

May 20, 2016



## **Vendor News Flash**

### COMPLIANCE EXPOSURE ANALYSIS

In December 2015, the VMO Unit published information regarding the High Risk Vendor Analysis Project and in March 2016 the VMO Director announced that the project name would be changed to Compliance Exposure Analysis (CEA). The project team has developed a project charter and timeline, which will be published on the project website and included in this vendor news flash. The project charter provides details regarding the project purpose, description, phases, and approval requirements.

#### PHASE II UPDATE

During the stakeholder engagement process, we only received three comments and only one of the three comments provided any substantive feedback in relation to the questions VMO asked. Some strong key indicators that were identified in the comments included:

- Multiple transactions for same amount
- Number of even dollar transactions
- WIC item purchases consist of few items but large quantities
- Irregular pattern of time when transactions are processed both on daily basis and on a monthly basis

The comments received will be published on the project website and included in this vendor news flash.

## PHASE III: METHODOLOGY DEVELOPMENT AND TESTING

The project team, in developing some test methodologies, considered several of the key indicators submitted through the stakeholder engagement process. The test methodologies narrowed the list of key indicators to 4 main usable ones. These 4 key indicators were cross validated with academic literature in the field of fraud, waste, and abuse auditing. Initial testing show that the selected key indicators are statistically sound, therefore, the project team has moved forward with full testing development. This process is scheduled to take up to or through at least July 2016. The data has to be established in formula calculations and then analyzed for trends, finding the optimal cut score, anomalies, etc. Additional information will be provided as the project team progresses through phase III.

## WIC VENDOR POLICY & WIC REGULATIONS

This section will provide a brief overview of the federal regulation and the requirements placed on the State Agency (SA) to monitor high risk among its WIC vendor population. The origination of the term “high risk” is from the Code of Federal Regulation Title 7 part 246. The regulation defines **High-Risk vendor** as follows:

*A vendor identified as having a high probability of committing a vendor violation through application of the criteria established in Section 246.12(j)(3) and any additional criteria established by the State agency.*

The SA requirements for identifying high risk vendors is stated in 246.12(j)(3), and states the following:

*The state agency must identify **high-risk vendors** at least once a year using criteria developed by FNS and/or other statistically-based criteria developed by the state agency. FNS will not change its criteria more frequently than once every two years and will provide adequate advance notification of changes prior to implementation. The state agency may develop and implement additional criteria. All State agency-developed criteria must be approved by FNS.*

VMO is charged with carrying out the implementation of this requirement, and is the basis for the revamp of the methodology currently in place. VMO’s goal is to establish a new methodology that is statistically based, supported by literature in the field, and is transparent to our stakeholders. Additionally, VMO is strategically poising the requirement as a compliance analysis and moving away from the use of *High Risk* which tends to have a negative connotation, look, and

feel; therefore, the renaming of the project from High Risk Vendor Analysis to Compliance Exposure Analysis.

## WHAT SHOULD I EXPECT IN PHASE IV?

Phase IV is a stakeholder engagement opportunity, where the project team will share information pertaining to the analysis process in place as well as the recommended process change. Both internal and external stakeholders will have an opportunity to review the information provided and submit comments. The project team will frame some impact related questions that will assist with stakeholder feedback. This phase is tentatively scheduled for the August/September 2016 timeframe.

## WHO TO CONTACT

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## PHASE II: STAKEHOLDER ENGAGEMENT

The VMO unit received three comments in relation to the Compliance Exposure Analysis. The comments as received by VMO are detailed below:

### 1. Texas PWIC Association

The following e-mail was received on February 11, 2016

Paul

I have attached a file with feedback from the members of the Texas PWIC association with regards to the High Risk vendor. Thanks for the opportunity to provide input into this important matter if you have any questions feel free to contact me, thanks.

- What do you consider as indicators of fraud, waste, and abuse in the retail industry?
  - If a vendor's average selling price shows drastic increase or decrease or fluctuating at a high pace possibly indicating "rigging" or kickbacks from suppliers resulting in skewed pricing in cost containment.
  - Drastic increase or decrease in the quantity of items sold. Seeing sudden and uncharacteristic changes in cost, quantity, or price of goods during a monthly time pattern.
  - Inconsistency in State compliance monitoring policies for all businesses in the same industry. Inconsistent oversight of vendors can open the door to misconceptions, misunderstandings and manipulation of the rules by those with little oversight. The same rules and policy in place for all businesses makes clear and concise policies for all to follow.
  - Another source for indications of fraud and abuse in the industry is by talking and listening to the local WIC clinics and store customers. There are many experiences of fraud and abuse that customers have either witnessed or experienced themselves during their shopping experience that should be taken into consideration and investigated. Some examples that customers have shared:
    - Customers being forced to take store brand products over national brands even though it is not an LEB item because the profit margin is larger for the store.
    - LEB brand stickers intentionally left off low profit margin items.
    - Being told that they must take all of their food prescription at once.
  
- What do you consider as an indicator of high risk considering the industry your business is in?
  - The current high risk definition unfairly labels and targets PWIC vendors for higher scrutiny and standards than TWIC vendors.

- Because of the low reimbursement rate of the WIC cost containment system any vendor that does not have sufficient overall volume in order to buy directly from manufacturers or negotiate bulk rates with wholesalers would have difficulty operating at a profit and might be susceptible to committing fraud to keep their doors open.
- However, today's high risk definition labels honest vendors as risk for fraud and subjects them to ongoing monitoring activities that show little evidence of illicit activity. Clear guidelines should be developed by the State as to what constitutes committing intentional fraud versus paperwork errors that are common to large volume vendors. An ongoing assessment of the program fraud policy is a key enabler to convey fraud risk management expectations and also allow the industry participants to design effective preventive control, rules, and policies of their own. The State should develop high risk mitigation processes in line with industry standards.
  - Expert Developed Audit Processes: Zero tolerance audits conducted on only a small portion of vendors does not fairly establish a "pattern of abuse" (which in itself is an arbitrary term). Recently the Texas Office of the Inspector General was heavily criticized for exaggerating fraud findings in audits and investigations they conducted. New rules should be created to ensure that audits and investigations are fairly conducted using processes and guidelines that are professionally developed by industry audit experts. These should include allowances for such things as:
    - Manufacturer mislabeling of products (ex. Juice arrives with wrong labels)
    - Manufacturer/ Distributor invoice errors (ex: wrong UPC on invoice, rebranding)
    - Manufacturer/ Distributor shortage/overage allowances (for delivery mistakes deemed too insignificant to correct)
    - Reasonable percentage tolerances for errors
  - Cost Benefit Analysis of Compliance Monitoring Activities: The State should examine whether current methods of vendor monitoring have produced significant findings that justify the cost of these activities, or whether vendor training and communication are more effective.
    - More than two passes of compliance buys for minor infractions could more easily and cheaply be corrected by directly communicating expectations with the vendor than additional investigations.
    - Path off the High Risk Vendor list: The State should provide a process in which vendors that successfully pass invoice audits and compliance buys should not be perpetually considered high risk because of their PWIC category. The vendor would be subject to the same random monitoring process as other low risk vendors. Monitoring dollars could then be more focused on vendors that are have been proven to be high risk by the monitoring process.
  - Initial Vendor Training: Many times what has been labeled as fraud is actually mistakes caused by an incomplete understanding of the extensive rules of Vendor policies. It could be more cost effective to convey clear and explicit expectations about risk/fraud policies to every vendor, and ensure that those policies are applied to all vendors

equally. Some states make new WIC vendors go through a formal training class before allowing them to participate in the program. At a minimum, a new WIC vendor in Texas (particularly, a small business) should receive counseling/training from the Vendor Management & Operations Unit:

- 1. Cost containment
  - 2. Emphasis on the extensive recordkeeping necessary to "pass" an invoice audit, i.e., every single receipt/invoice for every vendor for every item sold by a WIC vendor over a one-year period.
  - 3. Include OIG staff to explain the compliance buys and the audit process to a new WIC vendor, i.e., flow of documents, investigation, timeframes, etc.
- Are there certain food products that have higher risk rating than others? If so, provide a list of those products that are WIC eligible only.
- Due to its high cost and low profit margin infant formula certainly has the highest risk of all WIC products
  - There also exists a secondary black-market in which customers obtain formula and sell it on internet sites such as Craigslist and La Chachara.

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## 2. Texas Retailers Association

Email was received on February 16, 2016

Paul,

Apologize for being late. Have been out of pocket. I have gone out to our membership several times for feedback. Below is a summary of the comments we received. We had several conversations about the process and realized we really didn't fully understand the procedure or process of how it has been accomplished over the years.

- Projected or actual sales are less than WIC payment receipt requests.
- WIC sales far exceed estimated sales submitted
- Multiple transactions for the same amount.
- Number of even dollar transactions
- WIC item purchases consist of few items but large quantities.
- Fruit or vegetable charge backs to WIC for one client is more than can be consumed by that client in short period of time.

- Irregular pattern of time when transactions are processed both on daily basis and on a monthly basis.
- Combination of vendors submitting transactions via one outlet number

Sincerely,  
Joe

Joe Williams

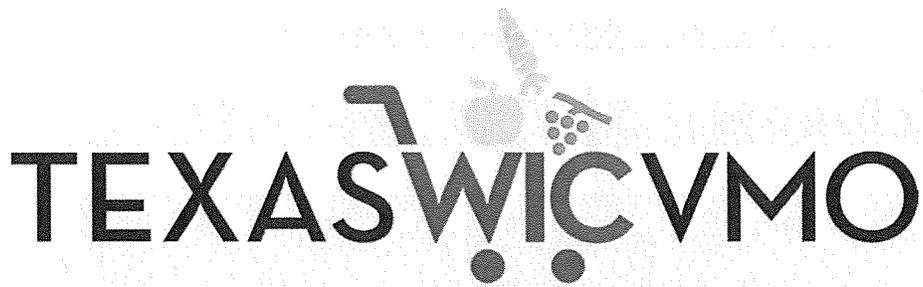
Texas Retailers Association  
O- 936-258-3414  
C-832-577-4227  
[jwilliams@txretailers.org](mailto:jwilliams@txretailers.org)

### **3. IGA Killeen**

A phone call was received on February 11, 2016, details of the call follow.

The vendor stated that he wasn't quite sure exactly what we were looking for, but that the main indicator he could think of was a large percentage of claims showing up during the first three days of the month.

John Benson  
IGA Killeen  
254-702-1262



VENDOR MANAGEMENT & OPERATIONS UNIT

## PROJECT CHARTER

<b>Project Title:</b>	WIC Vendor Compliance Exposure Analysis		
<b>Project Sponsor:</b>	Magdalena Blanco	<b>Date Prepared:</b>	January 26, 2016
<b>Project Manager:</b>	Paul Gesn	<b>Project Customer:</b>	WIC VMO

### PROJECT PURPOSE

The purpose of this project is to develop a statistically-based methodology for identifying the level of exposure of WIC vendors' compliance with WIC policies, contract, and regulations. This methodology will allow the Texas WIC program to determine which vendors pose the greatest risk of non-compliance, by leveling the evaluation criteria so all vendors are equally and fairly evaluated. Preparing this methodology provides the Texas WIC program the opportunity to present the United States Department of Agriculture (USDA) with statistically-based criteria (7 CFR 246.12 (j)(3)).

### HIGH-LEVEL PROJECT DESCRIPTION

The project involves developing a statistically-based methodology by conducting research, selecting key indicators for identifying exposure levels, developing indicator equations and testing those equations. Several iterations of the exposure analysis will be conducted and evaluated internally before it is shared with Texas WIC stakeholders. The project timeline is estimated at 12-18 months and includes 8 different phases. The project initiated in November 2015 and is scheduled to complete between November 2016 and May 2017. The variance in the completion time is dependent upon USDA approval of the statistically-based criteria.

**PROJECT APPROVAL REQUIREMENTS (ACCEPTANCE CRITERIA)**

Approval by the project sponsor will occur when the methodology is statistically supported through a completed analysis. The executive sponsor will approve the final methodology as recommended by the project sponsor. This final approved methodology will be provided to USDA for their review and approval.

**PROJECT TEAM**

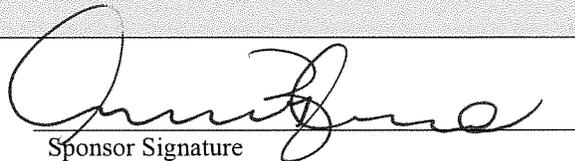
Role	Name	Organization/Agency
Project Manager	Paul Gesn	DSHS - WIC VMO
Statistical analysis support	Randy Wyrick	DSHS - WIC VMO
Program and policy technical support	Heather Claybrook	DSHS - WIC VMO
Technical support	Mark Morrow	DSHS - WIC VMO
Governmental Support	David Parmiter	HHSC – Office of Inspector General
Legal Support	Elizabeth Fitzgerald	DSHS – Office of General Counsel
Policy Support	Ellen Watkins	DSHS – WIC BSO
Project Sponsor	Magdalena Blanco	DSHS - WIC VMO
Executive Sponsor	Lindsay Rodgers	DSHS – NSS WIC

**APPROVALS**

  
 Project Manager Signature

Paul R. Gesn  
 Project Manager Name (printed)

3/23/2016  
 Date

  
 Sponsor Signature

Magdalena Blanco  
 Sponsor Name (printed)

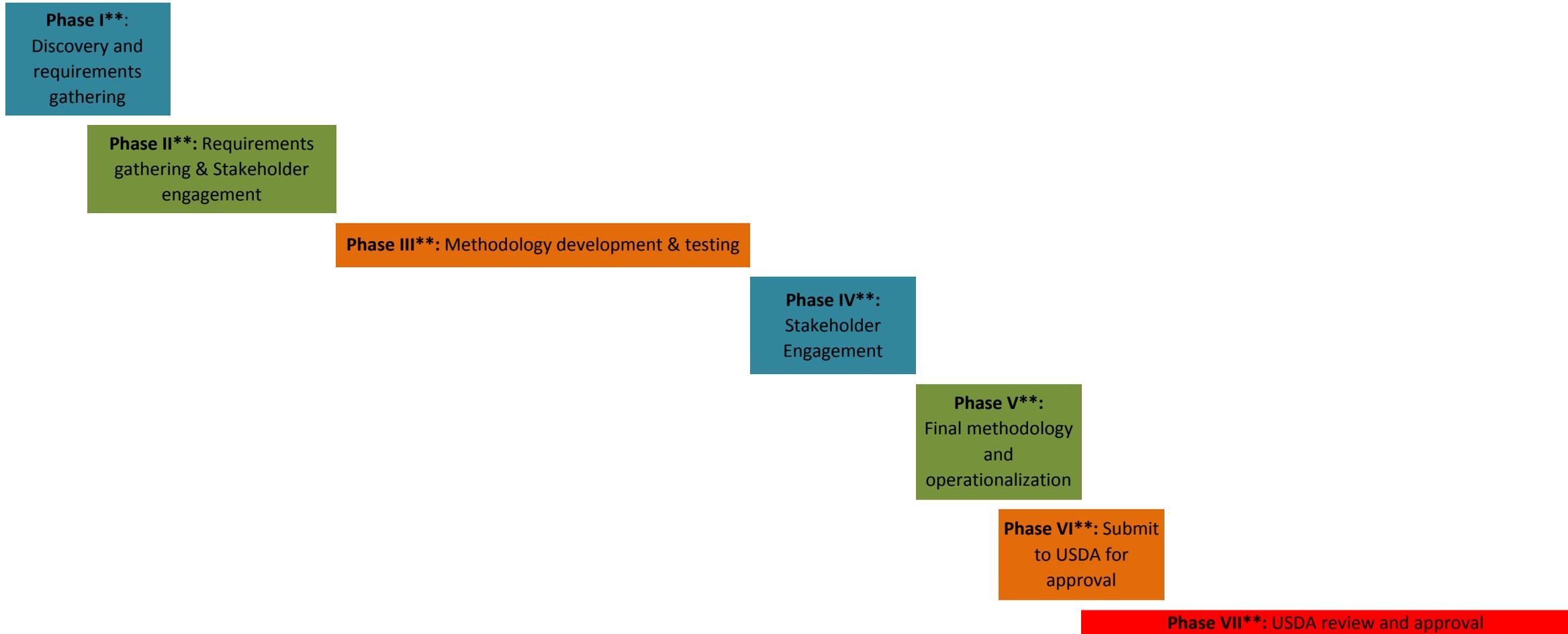
3/23/2016  
 Date



# TEXAS WIC VMO

VENDOR MANAGEMENT & OPERATIONS UNIT

Nov-15   Dec-15   Jan-16   Feb-16   Mar-16   Apr-16   May-16   Jun-16   Jul-16   Aug-16   Sep-16   Oct-16   Nov-16   Dec-16   Jan-17   Feb-17   Mar-17   Apr-17   May-17



\*\*subject to change, phase length are estimates