition Services Standards, Standard 3 Staff Qualifications, Roles and Responsibilities
16. Administrative Rule Of The West Virginia Division Of Personnel §143-1-12.4