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Food and Nutrition Service
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ACTION BY: Regional Directors
Supplemental Food Programs

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WIC Program—Certification: Limitations on Targeting Strategies Including Use of Applicant Age

This Instruction clarifies policy on age restrictions in the WIC Program and other issues related to benefit targeting.

Age Discrimination

In accordance with the Age Discrimination Act of 1975, no person in the United States can, on the basis of age, be excluded from participation in, be denied the benefit of, or be subjected to discrimination under, any program or activity receiving Federal financial assistance. The Act permits age distinction only if they are necessary to normal operations of the program or the achievement of the statutory or objective. WIC Program legislation established explicit age restrictions, e.g. children who have reached their fifth birthday cannot participate, and implicit ones, e.g., women beyond child-bearing age are ineligible. These restrictions, of course, are consistent with the Age Discrimination Act of 1975. The State agency cannot establish its own arbitrary age discrimination policies, such as declaring ineligible 4-year-old children, who are eligible under law. It can, however, make reasoned, justified distinctions bases on age, through subprioritization. For example, pregnant teens could be placed in a higher subpriority than older preganant women, or 2-year-old children could be placed in a higher subpriority then older children. These forms of preference based on age oare supportable because age can be viewed as an indicator or relative need for WIC benefits in certain situations. Subprioritization on this or other grounds associated with realative need helps to target program benefits. As in all subprioritization, all subpriorities within a priority must be served before service can be extended to a lower priority group.

Categorical Eligibility

A State agency may not establish more restrictive categorical eligibility criteria then those mandated by law and regulations. WIC legislation defines as categorically eligible: pregnant women, breast-feeding women (up to 1 year past termination of pregnancy), postpartum worn (up to 6 months past termination of pregnancy), infants (under 1 year old) and children under age 5. Provided that

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such persons meet income, nutritional risk, and residency criteria, they are eligible for program participation. Therefore, a State agency cannot, for example, exclude children between 4 and 5 years old or postpartum women over l8 years of age.

Some State agencies announce annual state wide categorical limitations which preclude service to eligible persons, sometimes rreflecting such policies formally in their State Plans. A State agency might, for example, inform its local agencies to restrict service to Priorities I-III during The fiscal year. Even though this procedure may not permanently deny access to categories of persons who are eligible under la w and regulations, it entails significant risks for State agencies. In a State which has restricted eligibility for the year to Priorities I-III, an eligible Priority IV pregnant woman may be denied certification by a local agency which has vacant slots. The State agency is in jeopardy if such a denied applicant appeals or initiates legal action. The Department would be unable to support the State agency in this situation. The policy under discussion so entails the possibility That a State agency may miscalculate regarding its ability to fill all available slots with high-priority participants and thus end The fiscal year with unused funds. In this situation, eligible citizens of the State are denied program benefits when funds are available to serve them. The restrictive policy carries with it (1) the responsibility for particularly close and constant monitoring of participation levels and (2) the need to be able to quickly extend program access to lower priorities in The event of a miscalculation or unanticipated funding influx. Given the inherent risks and the regulatory right of access to the program for applicants who meet eligibility requirements when slots are available, the Department does not support this procedure.

State agencies which do, nevertheless, pursue such restrictive policies should be aware that such restrictions can only be established in keeping with the participant priority system. A State agency cannot, for example, rule out older children in Priority III and admit pregnant women in Priority IV. Restrictions' can only be imposed beginning with the lowest priority level and moving upward without exempting priorities or subpriorities along the way. Finally, States which undertake restrictive policies must clearly understand the risks and possible consequences.

Waiting Lists

FNS Instruction 803-6, Rev. 1, permits States to establish policies for placement on waiting lists, provided that people who might reasonably be expected to be

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enrolled are not excluded from being placed on such waiting lists. A State's waiting list policies should not cause lower priority persons to be enrolled while higher priority persons are not even placed on waiting lists. Those policies that are based solely on category or age may inadvertently do this.

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