

Note: Retyped by NMA for clarity

**U.S. Department of Housing and Urban Development**

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**Special Attention of:**

**Interim Notice**    PIH 93-24

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Cross-References:

**Subject:** Family Self-sufficiency Program

1.     **Purpose.** This notice transmits a revised set of FSS Program Questions and Answers dated May 1993.
  
2.     **Applicability.** The documents transmitted by this notice are applicable to Section 8 certificate and voucher FSS programs, public housing FSS programs, and Indian housing FSS programs. Public housing agencies (PHAs) receiving FY 1991 FSS incentive award units, FY 1992 FSS incentive award units, or new units in FY 1993 or subsequent years must implement an FSS program.- FSS program implementation is optional for Indian housing authorities (IHAs) which did not receive FY 1991 or FY 1992 FSS incentive award units.
  
3.     **Implementation Dates.** The FSS Interim Rule is effective 30 days from its publication date. All policy changes should be implemented as soon as possible as specified in Question and Answer B-4. PHAs and IHAs with FSS program should immediately begin using the 1993 Contract of Participation for new FSS families. As soon as possible, FSS families who executed the 1991 Contract of Participation must execute the 1993 Contract of Participation and the 1991 contracts must be terminated as specified in Question and Answer G-7. (The differences between the 1991 Contract of Participation form and the 1993 Contract of Participation form are detailed in Question and Answer G-14.)

PHAs and IHAs with FSS programs should begin using the 1993 Escrow Credit Account Worksheet at the next annual reexamination or interim redetermination of income for FSS families as specified in Question and Answer C-31. (The differences between the 1991 Escrow Credit Account Worksheet and the 1993 Escrow Credit Account Worksheet are summarized in Question and Answer C-30.)

/s/ Michael B. Janis  
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## **FAMILY SELF-SUFFICIENCY (FSS) PROGRAM QUESTIONS AND ANSWERS**

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## **SECTION A - MINIMUM FSS PROGRAM SIZE, MANDATORY NATURE OF FSS PROGRAM, AND PROGRAM IMPLEMENTATION DEADLINES**

***Question-A-1:*** When does implementing an FSS program become mandatory?

**\*Answer A-1:** A PHA must implement a Section 8 FSS program if it received Fiscal Year 1991 or 1992 Section 8 FSS incentive award units. Unless exempted by HUD, a PHA must also administer a Section 8 FSS program if it receives funding for new, additional certificates or vouchers (i.e., all Section 8 funding reserved except certificate cost amendments or replacement for expiring certificate and voucher funding (renewals)) in Fiscal Year 1993, or any subsequent year. Likewise, a PHA must implement a public housing FSS program if it received Fiscal Year 1991 or 1992 public housing FSS incentive award rental units or, unless exempted by HUD, if it receives funding for new rental (not homeownership) public housing units in Fiscal Year 1993, or any subsequent year. (See Section I for Indian HA issues.)

***Question A-2:*** Does every PHA have to implement an FSS program?

**\*Answer A-2:** No. if a PHA did not receive Section 8 FSS incentive award units or receive any new Section 8 units in Fiscal Year 1993 or subsequent years, it does not have to implement a Section 8 FSS program. Likewise, if a PHA did not receive public housing FSS incentive award units or receive any new public housing units in Fiscal Year 1993 or subsequent years, it does not have to implement a public housing FSS program. In addition, HUD may exempt a PHA from implementing an FSS program even if it receives new Section 8 or public housing units in Fiscal Year 1993 or subsequent years (see Q and A A-18, and Section I for Indian HA issues).

**\*Question A-3:** How large must a PHA's Section 8 FSS program be? Does a replacement family have to be added to the FSS program once an FSS participant is no longer under a contract of participation?

**\*Answer A-3:** The minimum Section 8 FSS program size (i.e., the number of FSS family slots) equals the number of Fiscal Year 1991 and 1992 incentive award certificates and vouchers plus the cumulative number of new certificates or vouchers reserved beginning in Fiscal Year 1993. For example, a PHA receiving 50 certificates in Fiscal Year 1993 and 50 vouchers in Fiscal Year 1994 must operate a 100 family Section 8 FSS program. As the contracts of participation for these initial 100 FSS families are terminated or expire, replacement families must be selected so that there are always at least 100 families participating in FSS. The HUD field office may authorize the PHA to operate a smaller program. HUD headquarters will provide instructions on when the field office may approve a smaller FSS program. (See also Section I for Indian HA issues.)

**\*Question A-4:** Can a Section 8 FSS program consist of only certificate holders even though the PHA received Fiscal Year 1992 incentive award vouchers or Fiscal Year 1993 vouchers?

**Answer A-4:** Yes. The minimum Section 8 FSS program size may be met using only certificates, only vouchers, or any combination of the two programs.

**Question A-5:** How large must a PHA's public housing FSS program be? Does a replacement family have to be added to the FSS program once an FSS participant is no longer under a contract of participation?

**\*Answer A-5:** Unless authorized by the HUD field office in accordance with Headquarters instructions to operate a smaller program, the minimum public housing FSS program is equal to the number of Fiscal Year 1991 and 1992 incentive award public housing units plus the cumulative number of new public housing units reserved beginning in Fiscal Year 1993. For example, a PHA receiving 50 public housing units in Fiscal Year 1993 and 50 public housing units in Fiscal Year 1994 must operate a 100 family public housing FSS program. As the contracts of participation for these initial 100 FSS families are terminated or expire, replacement FSS families must be selected so that there are always at least 100 families participating in FSS. The HUD field office may authorize the PHA to operate a smaller program. HUD headquarters will provide instructions on when the field office may approve a smaller FSS program.

**\*Question A-6:** How large must a IHA's Indian housing FSS program be? Does a replacement family have to be added to the FSS program once an FSS participant is no longer under a contract of participation?

**\*Answer A-6:** Operation of an Indian Housing or a Section 8 FSS program by an Indian HA is optional. See Section I f or further information on Indian HA issues.

**\*Question A-7:** Do Section 8 units received in Fiscal Year 1993 and subsequent years to replace expiring Section 8 certificates or vouchers count towards a PHA's minimum FSS program size?

**Answer A-7:** No. Section 8 renewal units are not counted in determining the minimum Section 8 FSS program size.

**\*Question A-8:** When the ACC for a Section 8 FSS incentive award allocation or for new funding received in Fiscal Year 1993 or subsequent years expires, does the PHA's minimum FSS program size stay the same?

**Answer A-8:** Yes, since the expiring Section 8 units will be renewed by HUD.

**Question A-9:** Do families participating in Operation Bootstrap, Project Self-sufficiency, or other local self-sufficiency programs count towards meeting the FSS minimum program size?

**Answer A-9:** No, unless they transfer to the FSS program. Families actively participating (i.e., receiving supportive services) in Operation Bootstrap, PSS, or other local self-sufficiency programs who execute an FSS contract of participation are counted toward satisfying the minimum FSS program size. Such a transfer is voluntary, at the sole option of the family. See also Q and A H-2.

**\*Question A-10:** In meeting its minimum public housing FSS program size, may the PHA choose only to offer Section 8 certificates/vouchers rather than utilize public housing units for the FSS program?

**Answer A-10:** No. See also Q and A B-3.

**Question A-11:** Are elderly units excluded when determining the minimum FSS program size?

**Answer A-11:** No. See also Q and A A-12.

**\*Question A-12:** If a PHA receives additional units in Fiscal Year 1993 and subsequent fiscal years or Fiscal Year 1991 or 1992 incentive award units, does the PHA have to use those specific units in implementing its FSS program? For example, if the PHA received funding for elderly units, would elderly families have to participate in the FSS program?

**\*Answer A-12:** No. Receipt of Fiscal Year 1991 or 1992 FSS incentive award units or new funding for Section 8 or public housing in Fiscal Year 1993 or subsequent years only determines the minimum FSS program size. The PHA may fill these FSS slots with families needing different unit sizes from the sizes contained in the funding increment, and with families who live in units funded from a different funding increment. Note that the PHA/IHA will fill these FSS slots with current program participants (either Section 8 recipients or public/Indian housing residents, depending on the FSS program). See also Q and A B-3 concerning the prohibition against combining the Section 8 and public/Indian housing FSS programs.

**\*Question A-13:** Assume a PHA receives funds for 50 new construction public units in Fiscal Year 1993. Does the PHA have to wait until these units are constructed and occupied before implementing its FSS program? Must the PHA select the residents of this public housing project for the FSS program?

**\*Answer A-13:** No. The fund reservation for 50 units only means that 50 families are to be enrolled in the FSS program. There is no requirement that FSS families must live in specific units or that specific units must be designated as FSS units. FSS is not project or unit specific. However, the PHA could specify in its action plan its intent to transfer FSS participants living in other projects to a specific building or project. For example, the PHA may wish to transfer FSS participants to units in a newly constructed or modernized project.

**\*Question A-14:** Assume a PHA receives funds for 50 certificates in Fiscal Year 1993, and it will take ten months for the FSS supportive services to be in place. May the PHA issue these 50 certificates to non-FSS families?

**\*Answer A-14:** Yes. The FSS participants will be selected from current program participants.

**\*Question A-15:** What is the minimum program size for a voluntary FSS program (not associated with the receipt of new funding) or a Section 8 or Indian housing FSS program administered by an Indian HA?

**\*Answer A-15:** The size of a voluntary FSS program is the decision of the PHA/IHA.

**\*Question A-16:** May a PHA-/IHA implement a Section 8 moderate rehabilitation FSS program and count the FSS participants towards the PHA's minimum Section 8 FSS program size?

**\*Answer A-16:** No, moderate rehabilitation families may not participate in the FSS program. The FSS program is limited to the Section 8 certificate, voucher, and public/Indian housing programs.

**Question A-17:** Does a PHA/IHA need HUD approval to implement an FSS program larger than the minimum program size?

**Answer A-17:** No, but the FSS action plan needs to reflect the larger number.

**\*Question A-18:** Under what circumstances will HUD exempt a PHA from implementing an FSS program or authorize the PHA to implement a Section 8 or public housing FSS program smaller than the minimum program size? May the HUD field offices authorize exceptions?

**\*Answer A-18:** In accordance with Headquarters instructions, HUD field offices may exempt a PHA from implementing an FSS program or authorize the PHA to operate a smaller FSS program if the PHA certifies that operation of an FSS program of the minimum program size is not feasible because of local circumstances such as lack of supportive services funding, lack of funding for reasonable administrative costs, lack of cooperation by State or local government entities, and lack of family interest in participating in the FSS program. PHA requests for exemptions need to be fully justified and will be scrutinized very closely by HUD field office staff. HUD is more likely to authorize a smaller program than exempt a PHA totally. In addition, a PHA having difficulty establishing a program of the required minimum size should explore combining its FSS program with that of another PHA so both may stretch available supportive services and administrative resources.

**\*Question A-19:** Is it likely that a small PHA with primarily one bedroom public housing units occupied by elderly families (62 years or older) who are not interested in participating in the FSS program will be exempted from implementing an FSS program?

**\*Answer A-19:** Yes, provided that the PHA has conducted extensive and persuasive outreach to all the public housing residents and no one is interested in participating in the FSS program.

**\*Question A-20:** Are there deadlines for enrolling families?

**\*Answer A-20:** A PHA must begin FSS participant outreach, selection and enrollment within 12 months of HUD notification of approval of the funding that initially made implementation of the FSS program mandatory. A PHA must complete enrollment of the total required number of families and begin the delivery of services within 2 years of HUD notification of approval of the funding application. HUD field offices may extend these deadlines based on a good cause justification such as withdrawal of supportive service commitments and delayed delivery of supportive services.

## SECTION B - SELECTION OF FSS FAMILIES

**\*Question B-1:** May a PHA/IHA select both Section 8 applicants and participants for its Section 8 FSS program?

**\*Answer B-1:** No. PHAs/IHAs may only select FSS participants from families receiving Section 8 certificate or voucher assistance. The system for selecting FSS families must be described in the Section 8 administrative plan. (Also, see Q and A B-4.)

**\*Question B-2:** May a PHA/IHA select public housing applicants and public housing residents for its public housing FSS program and Indian housing applicants and Indian housing residents for its Indian housing FSS program?

**\*Answer B-2:** No. PHAs/IHAs may only select FSS participants from residents of public/Indian housing. The FSS family selection policies must be described in the FSS action plan. (Also, see Q and A B-4.)

**\*Question B-3:** May the PHA/IHA fill Section 8 FSS slots with public/Indian housing residents, and vice versa?

**\*Answer B-3:** No. Participants for each FSS program (Section 8 FSS program, public housing FSS program, and Indian housing FSS program) must come from current participants/residents of that program.

**\*Question B-4:** The September 1991 FSS Guidelines allowed PHAs/IHAs to opt to select FSS families from applicants on the waiting list and/or participants/residents. When does the PHA/IHA have to change its policies to reflect the 1992 Housing and Community Development Act provision which prohibits delaying Section 8 assistance for families that elect not to participate in the FSS program?

**\*Answer B-4:** If the PHA/IHA has not already done so, as soon as possible the PHA/IHA must cease selecting FSS families from applicants on the waiting list and submit a revised Action Plan (for public/Indian housing FSS programs) and Section 8 administrative plan to the HUD field office reflecting this policy change.

**\*Question B-5:** When selecting FSS participants, may a PHA/IHA use motivational screening or provide a selection preference for certain groups such as families enrolled in JOBS, JTPA, or other supportive service programs; families which have reached certain educational levels; single parent households; families with incomes over or under specified amounts; welfare recipients; families with earned income; and families with children?

**\*Answer B-5:** PHAs/IHAs must select FSS participants from interested, current public/Indian rental housing residents (for public/Indian housing FSS programs) or Section 8 certificate or voucher rental participants (for Section 8 FSS programs). PHAs/IHAs may target up to 50 percent of the FSS slots to residents/participants with one or more family members currently enrolled in, or on the waiting list for, one or more FSS related service programs such as Job Opportunities and Basic Skills Training (JOBS) and Job Training Partnership Act (JTPA). (An FSS related service

program means a program providing one or more of the supportive services listed in the regulatory definition of Supportive services".) The remaining (at least 50 percent) FSS slots must be filled using an objective selection system such as a lottery, the length of time the family has lived in subsidized housing, or the date the family expressed an interest in participating in the FSS program. After the PHA/IHA has tentatively selected families for the targeted service slots and the nontargeted slots, it may use motivational screening factors to determine which families will actually be selected. Acceptable motivational screening factors are those which solely measure the family's interest and motivation to participate in the FSS program. Any motivational screening tasks must be readily accomplishable by the family, based on the family members, educational levels and any disabilities. (Reasonable accommodations must be made for individuals with mobility, manual, sensory, speech impairments, mental or developmental disabilities.) Examples of motivational screening tasks which the PHA/IHA may require are attendance at FSS orientation sessions or preselection interviews, and completion of certain tasks which indicate the family's willingness to undertake the obligations which may be imposed by the FSS contract of participation like contacting job training or educational program referrals. Failure of the family to complete these tasks will result in the family not being selected to participate in the FSS program. PHAs/IHAs must not use the following motivational screening factors: educational level, educational or standardized motivational test results, previous job history or job performance, credit rating, marital status, number of children, sensory or manual skills, and discriminatory factors.

**\*Question B-6:** May a PHA maintain the same selection criteria as used in its Operation Bootstrap or Project Self-sufficiency programs?

**\*Answer B-6:** Probably not. The FSS participant selection criteria must be consistent with the FSS regulations.

**\*Question B-7:** What happens if a PHA/IHA needs to fill an FSS slot and supportive services are not available to meet the needs of the family who would otherwise be selected next to participate in the FSS program?

**\*Answer B-7:** If the PHA/IHA determines, after consulting with the family, that a missing service is key to the family's needs, the PHA/IHA should skip that family (and other similar families) and offer the FSS slot to the next family for which there are available services. If a missing service or group of services is consistently needed by applicants, the PHA/IHA should try to locate resources to deliver the missing services. In addition, the PHA/IHA does not have to meet every need of a family if certain resources are unavailable and the service is not determined key to the family's needs. For example, training in homemaking and parenting skills may be determined desirable but not essential to the family's needs.

**\*Question B-8:** Assume that a family wants to participate in the FSS program but is skipped when it normally would be selected because supportive services are unavailable. May the PHA/IHA provide a nontargeted FSS slot selection preference to that family when the missing service(s) become available?

**\*Answer B-8:** Yes, if the PHA's/IHA's written policies (Section 8 administrative plan or action plan) provide for such a policy.

**Question B-9:** May PHAs/IHAs exclude the elderly from the FSS program?

**\*Answer B-9:** No. Generally, the elderly will not be interested in participating in the FSS program and will not apply for an FSS slot. It is noted that if the FSS family consists of elderly and nonelderly family members, an elderly person does not necessarily have to be designated the head of FSS family (and required to get a job) and all adult family members do not have to receive FSS supportive services.

**Question B-10:** May PHAs/IHAS exclude the handicapped from the FSS program?

**Answer B-10:** No. PHAs/IHAs are prohibited from discriminating against otherwise qualified persons because of their disabilities. This applies to programs offered by the PHA/IHA like FSS, in connection with the provision of Federal housing assistance. The PHA/IHA is required to make a reasonable accommodation to the person's disability to allow participation in the FSS program. However, the PHA/IHA may decide that an accommodation is not reasonable if it causes undue financial and administrative burdens.

To illustrate, a person with a disability may need special transportation to use a necessary service. Neither the person nor the service provider can furnish transportation. In some instances, the PHA/IHA can provide transportation without a problem by using existing PHA/IHA vehicles and staff. Providing transportation in such a case may be a reasonable accommodation. In other cases, the PHA/IHA may not be able to provide transportation unless it buys an expensive, specially equipped van, hires a specially trained driver, and makes costly insurance payments. If this is an undue financial burden or administrative burden, the PHA/IHA may refuse to make this accommodation because it is not reasonable.

It is noted that if the FSS family consists of handicapped and nonhandicapped family members, a handicapped person does not necessarily have to be designated the head of FSS family (and required to get a job) and all adult family members do not have to obtain FSS supportive services. Further, on a case-by-case assessment of an individual's needs (not an assessment of the needs ordinarily associated with a particular disability), the PHA/IHA could skip a family if key services are unavailable. See also Q and A B-7.

**Question B-11:** If a family wants to try FSS but the PHA/IHA determines that the participant needs so much remedial education that there is little likelihood of the person becoming self-sufficient in five years, can the PHA/IHA refuse to enter a contract of participation?

**\*Answer B-11:** No. PHAs/IHAs should not deny participation in the FSS program based on an assessment that a person is not likely to become self-sufficient in five years. In addition to the goal of becoming self-sufficient of Federal, State, or local housing subsidies, other goals of the FSS program include obtaining a job for the first time or obtaining a better paying job, getting off welfare and other public assistance, and obtaining a high school diploma or higher education.

However, if the PHA/IHA determines that remedial education at the level needed is not available and that this service is key to the person's needs, then the family can be denied participation in the FSS program. See Q and A B-7.

**\*Question B-12:** How many times is the PHA/IHA expected to ask families if they are interested in participating in the FSS program?

**\*Answer B-12:** The PHA/IHA should survey Section 8 participants (or public/Indian housing residents for public/Indian housing FSS programs) to determine interest in participating in the FSS program at least once (e.g., asking new families when they are admitted to the housing program and asking old families at the next reexamination or by conducting a one-time survey). The PHA/IHA should also ask families to notify them if the families change their mind about FSS participation so this information can be updated. of course, if a PHA/IHA is experiencing difficulty in meeting it minimum FSS program size due to lack of family interest, it will want to survey families more than once using different marketing techniques.

**\*Question B-13:** When the PHA/IHA selects current Section 8 participants for the FSS program, may the non-FSS assistance previously used by those families then be given to families on the waiting list not selected for FSS?

**\*Answer B-13:** There are not FSS and non-FSS certificates and vouchers. A new certificate or voucher does not need to be issued to the Section 8 participant which enrolls in the FSS program. See Q and A A-12 and K-7.

**\*Question B-14:** May a PHA/IHA refuse to select a family for participation In the FSS program a second time if that family previously participated (e.g., the family did not meet its FSS obligations and was terminated from the FSS program)?

**Answer B-14:** Yes. If adopted, this policy should be stated in the FSS action plan or the Section 8 administrative plan.

**Question B-15:** Can a PHA/IHA select a family for participation in the FSS program who has family members already employed?

**Answer B-15:** Yes. A goal of the FSS program is to help the underemployed obtain better jobs and become free of housing subsidies.

**\*Question B-16:** May FSS participants be selected from current tenants of project-based certificate units?

**Answer B-16:** Yes.

**Question B-17:** Can families living in Turnkey III or Indian Housing's Mutual Help units participate in the FSS program?

**\*Answer B-17:** No.

**\*Question B-18:** May a PHA/IHA deny FSS participation to a family if the family owes the PHA/IHA, (or another PHA/IHA) money in connection with Section 8 or public housing assistance?

**\*Answer B-18:** Yes. If adopted, this policy should be stated in the FSS action plan or the Section 8 administrative plan.

**\*Question B-19:** The 1993 Interim Rule does not allow PHAs/IHAs to select FSS participants from the waiting list, thereby preventing PHAs/IHAs from negotiating with JOBS administrators to trade JOBS slots for assisted housing. Is there any way for PHAs/IHAs to leverage housing for supportive services?

**\*Answer B-19:** Yes. In selecting families for admission to public housing or Section 8, PHAs/IHAs may have a selection preference for families applying for, or participating in, JOBS programs or other supportive service programs which the PHA/IHA will use in its FSS program. After executing the assisted lease, these JOBS (or other FSS related service programs) families could opt to apply for the FSS program and be selected using the optional service targeted FSS slots. (The PHA may target up to 50 percent of its FSS slots to families receiving assistance who are enrolled in an FSS related service program or on the waiting list for such a program. See Q and A B-5.) Therefore, a PHA/IHA may negotiate with the JOBS administrator to trade assisted housing waiting list selection preferences for a specific number of JOBS participants (who may or may not end up in the FSS program) in exchange for a specified number of JOBS slots for FSS public/Indian housing residents or FSS Section 8 participants.

**\*Question B-20:** May a PHA/IHA provide an FSS family selection preference for residents living in a specified public/Indian housing development?

**\*Answer B-20:** A PHA/IHA may provide an FSS selection preference for families living in or willing to move to a specified project. However, the public housing lease and grievance procedures prohibit making a family move when the family completes its contract of participation or otherwise is terminated from the FSS program. See also Q and A A-13.

## SECTION C - FSS ESCROW ACCOUNTS

**Question C-1:** Where does the PHA/IHA get the funds to deposit in the FSS escrow accounts?

**Answer C-1:** In the public housing and Indian housing programs, FSS families will pay rent to the PHA/IHA in accordance with the normal procedures and the PHA/IHA will credit the applicable portion of the family's rent to the escrow account. For purposes of reporting the total monthly rent roll in the calculation of operating subsidy eligibility under PFS, a PHA/IHA will be allowed to exclude the amount credited to the escrow account. In the Section 8 programs, FSS Section 8 families will pay rent to the owners in accordance with the normal procedures and the PHA's/IHA's housing assistance payment to the owner will be calculated in accordance with the normal procedures. The PHA/IHA will use housing assistance funds paid by HUD for the FSS escrow deposits. Funding of the Section 8 FSS escrow account is illustrated below.

Assume that as of the effective date of the contract of participation for a rental certificate program participant, the total tenant payment is \$50, the contract rent to the owner is \$500, and the housing assistance payment is \$450. One year later, the total tenant payment is \$150 (the entire increase is attributable to an increase in earned income) and the contract rent remains \$500. In this case the family pays the owner \$150, the housing assistance payment is \$350 and the monthly credit to the FSS escrow is \$100. Note that the total subsidy amount is \$450 in both year 1 and year 2, and that the housing assistance payment from the PHA/IHA to the owner was decreased by an amount equal to the monthly FSS escrow credit.

**\*Question C-2:** What happens to a family's FSS escrow account if the family is terminated from the FSS program or is still receiving welfare when the contract of participation expires?

**\*Answer C-2:** The escrow funds will be used by the PHA for HUD approved expenses such as Section 8 housing assistance payments or public housing maintenance costs. In the Section 8 FSS program, the escrow account funds will be treated as additional program receipts for payment of program expenses under the PHA budget. In the public and Indian housing programs, the escrow account funds will be credited to the PHA's/IHA's operating reserves and counted as other income in the calculation of PFS operating subsidy eligibility for the next budget year.

**Question C-3:** How do you calculate the FSS escrow?

**\*Answer C-3:** During the term of the FSS contract of participation, PHAs/IHAs calculate the FSS escrow amounts for each FSS family using HUD's escrow account credit worksheet or another document which incorporates the procedures in the worksheet. The amount of the escrow account credit varies depending on the income of the family and is based on increases of earned income since the effective date of the contract of participation. For very low-income families, the amount of the monthly escrow credit is the lesser of (1) 30% of current monthly adjusted income less the family rent computed excluding earned income increases since the effective date of the contract of participation, or (2) current family rent less the family rent at the time of the effective date of the contract of participation.

For low-income but not very low-income families, the amount of the escrow credit is computed the same way but cannot exceed the amount computed for 50 percent of median income. There is no escrow credit for families who are not low-income. Question C-4: For purposes of the FSS escrow credit calculation, what is earned income?

**\*Answer C-4:** Earned income is defined as follows: the income or earnings included in annual income from (1) the full amount, before any payroll deductions, of wages and salaries, overtime pay, commissions, fees, tips and bonuses, and other compensation for personal services; (2) the net income from operation of a business or profession (see Sections 813.106 (b)(2), 913.106 (b)(2), and 905.320 \* of the regulations); and (3) all regular pay, special pay and allowances of a member of the Armed Forces (special pay to a family member serving in the Armed Forces who is exposed to hostile fire is excluded).

**\*Question C-5:** When does the FSS family receive the escrow account?

**\*Answer C-5:** The amount in the family's escrow account, less any amount owed to the PHA/IHA (e.g., for tenant damages or Section 8 vacancy loss), will be paid to the head of the FSS family when (1) the family has met its obligations under the contract of participation on or before the contract's expiration date or, whenever 30 percent of the family's monthly adjusted income equals or exceeds the existing housing Fair Market Rent for the size of the unit for which the FSS family qualifies based on the PHA's occupancy standards and the jurisdiction in which the family is living, and (2) at the time of contract completion, the head of the family certifies that no family members receive Federal or state welfare assistance. Federal or state welfare assistance includes AFDC, SSI that is subject to an income eligibility test, Medicaid, food stamps, General Assistance, or other assistance provided under a Federal or state program for general living expenses such as food, health care and child care. (Welfare assistance does not include transitional welfare assistance like Medicaid and child care for JOBS participants. Welfare assistance does not include participation in local, state or Federal housing programs where the assistance is paid to the housing owner or administering agency.) The PHA/IHA may verify the family's certification by contacting welfare agencies and requesting relevant documents. At the sole discretion of the PHA/IHA, the PHA/IHA may also advance to the FSS family a portion of the escrow account prior to completion of the contract if the PHA/IHA determines that the family has fulfilled certain interim goals, and the family needs the funds to complete the contract (e.g., to pay for school tuition or other school costs, small business start-up expenses, a car when public transportation is unavailable, or job training expenses).

**Question C-6:** What are the requirements for establishing the FSS escrow accounts? Are there required depositories and do the accounts earn interest? How is the interest on each family's escrow account calculated? How often does the PHA/IHA credit the escrow accounts and in what amounts? Does the PHA/IHA have to set up a separate escrow account for each FSS family?

**\*Answer C-6:** When the family is selected for the FSS program, the PHA/IHA will need to establish baseline income data. Depending on when the last reexamination or interim redetermination was conducted, the PHA may need to conduct a new reexamination or interim redetermination. (The PHA/IHA must conduct a reexamination or interim determination if more

than 120 days will occur between the effective date of the contract of participation and the effective date of the last reexamination or interim redetermination.) Thereafter, whenever the PHA/IHA conducts an annual reexamination or an interim redetermination of income for an FSS family during the term of the contract of participation, PHAs/IHAs must compute the monthly escrow credit using the HUD's escrow account credit worksheet (or another document which incorporates the procedures from the worksheet). If the family had one or more interim redeterminations of income in the 12 months since the last annual reexamination, then the monthly escrow amount shown on line 12 or 13 of the worksheet may change during the year. Otherwise, the monthly escrow credit will be the same for the entire period between annual reexaminations.

The PHA/IHA must deposit the FSS account funds of all FSS families into a single depository account which is deposited in one or more of the HUD approved investments listed in Handbook 7475.1 REV. This handbook can be obtained from the HUD field office. The total of the combined FSS account funds will be supported in the PHA/IHA accounting records by a subsidiary ledger showing the escrow balance applicable to each FSS family. Investment interest shall be credited periodically, but no less than annually, to each participating family's FSS account.

The investment interest for the FSS escrow funds for the period will be prorated and credited to each family's FSS account based on the balance in each account at the end of the period for which the investment interest is prorated. In cases where the family has a public housing accounts receivable balance representing one or more unpaid monthly payments or other amounts owed the PHA, or the Section 8 tenant has not paid the owner the rent or other amounts due under the lease, the balance in the family's FSS account shall be reduced by that amount prior to prorating the interest income. (This is the same basis outlined in Low-Rent Housing Accounting Handbook 7510.1, Chapter 16, Section 6, Appendix 1 and Chapter 18, Section 6, Appendix 1, for proration of investment income earned on homebuyer reserve funds held by the PHA/IHA).

**Question C-7:** Is there any escrow contribution if the FSS family's AFDC payment is increased? Are any funds deposited in the escrow account if no member of the family has become employed yet?

**Answer C-7:** No. Escrow credits are only earned based on increases in earned income.

**Question C-8:** Is the increased earned income of a family member under 18 years of age counted in the escrow calculation?

**\*Answer C-8:** No. The escrow calculation is based on increases in earned income included in the family's annual income. Annual income doesn't include the income from employment of children under the age of 18 years.

**Question C-9:** If, after execution of the FSS contract of participation, the head of household marries someone who is already employed, is the spouse's earned income counted when computing the escrow account? Likewise, what is the impact on the escrow account if an employed minor turns 18?

**\*Answer C-9:** In both cases, the earned income will be included in the FSS escrow calculations at the next reexamination or interim redetermination, regardless of whether the spouse or the 18 year old family member has an individual training and services plan. If additional earned income increases the family's total income above the very low-income limits, a lower percentage of earned income will be credited to the escrow account. If the family is no longer low-income, the escrow credits will cease.

**Question C-10:** Are escrow accounts subject to State laws governing escrow accounts?

**\*Answer-C-10:** Yes, any State escrow law for this type of escrow will be applicable unless the State law is inconsistent with the Federal statute and regulation.

**\*Question C-11:** If the rental certificate program head of household marries, household income increases, and the new Total Tenant Payment (TTP) equals or exceeds the Section 8 fair market rent, is the family entitled to the FSS escrow?

**\*Answer C-11:** Yes, provided that 30 percent of monthly adjusted income equals or exceeds the Section 8 Fair Market Rent and the family is no longer receiving any Federal or state welfare assistance (see Q and A C-5).

**Question C-12:** Assume a family does not report all income., What happens to the escrow account when the PHA/IHA collects back family rent?

**\*Answer C-12:** Committing program fraud is grounds for termination from the Section 8 programs, the public and Indian housing programs, and the FSS program. If the PHA/IHA does not wish to terminate the Section 8 subsidy or evict the family from public or Indian housing, the PHA/IHA may terminate the family from the FSS program. In any event, the PHA must not credit the family's escrow account with any portion of the back rent.

**Question C-13:** Can a PHA/IHA restrict a family's use of FSS escrow account funds withdrawn by the family?

**\*Answer C-13:** No, unless the PHA/IHA allowed the family to withdraw funds for specific purposes after the family met interim goals but prior to completion of the FSS contract of participation. (See Q and A C-5.)

**Question C-14:** If a PSS or Operation Bootstrap family converts to the FSS program, how long does the escrow accumulate and what is the base on which it is calculated?

**\*Answer C-14:** Such a family's escrow will cumulate during the term of the FSS contract of participation like all other FSS participants. The base is the family's earned income on the effective date of the FSS contract of participation. (See also Q and A G-12 and H-3.)

**\*Question C-15:** Does the family count the funds, or the interest on the funds, in the escrow account as income for purposes of income taxes before the family actually receives the escrow?

**\*Answer C-15:** No.

**\*Question C-16:** Does the family count the escrow funds as income for purposes of taxes when the family receives the escrow account funds?

**\*Answer C-16:** No.

**\*Question C-17:** Can an FSS family receive the escrow balance upon completion of the FSS program if it is still receiving SSI for a disabled family member if the SSI payments are not subject to an income eligibility test?

**\*Answer C-17:** Yes.

**\*Question C-18:** What happens if the FSS family's income has increased to an amount where they can afford unsubsidized housing, but the family wants to continue to participate in the FSS program in order to increase the escrow amount?

**\*Answer C-18:** An FSS family has successfully completed the FSS program when 30 percent of monthly adjusted income equals or exceeds the Existing Housing FMR for the applicable unit size for the area in which the family's unit is located. The family's FSS contract of participation terminates when the family's income reaches this level, even though the five year term has not expired.

**Question C-19:** If the head of the family dies and the remaining members of the family choose not to continue participating in the program and the family's contract of participation obligations have not been met, will the escrow account be forfeited?

**Answer C-19:** Yes, the escrow funds would be forfeited in such cases.

**Question C-20:** Who gets the escrow if a family with two adults split up and the PHA/IHA determines that the escrow should be paid to the FSS family?

**\*Answer C-20:** If the family member continuing to reside in the public/Indian housing unit or the family member retaining the certificate or voucher assistance is already the head of the FSS family, that family member is eligible to receive the escrow. If the family member continuing to reside in the public/Indian housing unit or the family member retaining the certificate or voucher was not designated as the head of the FSS family, that family member may now designate himself or herself to receive the escrow as authorized by the FSS regulations. (See also Q and A G4.)

**Question C-21:** Do PHAs/IHAs have to submit IRS forms 1099 on behalf of FSS families with escrow account balances?

**\*Answer C-21:** No. The IRS has advised HUD that PHAs/IHAs do not have to submit IRS forms 1099 for these families.

**Question C-22:** Will AFDC benefits decrease or be eliminated because of the family's escrow account?

**\*Answer C-22:** No. 45 CFR 233.20 (a) (3) (ii) (D) of HHS's regulations for the AFDC program states in part: "income and resources are considered available both when actually available and when the applicant or recipient has a legal interest in a liquidated sum and has the legal ability to make such sum available for support and maintenance."

**Question C-23:** How will the cost of the FSS escrows be funded for PHAs/IHAs not currently receiving public/Indian housing operating subsidies, or for PHAs/IHAs voluntarily implementing an FSS program using their existing stock of public/Indian housing?

**Answer C-23:** To the extent that a PHA/IHA is eligible for PFS because the expense level exceeds dwelling income, HUD will provide operating subsidies to PHAs/IHAs for the first time, or increase the PHA's/IHA's operating subsidies, if establishing the escrow accounts will result in a deficit.

**Question C-24:** What happens to the monthly escrow account credits if the families do not pay their rents to the PHA/IHA (public or Indian housing) or the Section 8 owner?

**\*Answer C-24:** Compliance with the applicable Section 8, public housing, or Indian housing lease is a family obligation under the contract of participation, and nonpayment of rent is grounds for terminating a family's FSS participation and forfeiture of the escrow.

The contribution to the escrow account is based on the amount of family rent actually paid by the family, not the amount of family rent charged. If the FSS participant does not pay the full family rent or other amounts due to the owner under the lease and the PHA has not terminated the family from the FSS program, the FSS escrow account balance would be reduced by the amount of any unpaid family rent or other amounts due under the lease before allocation of the interest income on funds invested. See Q and A C-6.

**\*Question C-25:** Assume the FSS family does not receive welfare assistance, but has not met its FSS obligations on or before completion of the FSS contract of participation term. Is this family eligible to receive the escrow?

**\*Answer C-25:** No, since the FSS obligations were not met.

**Question C-26:** How many escrow accounts are established for a Section 8 FSS family exercising portability?

**\*Answer C-26:** One. See Q and A J-3 for further information.

**Question C-27:** What are the accounting entries for the crediting or cashing out (giving the escrow funds to the family) the FSS escrow?

**Answer C-27:** The accounting entries are illustrated on Attachment 3. [*NMA note: attachment 3 omitted; FSS escrow accounting is covered in the Nan McKay Section 8 Financial Management Master Book, and the Public Housing Accounting Master Book*]

**\*Question C-28:** When does the family get its annual statement of the escrow balance?

**\*Answer C-28:** The PHA may opt to provide the report of the status of the escrow account to each FSS family at the reexamination date, the HAP contract anniversary date, the end of the calendar year, or any other time selected by the PHA/IHA.

**\*Question C-29:** Assume an intergenerational family is participating in the FSS program. The head of the FSS family becomes independent of welfare assistance but an adult daughter with a child continues to receive AFDC. May the head of the FSS family receive the escrow if all other contract of participation obligations are met?

**\*Answer C-29:** No. One of the conditions for receiving the escrow is that all family members must be free of Federal and state welfare assistance.

**\*Question C-30:** What are the differences between the November 1991 and the May 1993 escrow worksheets?

**\*Answer C-30:** The worksheet has been redesigned to (1) simplify the process for computing the escrow amount for very low-income families (although the 1993 worksheet uses a different approach, the escrow amount calculated for very low-income families will be identical to amount calculated using the 1991 worksheet) and (2) to reflect the more generous method for calculating the escrow amount for low-income, but not very low-income, families contained in the 1993 Interim Rule.

**\*Question C-31:** When may the PHA/IHA start using the 1993 escrow worksheet?

**\*Answer C-31:** There is no calculation of the escrow credit at the time a family is first enrolled in the FSS program. The 1993 escrow worksheet should be used at the next annual reexamination or interim redetermination of income after receipt of this Notice for families participating in the FSS program.

**\*Question C-32:** What must be in the PHA annual report to the family on the escrow?

**\*Answer C-32:** The PHA's annual report on the status of the escrow account must include the balance of the FSS account at the, beginning and end of the reporting period, the amount of the family's rent that was credited to the FSS account during the reporting period, any deductions for amounts due the PHA, and the amount of interest earned during the reporting period.

**\*Question C-33:** Assume an FSS family receives an advance payment from their escrow account prior to completion of the contract of participation so they can pay school tuition. If the family later drops out of the FSS program without meeting the contract of participation obligations, does the family owe the PHA/IHA the amount of advanced escrow funds?

**\*Answer C-33:** No, unless the advance payment was based on fraud or misinformation by the family.

**\*Question C-34:** May a PHA/IHA provide FSS families additional financial incentives (e.g., an escrow based on a different formula than the one specified in the regulations or additional monetary incentives) using public/Indian housing operating subsidies or Section 8 housing assistance payments or administrative fees?

*\*Answer C-34:* No, unless the source of funding is Section 8 operating reserves (excess administrative fees).

*\*Question C-35:* May a PHA/IHA provide families not participating in the FSS program an FSS escrow or an escrow similar to the FSS escrow?

*\*Answer C-35:* No.

## SECTION D - FSS PROGRAM FAMILY RENTS

**\*Question D-1:** During the term of the FSS contract of participation, how are the FSS families' rents calculated?

**\*Answer D-1:** Rents for FSS families are calculated the same way as they are for non-FSS families. Total tenant payments for public/Indian housing FSS families are calculated in accordance with 24 CFR Part 913 and 905. Total tenant payments and housing assistance payments for Section 8 certificate FSS participants are calculated in accordance with 24 CFR Part 812 and 882. Housing assistance payments for Section 8 voucher FSS participants are calculated in accordance with 24 CFR Part 887. As family income increases, family contributions towards rents will increase in accordance with 24 CFR Parts 813, 887, 913, and 905.

**Question D-2:** Does the PHA/IHA have to do an interim adjustment for every increase in income resulting from employment of an FSS family member?

**Answer D-2:** The PHA/IHA must follow its established local policies for conducting interim redeterminations of income for both FSS and non-FSS families. Some PHAs/IHAs do not do interims for increases of income between annual reexaminations. other PHAs/IHAs only conduct interims if income increases above a certain dollar amount, while other PHAs/IHAs conduct interim reexaminations for every dollar increase in income.

**Question D-3:** What happens if an FSS participant family does not report increases in income (earned income or unearned income)?

**Answer D-3:** See Q and A C-12.

## SECTION E - FSS ADMINISTRATIVE AND SUPPORTIVE SERVICES-COSTS

**Question E-1:** May a PHA/IRA use public/Indian housing operating subsidies to pay for FSS supportive services?

**Answer E-1:** The PHA's/IRA's operating subsidy will not be increased to cover additional supportive service costs. However, the supportive services can be considered eligible expenditures in the public/Indian housing program if they are necessary and reasonable housing related expenditures in accordance with the ACC.

**Question E-2:** May a PHA/IHA use CDBG funds to pay for FSS supportive services and administrative costs?

**Answer E-2:** Yes, provided that funding the particular FSS service or expense is consistent with the CDBG regulations.

**\*Question E-3:** May a PHA/IRA use Section 8 housing assistance payments or administrative fees to pay for FSS supportive services? Do FSS supportive services and FSS administrative expenses qualify as a "housing purpose" eligible for expenditure of a PHA's/IRA's Section 8 operating reserves (excess administrative fees)?

**\*Answer E-3:** The Section 8 FSS supportive services must be funded from sources other than current Section 8 administrative fees or housing assistance payments. However, FSS supportive services and administration could be considered "housing purposes 11 in connection with Section 8 operating reserves (excess administrative fees) if this determination is consistent with the PHA's/IHA's authorities under State, local and tribal law.

**Question E-4:** Will PHAs/IHAs receive increased administrative fees for administering a Section 8 FSS program?

**\*Answer E-4:** The law authorizing the FSS program specifies a Section 8 FSS administrative fee structure, subject to appropriations, as follows: (1) 8.2 percent of the two bedroom FMR for ongoing administrative fee, (2) \$45 hard-to-house fee and (3) \$300 preliminary fee (\$25 higher than the usual \$275 maximum). Congress did not provide appropriations approval for the \$300 preliminary fee for the Fiscal Year 1991 or 1992 Section 8 incentive award units or Fiscal Year 1993 Section 8 certificates and vouchers; therefore the \$275 maximum will continue to apply for PHAs/IHAs receiving funds for those units. It is noted that Congress directed the General Accounting Office (GAO) to conduct a study which includes a determination of the additional cost of administering an FSS program, and to recommend whether the amount of the Section 8 administrative fees should be changed. GAO issued a report in April 1992 which concluded that GAO could not determine the additional cost of operating an FSS program because there was no documentation of the costs to operate prior self-sufficiency programs, and PHAs did not have enough FSS experience to gather more than rough cost estimates during the GAO review period of October 1991 to February 1992.

**Question E-5:** Will PHAs/IHAs receive increased operating subsidies for administering a public/Indian housing FSS program?

**\*Answer E-5:** The law authorizing the FSS program requires HUD to include in PFS "reasonable and eligible administrative costs, including the costs of employing a full-time service coordinator" if Congress appropriates funds for this purpose. Congress did not provide any appropriations for FSS administrative costs for the Fiscal Year 1991 or 1992 public/Indian housing incentive award units; therefore increased operating subsidies were not provided for those units. For Fiscal Year 1993, appropriations for operating subsidy would permit the payment of up to \$25.9 million for the additional costs of operating public and Indian housing FSS programs.

**Question E-6:** Assume a PHA/IHA operates only a Section 8 FSS program. May that PHA/IHA use nondwelling space, common areas, or vacant units at a public/Indian housing project for FSS services delivery or other related activities for Section 8 FSS participants?

**\*Answer E-6:** Yes. It is noted that HUD must approve the use of vacant public housing units for such a purpose.

**Question E-7:** May the PHA/IHA use public/Indian housing operating subsidies and Section 8 administrative fees to finance the salary cost of an FSS coordinator or other FSS administration expenses?

**Answer E-7:** Yes. Shared FSS administrative costs must be prorated between the Section 8, public housing, and Indian housing FSS programs using an equitable allocation system such as percentage of time or number of FSS participants.

**Question E-8:** For purposes of justifying the maximum \$275 (or \$300 subject to appropriations) Section 8 preliminary fee for FSS incentive award units or the maximum preliminary fee for incremental (non-FSS) units, may the PHA/IHA cost justify FSS administrative expenses not related to lease-up and expenses related to FSS participants who will not live in the newly allocated units?

**Answer E-8:** Yes.

## **SECTION F - FSS ACTION PLAN AND PROGRAM COORDINATING COMMITTEE**

**Question F-1:** Are there any mandatory members of the program coordinating committee or any minimum number of members?

**\*Answer F-1:** A program coordinating committee for a Section 8 FSS program must have a PHA/IHA representative and a resident/participant representative from either the Section 8 rental certificate, rental voucher, or public/Indian housing programs. A program coordinating committee for a public housing FSS program must have a PHA representative and a public housing resident representative. A program coordinating committee for an Indian housing FSS program must have an IHA representative and an Indian housing resident representative. Note that based on these requirements, only one resident representative is required even if the program coordinating committee covers more than one FSS program. It is recommended that a representative from the chief executive's office who has direct, personal access to the chief executive officer (e.g., an administrative assistant) be included on the program coordinating committee.

**Question F-2:** May the PHA/IHA use the coordinating body established for Operation Bootstrap or JOBS, the PSS task force, the Private Industry Council, or similar entities as the FSS coordinating committee?

**\*Answer F-2:** Yes, the PHA/IHA in consultation with the chief executive officer may decide to use an existing entity as the FSS coordinating committee if the membership of that entity is drawn from one or more of the same or similar organizations as listed in the program coordinating committee section of the 1993 Interim Rule. If this existing entity does not include PHA/IHA and resident representatives, these representatives will need to be added when the existing entity functions as the FSS program coordinating committee.

**Question F-3:** What is the role of the program coordinating committee?

**Answer F-3:** The program coordinating committee will help develop the action plan and FSS program policies, help the PHA/IHA obtain supportive services funding and services commitments, and help oversee the overall implementation of the FSS program.

**Question F-4:** Who has the final decision-making authority with respect to the action plan and the membership of the program coordinating committee?

**Answer F-4:** The PHA/IHA has the final decision-making authority with respect to the action plan and the membership of the program coordinating committee.

**Question F-5:** In the case of State or regional PHAs, what would be the pertinent unit of local government (chief executive officer) for purposes of the program coordinating committee and action plan?

**Answer F-5:** The Governor is the chief executive officer for State PHAs. A regional PHA must consult with the mayor, county executive, or similar elected official of the one or more jurisdictions from which it will select most of the initial FSS participants.

**Question F-6:** What type of data should the PHA/IHA collect to estimate in the action plan the types of families expected to participate in the FSS program and their supportive service needs?

**\*Answer F-6:** The PHA/IHA should assume a cross section of the current public/Indian housing residents (for a public/Indian housing FSS program) or Section 8 certificate and voucher participants (for a Section 8 FSS program) will participate, and estimate the types and needs of families based on available information on these families and the PHA's/IHA's best estimates of the supportive service needs of these families. The PHA/IHA may delete elderly (62 years or older) families from this sample if the PHA/IHA anticipates a low participation rate by the elderly.

**Question F-7:** How many action plans need to be developed if two or more PHAs/IHAs will operate a joint FSS program or one PHA/IHA will operate both a Section 8 and public/Indian housing FSS program?

**\*Answer F-7:** Only one action plan needs to be developed in either case.

**Question F-8:** May more than one PHA/IHA share the same program coordinating committee?

**Answer F-8:** Yes. This is especially appropriate for PHAs/IHA, operating a joint FSS program.

**Question F-9:** Does the PHA/IHA have to indicate in its action plan how many units in each bedroom size will be used for the FSS program?

**\*Answer F-9:** No. In addition, the PHA's/IHA's FSS unit size distribution does not need to be identical to the unit size distribution of the PHA's/IHA's application for funding. (See Q and A A-12.)

**\*Question F-10:** The 1993 Interim Rule requires the PHA/IHA to include a description of incentives to encourage participation in the FSS action plan. Does this incentive plan have to include incentives for FSS participation in addition to the mandatory FSS escrow?

**\*Answer F-10:** No.

## **SECTION G -FSS CONTRACT OF PARTICIPATION AND FSS SUPPORTIVE SERVICES**

**Question G-1:** May the PHA/IHA require family members in addition to the head of the FSS family to become employed and maintain employment?

**Answer G-1:** No, only the head of the FSS family is obligated to seek and maintain suitable employment during the term of the contract of participation. The contract may require one or more family members to attend job training and counseling sessions, and to interview for jobs. However, the contract cannot be considered broken if the family members other than the designated head fulfill their individual training plans but never become employed or lose their jobs.

**Question G-2:** May an FSS participant attend school instead of obtaining a job?

**Answer G-2:** No, the head of the FSS family must seek and maintain a suitable job sometime during the contract. This would not preclude a PHA/IHA from approving an arrangement where an FSS participant went to school four years and obtained a job in the fifth year. Although there will be exceptions, in most cases the PHA/IHA should require FSS participants going to school part-time to work part-time or obtain concurrent job training.

**Question G-3:** Who determines whether the job obtained by the family head is suitable, and on what basis?

**\*Answer G-3:** The PHA/IHA has the ultimate responsibility for making this decision although it must be done in conjunction with the head of the FSS family, and it must be based on the person's skills, education, and the available job opportunities within the PHA's/IHA's jurisdiction. The overall objectives should include employment in more than minimum wage jobs unless there is potential for advancement. The PHA/IHA may delegate this responsibility to the FSS coordinator, the program coordinating committee or other appropriate entities.

**Question G-4:** What is the effect on the family's FSS participation if members of the family split up?

**\*Answer G-4:** If the family is residing in public housing, Indian housing, or a project-based certificate unit, the family members remaining in the unit constitute the assisted family. If the head of the FSS family leaves the assisted unit during the term of the FSS contract of participation, a new head of household will be designated and the PHA and the family will need to revise the contract of participation to designate this person as the new head of the FSS family. If the head of the FSS family left the family after the expiration of the contract of participation, the contract provides for the remaining family members to designate a family member to receive the escrow. If any family member with an individual training and services plan leaves the assisted unit during the term of the FSS contract of participation, the PHA and the family need to revise the contract of participation to delete the affected individual training and service plans, and the PHA must determine whether new or revised individual training and services plans need to be established in order for the family to continue its participation in the FSS program.

In the case of the tenant-based rental certificate and rental voucher programs, if the head of the FSS family left during the term of the contract of participation and the remaining family members continue participation in the rental certificate or rental voucher program, a new head of household will be designated and the contract of participation will need to be revised to designate this person as the new head of the FSS family. If the head of the FSS family left the family after the expiration of the contract of participation, the contract provides for the retraining family members to designate a family member to receive the escrow. If any family member with an individual training and services plan leaves the assisted family during the term of the FSS contract of participation, the PHA and the family need to revise the contract of participation to delete the affected individual training and service plans, and the PHA must determine whether new or revised individual training and services plans need to be established in order for the family to continue its participation in the FSS program.

If the initially designated head of the FSS family or any other family member with an individual training and services plan did not meet the obligations under the contract of participation, the PHA/IHA could then terminate the Section 8 assistance in accordance with the terms of the contract of participation or terminate the family's participation in the FSS program.

**Question G-5:** What latitude does the PHA/IHA have if the head of the FSS family has tried but failed to find employment?

**\*Answer G-5:** If the head of the FSS family does not seek and maintain employment as specified in the FSS contract of participation or never finds employment during the contract's five year term, the family has not met its FSS obligations and the PHA/IHA may terminate the family's participation in the FSS program and may terminate the family's Section 8 subsidies. The PHA/IHA is never required to terminate Section 8 assistance as a consequence of termination the FSS contract of participation. Instead the family may continue to receive Section 8 subsidies after termination of participation in the Section 8 FSS program. The PHA's/IHA's administrative plan should include policies for terminating Section 8 assistance to FSS families.

**\*Question G-G:** Is there an FSS contract of participation form?

**\*Answer G-6:** Yes, Form HUD-52650, dated May 1993.

**\*Question G-7:** When must PHAs/IHAs discontinue using the contract of participation dated November 1991 and begin using the contract of participation dated May 1993? If families have already executed the contract dated November 1991, should the 1991 contract be voided and a new contract executed which incorporates the training and service plans from the 1991 contract?

**\*Answer G-7:** Immediately upon receipt of this Notice, the PHA/IHA must discontinue executing the contract of participation dated November 1991\*for new FSS families and instead use the contract of participation dated May 1993. As soon as possible, families that executed the 1991 contract of participation forms must execute the 1993 contract of participation forms and the 1991 contracts must be terminated. For an FSS family who previously executed the 1991 contract: (1) the effective date of the 1993 contract of participation is the first day of the month following the date that the PHA/IHA and the family sign the 1993 contract of participation; (2) the expiration

date of the 1993 contract of participation must be the same as the expiration date of the prior contract of participation; (3) the income and rent figures entered on page two of the 1993 contract of participation will be the amounts applicable when the family entered the FSS program; and (4) the 1991 individual training and services plan information must be transferred to the 1993 contract of participation form and final and interim goals must be established. (Paragraph 19.e of the 1991 contract of participation permits the termination of the contract "by operation of law". The HCD Act of 1992 contains changes to the FSS program that make the 1991 contract form inconsistent with the law. Hence, there is legal authority to void the 1991 contract. It is noted that the 1993 contract form will have no or a negative impact on FSS families. See Q and A G-14 f" explanation of the principal differences between the two forms of the contract of participation.)

**Question G-8:** What is the definition of "seek employment" for purposes of the FSS contract of participation and what proof must the family furnish?

**Answer G-8:** Seek employment means activities such as looking for a job, applying for work, going on job interviews, and otherwise following up on employment opportunities. Verbal progress reports to the PHA/IHA or its designee of the family's activities in this area will be sufficient verification.

**Question G-9:** How long does a family need to be employed in order to meet its contract of participation requirements?

**Answer G-9:** There is no minimum employment period. See also Q and A G-2.

**\*Question G-10:** If the head of household is an elderly parent or the grandparent who does not want to be the head of the FSS family, may the head of the household for purposes of determining rent be changed?

**\*Answer G-10:** Yes.

**Question G-11:** Can an FSS family change the designated head of the FSS family during the term of the contract of participation?

**\*Answer-G-11:** Yes, the PHA/IHA may approve such a change

provided the person designated is the head of the household (the adult member of the FSS family who is the head of the household for purposes of determining income eligibility and rent).

**Question G-12:** If a family does not need five years to become self-sufficient, may the PHA/IHA and family execute a shorter contract of participation?

**\*Answer G-12:** No, because the statute requires a five year minimum term. The term of the contract of participation is always five to seven years except in the case of portability when more than one contract of participation is executed (see Q and A J-2). The PHA/IHA may set milestones for employment and other activities leading to self-sufficiency early in the five year contract term, commensurate with the family's abilities. (The family's FSS obligations may terminate before the end of the five year contract of participation term.)

**Question G-13:** What is the FSS status of a family which is delinquent in the rent but has not been evicted yet?

**Answer G-13:** See Q and A C-24 for the answer.

**\*Question-G-14:** What are the differences between the November 1991 and the May 1993 contracts of participation?

**\*Answer G-14:** The contract of participation was revised in 1993 to make the form more understandable to FSS participants and to reflect the regulatory changes contained in the 1993 Interim Rule. The principal differences between the 1991 and 1993 contracts are as follows:

- The 1991 contract required a family to be independent of public subsidies for housing (including welfare assistance) within 10 years in order to receive the escrow funds in its FSS account. The 1993 contract requires a family to be independent of Federal or state welfare assistance (but not housing assistance) in order to receive the escrow funds in its FSS account. In addition, the 1993 contract allows the PHA to pay a portion of the funds in the FSS account to the family prior to contract completion if the family has met certain interim goals and the escrow funds are needed to complete the contract of participation.
- The 1993 contract requires that the head of the FSS family is the adult member who is the head of the household for income eligibility and rent purposes.
- The 1993 contract clarifies the obligations of the head of the FSS family, family members with individual training and service plans, and all family members. Also, the 1993 contract requires all family members to be independent of welfare assistance for at least 12 consecutive months before the contract expires. Those families receiving Section 8 assistance are also required to live in the jurisdiction of the PHA/IHA that enrolled the family in the FSS program at least 12 months from the effective date of the contract. (Of course, a PHA/IHA would not enforce this portability provision for families who moved prior to executing the 1993 contract of participation.)
- The 1993 contract states that Section 8 assistance may be terminated when allowed by HUD requirements. The May 1993 FSS regulations state that noncompliance with the lease and not becoming independent of welfare assistance cannot be the sole reasons for terminating Section 8 assistance.
- The 1993 contract lists income and rent information as of the effective date of the contract of participation.
- The 1993 contract requires the PHA/IHA to provide the families with an annual report on its FSS escrow account.
- The 1993 contract adds the 1993 regulatory provision that the contract is completed when 30 percent of monthly adjusted income meets or exceeds the Existing Housing FMR.
- The individual training and services plans in the 1993 contract specify final and interim goals.
- The 1993 contract requires the contract to be interpreted and administered in conformance with HUD regulations.
- Completion instructions are provided for the 1993 contract.

**Question G-15:** If a Section 8 participant violates the contract of participation within the first 12 months of the Section 8 lease, can the PHA/IHA terminate the Section 8 HAP contract?

**\*Answer G-15:** Not meeting the FSS obligations or other Section 8 family obligations (except when the only family obligations not met are lease compliance and/or becoming independent of welfare assistance) may be grounds for the PHA/IHA to terminate the Section 8 subsidies at any time. The PHA/IHA should review the circumstances of the noncompliance to determine the appropriate remedy. Terminating participation in the FSS program and the family's ability to earn the FSS escrow may be the appropriate remedy without terminating the Section 8 subsidies. Depending on the violation, the PHA/IHA also may consider renegotiating the contract of participation with the family. See also Q and A G-5.

**Question G-16:** Which family members receive FSS supportive services? At what point is the PHA/IHA not obligated to serve family members other than the head of the FSS family?

**\*Answer G-16:** The head of the FSS family must have an individual training and services plan. It is the PHA's/IHA's decision, after consulting with the family, whether to provide supportive services to other family members. (Individual training and services plans are only completed for family members, other than the head of the FSS family, over 18 years of age if they want to participate in the FSS program and supportive services are available.)

**Question G-17:** Why is there no provision to evict public/Indian housing residents if they do not meet their FSS obligations?

**Answer G-17:-** The law only provides for a termination of Section 8 assistance if the family fails to comply with the requirements under the contract of participation.

**Question G-18:** When should the FSS contract of participation be extended beyond five years?

**\*Answer G-18:** The contract of participation may be extended up to two additional years because of circumstances beyond the family's control such as serious illness or involuntary loss of employment. PHAs/IHAs should only grant extensions in rare circumstances such as the closing of a factory or another major source of employment, or an illness not allowing completion of the training and services plan. Termination of employment because of nonperformance by the head of the family is not justification for a contract extension. Also, PHAs/IHAs may extend the contract of participation to allow families to meet the interim goal of remaining off welfare assistance for at least one year before the expiration of the contract.

## **SECTION H - OPERATION BOOTSTRAP, PROJECT SELF-SUFFICIENCY (PSS), AND OTHER SELF-SUFFICIENCY PROGRAM ISSUES**

**Question H-1:** If the PHA has an Operation Bootstrap allocation and the participating Bootstrap families convert to the FSS program, will those families count toward satisfying the minimum FSS program size?

**Answer H-1:** See Q and A A-9 for the answer.

**Question H-2:** Will PHAs with ongoing Operation Bootstrap, PSS, and other similar local self-sufficiency programs be allowed to count these units toward satisfying the minimum FSS program size if the families choose not to convert to the FSS program?

**Answer H-2:** No.

**\*Question H-3:** If an Operation Bootstrap family converting to the FSS program is at the point of becoming employed, will the family still execute a five year FSS contract of participation?

**\*Answer H-3:** Yes. A family transferring from an Operation Bootstrap, PSS or other local self-sufficiency program will enter into the five year FSS contract of participation. If the family has already received job training and other supportive services and is about to become employed, the milestones and services included in the individual training and services plan may be minimal and it is likely that the family's obligations under the contract of participation will terminate before the end of the five year term. In addition, the contract of participation must be terminated when 30 percent of monthly adjusted family income equals or exceeds the Existing Housing FMR for the area in which the family is residing. See Q and A G-12.

**\*Question H-4:** If an Operation Bootstrap or PSS family converts to the FSS program, is the FSS escrow credit based on any new increase in income after the effective date of the FSS contract of participation?

**Answer H-4:** Yes. See Q and A C-14.

**Question H-5:** How long may PHAs continue to operate Operation Bootstrap, PSS, and other local self-sufficiency programs? Should PHAs implement new Operation Bootstrap programs?

**\*Answer H-5:** Since FSS replaces Operation Bootstrap, PSS, and other local self-sufficiency programs using Section 8 or public/Indian housing resources, PHAs must not enroll any new families in these former programs and must discontinue implementation plans for new non-FSS programs. Instead, every PHA operating (or planning to implement) a Operation Bootstrap, PSS or other self-sufficiency program should begin to transition those programs to the FSS program by encouraging participants to transfer to (or be initially enrolled in) the FSS program as soon as it is established. PHAs will need to continue operating the Operation Bootstrap, PSS, and other local self-sufficiency programs until all the obligations to the participants are fulfilled or until all participants have agreed and have been transferred to FSS. (PHAs/IHAs operating statutory local self-sufficiency demonstrations may continue those programs.)

**Question H-6:** Is it permissible to continue to use the Operation Bootstrap, PSS, or other local self-sufficiency program participant selection criteria such as motivation and targeting to certain groups? Can participants using such selection criteria convert to the FSS program, bypassing the FSS participant selection requirements?

**Answer H-6:** Families that are already participants in Operation Bootstrap, PSS, or local self-sufficiency programs may be converted to FSS without regard to the criteria used for their initial selection. As indicated in Q and A H-5, additional Section 8, public housing and Indian housing families must not be enrolled in Operation Bootstrap, PSS and other local self-sufficiency programs.

**Question H-7:** If a PHA is currently operating an Operation Bootstrap, PSS or other local self-sufficiency program, what will the PHA have to do to set up a replacement FSS program?

**Answer H-7:** The PHA will need to establish a program coordinating committee if one doesn't already exist and submit an FSS action plan to the HUD field office for approval. Upon approval of the action plan the PHA may implement the FSS program using the FSS regulations and HUD FSS guidance. See also Q and A K-5.

## SECTION I - INDIAN HOUSING AUTHORITY FSS ISSUES

**\*Question I-1:** Assume an IHA did not receive Fiscal Year 1991 or 1992 FSS incentive award units. If this IHA receives additional rental Indian housing units or Section 8 certificates or vouchers in Fiscal year 1993 or subsequent years, does it have to implement an FSS program?

**\*Answer I-1:** No, the HCD Act of 1992 makes implementation of the FSS program by IHAs receiving Fiscal Year 1993 units and funding for units in subsequent fiscal years voluntary.

**\*Question I-2:** Assume an IHA received 50 Fiscal Year 1991 or 1992 FSS incentive award units. Must this IHA operate a 50 unit FSS program or is implementation of an FSS program optional?

**\*Answer I-2:** The 1993 FSS Interim Rule specifies that IHAs which received FSS incentive award units are not subject to the minimum program size requirements. The law, however, requires IHAs receiving FSS incentive award units to implement an FSS program. Therefore, unless HUD approves an exemption, an IHA which received FSS incentive award units must operate an FSS program of at least one unit. (If an IHA had a one unit FSS program, the IHA would have to continue to replace the FSS "graduates" indefinitely. See Q and A A-5.)

## SECTION J - SECTION 8 FSS PORTABILITY

**Question J-1:** If a Section 8 FSS family moves to another PHA's/IHA's jurisdiction, does the receiving PHA/IHA have to enroll the family in its FSS program?

**Answer J-1:** No. The PHA's/IHA's administrative plan may provide for an FSS participant selection preference for such portable FSS families, at the PHA's/IHA's sole option.

**Question J-2:** If a Section 8 FSS family exercises portability during the term of the contract of participation with the initial PHA/IHA, how many contracts of participation will there be?

**\*Answer J-2:** If the family remains an FSS participant in the initial PHA's/IHA's FSS program, there will only be one contract of participation (with the initial PHA/IHA). If the receiving PHA/IHA allows the family to participate in the receiving PHA's/IHA's FSS program, the receiving PHA/IHA will enter into a new contract of participation with the family for the remaining term left on the contract with the initial PHA/IHA (e.g., if the family participated in the initial PHA's/IHA's FSS program for 3 years, the receiving PHA's/IHA's contract will be for 2 years.) The initial PHA/IHA will terminate its contract of participation.

**\*Question J-3:** If a Section 8 FSS family exercises portability during the term of the contract of participation with the initial PHA/IHA, how many escrow accounts will there be? Which PHA/IHA maintains the escrow account?

**\*Answer J-3:** Regardless of whether the portable family enters the receiving PHA's/IHA's FSS program, there will only be one escrow account. The initial PHA/IHA will maintain the account until the FSS family is absorbed by the receiving PHA/IHA, at which time the initial PHA/IHA will transfer the family's FSS account to the receiving PHA/IHA. If the family is terminated from the FSS program because it did not fulfill its contract of participation obligations, the funds in the escrow will be treated as program receipts of the PHA/IHA maintaining the account (e.g., the initial PHA/IHA until the family is absorbed by the receiving PHA/IHA).

**Question J-4:** Is there a minimum amount of time that the FSS family must live in the jurisdiction of the initial PHA/IHA?

**\*Answer J-4:** Yes, an FSS family must lease an assisted unit within the jurisdiction of the initial PHA/IHA for a mini period of 12 months after the effective date of the contract of participation.

**Question J-5:** Which PHA/IHA has authority to terminate the Section 8 assistance of an FSS family which has violated the contract of participation after moving to another PHA's/IHA's jurisdiction.

**\*Answer J-5:** The PHA/IHA which is operating the FSS program is responsible for determining whether the family has violated the contract of participation and whether the family's Section 8 assistance should be terminated. In cases where the FSS family is not absorbed by the receiving PHA/IHA but is participating in the receiving PHA/IHA's FSS program, the initial PHA/IHA which is providing the Section 8 funding must abide by the termination decision of the receiving PHA/IHA operating the FSS program.

**Question J-6:** Will the initial PHA/IHA be responsible for tracking the FSS status of families who move to another PHA's/IHA's jurisdiction?

**Answer J-6:** The PHA/IHA which is party to the FSS contract of participation will be responsible for monitoring the family's FSS status, e.g., the initial PHA/IHA if the family remains in the initial PHA's/IHA's FSS program or the receiving PHA/IHA if the family becomes a participant in the receiving PHA's/IHA's FSS program.

**\*Question J-7:** May a PHA/IHA specify in its Action Plan that FSS participants will be ineligible to exercise portability with their Section 8 certificates and vouchers after the first year of participation in the FSS program?

**Answer J-7:** No.

**Question J-8:** If a PHA-/IHA decides to terminate a family's FSS contract of participation because the family moved to a new location and was unable to fulfill its FSS obligations after the move, can the Section 8 assistance also be terminated?

**\*Answer J-8:** FSS families should not be penalized in exercising their right to portability, and generally the family's Section 8 assistance should not be terminated, solely because they cannot participate in the FSS program in their new location. However, if a family is subject to termination in the FSS program because of failure to meet a contract of participation obligation, the family should not be allowed to use a portability move to avoid the consequences of such failure; in this instance, the PHA/IHA may exercise its authority to terminate the family's Section 8 assistance.

**Question J-9:** Is it possible for an FSS family to move to a new location and continue in the initial PHA's/IHA's FSS program?

**Answer J-9:** Yes. It is possible for the FSS family to move and continue to fulfill its FSS obligations. For example, the family may be within commuting distance of the initial PHA's/IHA's supportive services after the move, or the family may have moved to enroll in a community college or obtain a job in the new location, as specified in the contract of participation with the initial PHA/IHA.

## SECTION K - MISCELLANEOUS FSS ISSUES

**Question K-1:** How will HUD determine if a PHA's/IHA's FSS program has succeeded?

**\*Answer K-1:** HUD will measure the successes of the FSS program in multiple ways, including one or more family members obtaining a job for the first time or obtaining better paying jobs, families getting off welfare, family members obtaining a high school or higher education, families whose income increases to a level where 30 percent of monthly adjusted income equals or exceeds the applicable Existing Housing FMR, and families becoming independent of housing subsidies.

**Question K-2:** Will HUD provide a form for the annual FSS report?

**Answer K-2:** Yes. This reporting form will be distributed to PHAs/IHAs after it is finalized.

**Question K-3:** Will Section 8 PHAs/IHAs have to amend their administrative plans in addition to submitting an FSS action plan?

**\*Answer K-3:** Yes. At a minimum, the Section 8 administrative plan will need to be revised to include local policies with respect to the following: (1) a description of how current Section 8 participants will be selected to participate in FSS (see Q and A B-1 and B-8); (2) actions to be taken if an FSS participant underreports income and assets (see Q and A C-12); (3) policies for terminating or withholding Section 8 assistance, or terminating or withholding of FSS supportive services, for violation of FSS obligations (see Q and A G-5); (4) policies for denying FSS participation to families owing PHAs/IHAs money (see Q and A - B-18) or families previously terminated from the FSS program (see Q and A B-14); and (5) if applicable, provision of an FSS participant selection preference for FSS families exercising portability (see Q and A J-1).

**Question K-4:** Should the HUD field office staff delay ACC execution until the action plan is approved?

**Answer K-4:** No, the ACC can be executed in advance of HUD approval of the action plan.

**Question K-5:** Assume a PHA/IHA wants to operate a Section 8, public housing or Indian housing FSS program larger than the minimum required size. Does the PHA/IHA need HUD authorization, do the same FSS requirements apply, and may an FSS escrow be established for each family?

**Answer K-5:** Every PHA/IHA implementing an FSS program must follow the FSS regulations and other HUD requirements, without regard to whether PHA/IHA program is larger than the required minimum. Approval of the action plan is the PHA's/IHA's authorization to implement an FSS program larger than the minimum required size which includes establishing an FSS escrow account for all participating families.

**\*Question K-6:** Does a State or multi jurisdictional Section 8 PHA have to initially implement the FSS program in every jurisdiction?

**\*Answer K-6:** No, not initially as long as the PHA can meet its minimum FSS program size. Over some reasonable period of time the State or regional PHA should implement the FSS program in areas where the majority of the Section 8 certificate and voucher participants live.

**Question K-7:** If a Section 8 family drops out of the FSS program and the PHA/IHA decides to allow the family to continue to receive Section 8 assistance, does the PHA/IHA have to issue the family a new non-FSS certificate or voucher? What happens when the family's five year contract of participation expires?

**\*Answer K-7:** In both cases described above the family would retain its current certificate or voucher and will be reclassified as a non-FSS family. Once the replacement family is selected for the FSS program, and during the term of the family's contract of participation, the new FSS family will be classified as a participant in the FSS program and will count towards the minimum FSS program size.

**Question K-8:** Does HUD need to revise the Section 8 certificate housing assistance payments contract and the voucher contract to permit PHAs/IHAs to terminate assistance because of family failure to comply with it's FSS obligations?

**Answer K-8:** No. The current contracts allow the PHA/IHA to terminate assistance because of family breach of an agreement with the PHA/IHA.

**Question K-9:** Do Section 8 owners need to be notified that their tenants have been selected to participate in the FSS program?

**Answer K-9:** No.

**Question K-10:** What are the FSS family's appeal rights if the PHA/IHA decides to terminate FSS supportive services or Section 8 assistance because the family failed to comply with its FSS contract?

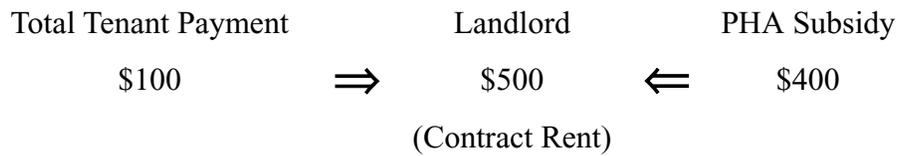
**Answer K-10:** Section 8 FSS families are entitled to request an informal hearing in accordance with the Section 8 regulations. Public/Indian housing FSS families are entitled to present a grievance in accordance with the public/Indian housing grievance procedures.

**FAMILY SELF-SUFFICIENCY**

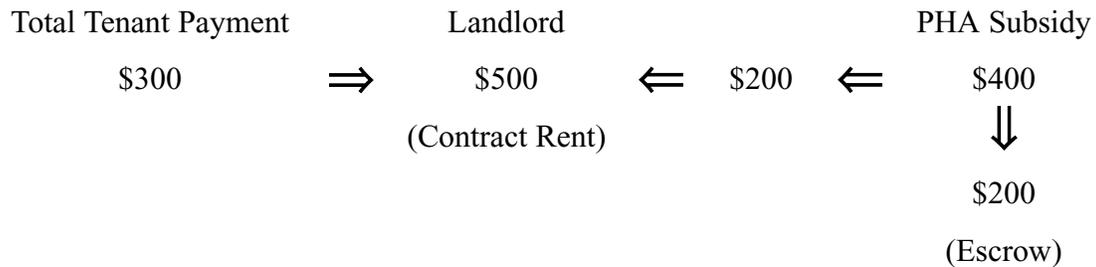
Illustration of Escrow “Cash Flow”

For a Section 8 Family

**INITIAL SITUATION: (No employment income)**



**TWO YEARS LATER: (Employment income increases TTP to \$300)**



***NMA Note***

**Attachment 2, *Calculating the FSS Escrow Credit***, and the escrow worksheets have been omitted because they are obsolete. See *Escrow Accounts* for updated worksheets and examples.

**Accounting Entries for the FSS Escrow**

**A. SECTION 8 FSS ESCROWS**

<u>Situation</u>	<u>Non-FSS</u>	<u>FSS Family</u>
Contract Rent	\$400	\$400
Less: Total Tenant Payment	300	320
PHA/IHA HAP to Owner	\$100	\$80
FSS Escrow Amount	0	20
HUD Housing Assistance Paymt	<u>\$100</u>	<u>\$100</u>

1. Section 8 Charts of Accounts<sup>1</sup>

The following chart of accounts should be established to record Section 8 FSS escrow transactions.

- 1165 Investments - FSS Escrow - Section 8 Rental Certificates
- 1166 Investments - FSS Escrow - Section 8 Rental Vouchers
- 2181 FSS Escrow, Section 8 Rental Certificates
- 2182 FSS Escrow, Section 8 Rental Vouchers
- 4718 Housing Assistance Payment, FSS Escrow, Section 8 Rental Certificates
- 4719 Housing Assistance Payment, FSS Escrow, Section 8 Rental Vouchers

2. Monthly Entry for Section 8 FSS Escrow Credits for FSS Family Example above.

a. Monthly HAP entry

General Ledger

Debit:	Account 4000, Expense Control	\$100	
Credit:	Account 111.1, Cash		\$80
Credit:	Account 2181 or 2182, FSS Escrow, Section 8 Certs or Vouchers		\$20

Subsidiary Ledger

Debit:	Account 4715, Housing Assistance Payments	\$80	
Debit:	Account 4718 or 4719, HAP, FSS Escrow, Dec. 8 Certs or Vouchers	\$20	
Credit:	FSS ledger account for family		\$20

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1. **NMA Note:** Accounts have changed since this notice was issued. See Nan McKay Section 8 Financial Management Master Book for current information on accounting for Section 8 FSS escrows.

b. Investment of escrow funds

General Ledger

Debit:	Account 1165 or 1166, Investments - FSS Escrow - Section 8 Certs or Vouchers	\$20	
Credit:	Account 1111.1, Cash		\$20

Subsidiary Ledger

Debit:	FSS Escrow Investments Register	\$20	
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3. Interest Earned on Section 8 FSS Escrow Investments. Interest earned on FSS invested escrow funds is credited to the individual FSS family account at least annually in the same proportion as (a) the amount invested for the individual family at the time of interest allocation is to (b) the total FSS funds invested.

General Ledger: Interest Earned

Debit:	Account 1165 or 1166, Investments - FSS Escrow - Section 8 Certs or Vouchers, for amount of interest earned	\$xx	
Credit:	Account 2181 or 2182, FSS Escrow, Section 8 Certs or Vouchers, for interest earned on total FSS funds invested		\$xx

Subsidiary Ledger: Allocation of Interest

Credit:	FSS ledger account for family for family's share of interest earned on FSS funds invested		\$xx
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4. Disposition of Section 8 FSS Escrow Funds

a. FSS escrow funds given to eligible family

General Ledger

Debit:	Account 2181 or 2182, FSS Escrow, Section 8 Certs or Vouchers	\$xx	
Credit:	Account 1111.1 Cash (for amount paid to family)		\$xx

Subsidiary Ledger

Debit:	FSS ledger account for family	\$xx	
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- b. FSS escrow funds retained by PHA/IHA when family is terminated from the FSS program or forfeits FSS escrow. The escrow account funds retained by the PHA/IHA are credited to Account 40000/4718 or 4719, HAP - FSS Escrow - Section 8 Certs or Vouchers, and closed to the PHA/IHA ACC project reserve account at fiscal year end.

General Ledger

Debit:	Account 2181 or 2182, FSS Escrow, Section 8 Certs or Vouchers	\$xx	
Credit:	Account 4000, Expense Control		

Subsidiary Ledger

Debit:	FSS ledger account for family	\$xx	
Credit:	Account 4718 or 4719, HAP, FSS Escrow, Section 8 Certs or Vouchers		\$xx

- c. Transfer of FSS escrow funds from investment account.

General Ledger

Debit:	Account 111.1, Cash	\$xx	
Credit:	Account 1165 or 1166, Investments - FSS Escrow - Section 8 Certs or Vouchers		\$xx

Subsidiary Ledger

Credit:	FSS Escrow Investments Register		\$xx
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B. PUBLIC AND INDIAN HOUSING FSS ESCROWS<sup>1</sup>

1. Monthly Charge to Public/Indian Housing Tenant. Assume a total tenant payment of \$100 of which \$20 is to be set aside in the FSS Escrow Account:

General Ledger

Debit:	Account 1122, Tenants Accounts Receivable	\$100	
Credit:	Account 3000, Operating Income		\$80
Credit:	Account 2180, FSS Escrow		\$20

Subsidiary Ledger

Credit:	Account 310, Dwelling Income		\$80
Credit:	FSS ledger account for family		\$20

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1. **NMA Note:** Accounts have changed since this notice was issued. See Nan McKay Public Housing Accounting Master Book for current information on accounting for Public Housing FSS escrows

2. Interest earned on Public/Indian Housing FSS Investments. Interest earned on FSS invested escrow funds is credited to the individual FSS family account at least annually in the same proportion as (a) the amount invested for the individual family at the time of interest allocation is to (b) the total FSS funds invested.

General Ledger: Interest Earned

Debit:	Investment account for amount of interest earned	\$xx	
Credit:	Account 2180, FSS Escrow, for interest earned on total FSS funds invested		\$xx

Subsidiary Ledger: Allocation of Interest

Credit:	FSS ledger account for family for family's share of interest earned on FSS funds invested		\$xx
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3. Disposition of Public/Indian Housing FSS Escrow Funds

- a. FSS escrow funds given to eligible family.

General Ledger

Debit:	Account 2180, FSS Escrow	\$xx	
Credit:	Cash (for amount paid to family)		\$xx

Subsidiary Ledger

Debit:	FSS ledger account for family	\$xx	
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- b. FSS escrow funds retained by PHA/IHA when family is terminated from the FSS program or forfeits its FSS escrow. The escrow account funds retained by the PHA/IHA are credited to Account 3000/3690, Other Income, closed to the PHA/IHA project reserve at fiscal year end, and counted as "other income" in the calculation of PFS operating subsidy eligibility for the next budget year.

General Ledger

Debit:	Account 2180, FSS Escrow	\$xx	
Credit:	Account 3000, Operating Income		\$xx

Subsidiary Ledger

Debit:	FSS ledger account for family	\$xx	
Credit:	Account 3690, Other Income		\$xx

### **Sample FSS Program Individual Training and Services Plan**

Thelma Green, a public housing resident living in Washington, DC, is the head of a family consisting of herself and her 3 year old daughter Suzanne Green. At the time of Thelma's enrollment in the FSS program, the family was receiving Aid to families with Dependent Children (AFDC). Thelma and the PHA signed the FSS Contract of Participation on December 15, 1993, so the contract has an effective date of January 1, 1994 and an expiration date of December 31, 1998. Prior to execution of the FSS Contract of Participation, Thelma completed a career assessment interview and test through the local public school system's counseling office. The attached training plan was developed in conjunction with that career assessment interview and testing. Her plan includes the interim goals of completion of her General Equivalency Diploma (GED), completion of emergency medical technical (EMT) certification as well as the mandatory interim goal of becoming independent of welfare assistance for at least twelve consecutive months before the end of the contract. Her final goal is to obtain and maintain employment as an EMT. The FSS coordinator was able to locate child care for Suzanne Green in a Federally funded day care center where payment is on a sliding fee scale. However, throughout the training period and first year of employment, the cost of Suzanne's day care will be fully covered by a Federally funded grant. The local transportation authority has agreed to provide a transit pass for Thelma and other FSS program participants during their training periods, which in Thelma's case is through completion of the EMT certification.

# Family Self-Sufficiency Program Individual Training and Services Plan

Name of Participant: Thelma Green (Head of family)

Social Security #: 123-45-6789

**FINAL GOAL/S:** Obtain and maintain full-time employment as an Emergency Medical Technician (EMT)

Signatures:

Family

Housing Agency

Thelma Green

Alice Brown

Participant

HA Representative

12-15-93

12/15/93

Date

Date

Interim Goal # 1: Obtain General Equivalency Diploma (GED)

Date Accomplished: \_\_\_\_\_

<u>Activities/Services</u>	<u>Responsible Parties</u>	<u>Date/s</u>
Begin GED classes	Thelma Green/ DC public schools	1/30/94
Complete GED	Thelma Green/ DC public schools	7/31/94
Provide child care for Suzanne	Thelma Green/ ABC Day Care Center	ongoing
Provide Metro subway pass	Transit Authority	1/30/94 - 12/15/95
Personal counseling	PHA/Department of Human Resources/Thelma Green	ongoing

Comments: Transit passes to be provided through completion of EMT certification.  
Day care provided free through 1/14/97, the end of the 1st year of employment.  
Subsequent day care cost based on a sliding scale according to income.

Interim Goal # 2 : Obtain Emergency Medical Technician (EMT) Certification

Date Accomplished: \_\_\_\_\_

<u>Activities/Services</u>	<u>Responsible Parties</u>	<u>Date/s</u>
Apply for financial aid for EMT training	Thelma Green	6/1/94
Receive job readiness and interview skills training	Thelma Green/PHA	8/14/94
Begin EMT Training	Thelma Green/ DC ambulance service	9/1/94
Complete EMT Training	Thelma Green	6/30/95
Begin EMT provisional employment	Thelma Green	7/15/95
Pass EMT certification	Thelma Green	12/15/95
Provide child care for Suzanne	Thelma Green/ ABC Day Care Center	ongoing
Provide Metro subway pass	Transit Authority	1/30/94 - 12/15/95
Personal counseling	PHA/Department of Human Resources/Thelma Green	ongoing

Comments: FSS coordinator will assist in preparing application for financial aid for EMT training. See comments under interim goal #1 for information regarding child care and transportation.

**Interim Goal # 3**: Obtain full-time EMT job and become independent of welfare assistance for at least twelve consecutive months prior to December 31, 1998.

Date Accomplished: \_\_\_\_\_

<u>Activities/Services</u>	<u>Responsible Parties</u>	<u>Date/s</u>
Begin permanent EMT employment	Thelma Green	1/15/96
Become independent of welfare assistance	Thelma Green	1/14/97
Provide uniforms	Springer Uniform Company	7/10/95
Provide child care for Suzanne	Thelma Green/ ABC Day Care Center	ongoing
Provide Metro subway pass	Transit Authority	1/30/94 - 12/15/95
Personal counseling	PHA/Department of Human Resources/Thelma Green	ongoing

Comments: Springer Uniform Company will provide two uniforms at no cost. See comments under interim goal #1 for information regarding child care and transportation.



THE SECRETARY OF HEALTH AND HUMAN SERVICES  
WASHINGTON, D.C. 20201

APR 27 1982

The Honorable Jack Kemp  
Secretary of Housing and Urban Development  
Washington, DC 20590

Dear Jack:

This letter is in response to your request that I issue guidance to appropriate State officials clarifying how escrow accounts established under your Family Self-Sufficiency (FSS) program would affect benefits under the Aid to Families with Dependent Children (AFDC) and Medicaid programs.

Your letter explains that certain AFDC and Medicaid recipient families participating in FSS would be required to have a portion of any rent increase resulting from increased earnings placed in an escrow account. These funds and the interest earned thereon could be withdrawn "only after the family is no longer a recipient of any Federal, State, or other public assistance for housing." You are concerned that AFDC and Medicaid agencies would consider these escrow accounts as countable assets. You indicated that a policy clarification on the appropriate treatment of these escrow accounts would help prevent confusion and delays at the local level as AFDC and Medicaid families enter the FSS program later this year.

We would be pleased to provide whatever assistance is needed in this matter. In the spirit of our Memorandum of Understanding, we are issuing written clarification to both State welfare and Medicaid agencies advising that the money in a FSS family's escrow account would not be considered to be available income or resources under AFDC and Medicaid regulations so long as the family lacks the legal ability to use the money for its support and maintenance.

We hope this assistance is helpful to you in expediting the implementation of this very important program. If we can further assist you, please let us know. You may refer any specific questions concerning AFDC to Jo Anne B. Barnhart, Assistant Secretary for Children and Families at (202) 401-9200 and any Medicaid questions to Christine Nye, Director of the Medicaid Bureau, Health Care Financing Administration at (410) 966-3870.

Sincerely,

Louis W. Sullivan, M.D.

5/93

# Aid To Families with Dependent Children (AFDC) Information Memorandum

U.S. Department of  
Health and Human Services  
Administration for Children & Families  
Office of Family Assistance  
Washington, D.C. 20447

No. ACF-IM-92-5

Date May 13, 1992

TO: STATE AGENCIES ADMINISTERING APPROVED PUBLIC ASSISTANCE PROGRAMS AND OTHER INTERESTED PARTIES AND ORGANIZATIONS

SUBJECT: Treatment of Escrow Accounts Under the Family Self-Sufficiency (FSS) Program Administered by the Department of Housing and Urban Development (HUD)

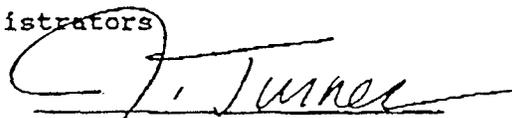
RELATED REFERENCE: 45 CFR 233.20(a)(3)(ii)(D)

CONTENT: This Information Memorandum is to advise that HUD has established a Family Self-Sufficiency Program to provide supportive services, to enable participating families to achieve economic independence and self-sufficiency. Under this program, certain families living in public housing, or receiving section 8 assistance, and participating in the FSS program, would have a portion of any rent increase resulting from increased earnings credited to an escrow account. For example, a FSS participant who is employed and whose wages increased would also pay more rent to the housing authority pursuant to a HUD formula. The aggregate amount of the increased rent would then be transferred to an escrow account. These escrow funds can not be paid to the family as long as it is receiving any Federal, State, or other public assistance for housing.

Pursuant to 45 CFR 233.20(a)(3)(ii)(D), "... income and resources are considered available both when actually available and when the applicant or recipient has a legal interest in a liquidated sum and has the legal ability to make such sum available for support and maintenance." Therefore, the money in a FSS family's escrow account would not be considered available income or resources under the AFDC program or the Adult Assistance Programs in Guam, Puerto Rico and the Virgin Islands so long as the family lacks the legal ability to use the money for its support and maintenance.

EFFECTIVE DATE: Upon issuance

INQUIRIES TO: ACF Regional Administrators

  
Jason Turner  
Director  
Office of Family Assistance

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OFFICE OF  
CHIEF COUNSEL

DEPARTMENT OF THE TREASURY  
INTERNAL REVENUE SERVICE  
WASHINGTON, D.C. 20224

Attachment 6  
(Q and A C-15, C-16  
and C-21)

MAY 8 1992

The Honorable Jack Kemp  
Secretary of Housing and Urban Development  
U.S. Department of Housing  
and Urban Development  
Washington, D.C. 20410-0001

Dear Secretary Kemp:

This is in response to your December 31, 1991, letter requesting an opinion on the possible tax consequences of the Family Self-Sufficiency (FSS) program.

Specifically, you have inquired whether interest earned on escrow accounts established as part of the FSS program has a tax consequence either to the public housing agencies (PHAs) and Indian housing authorities (IHAs) or to the families that participate in the program. You also ask whether any Forms 1099 will be required.

I. Summary of the facts.

The FSS program was created by section 554 of the National Affordable Housing Act (the Act), which amended title I of the United States Housing Act of 1937 (42 U.S.C. section 1437 et seq.) by adding a new section 23. The stated purpose of the FSS program "is to promote the development of local strategies to coordinate the use of public housing and assistance under the certificate and voucher programs under section 8 with public and private resources, to enable eligible families to achieve economic independence and self-sufficiency."

Under the FSS program, residents of public housing (including section 8 housing) or applicants on public housing waiting lists with certain qualifying income levels may opt to join the program. These participating families enter into a contract with the PHA/IHA that spells out the responsibilities of the family, including the conditions or causes of termination from the program. During the period of the contract (generally 5 years), the head of the participating family must seek and maintain suitable employment (as determined by the head of family's skills and education and jobs available within the jurisdiction). The Act requires the PHAs/IHAs to develop support services, such as child care, remedial education, job training

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and preparation, substance abuse treatment and counseling, homemaking and parenting skills, training in money management, and any other services necessary to assist families in satisfying the contract terms.

As an incentive for a family to enter into a contract with a PHA or an IHA, payments are made to an interest bearing, escrow account (FSS Account). The PHA/IHA will credit the FSS Account with a portion of the rent increase (rent credit) that would otherwise be paid by the family as a result of an increase in family earned income during the term of the contract. However, if the family income rises to 80 percent or more of the area median income, no additional rent credits will be made to the FSS Account. The funds held in escrow are to be invested in HUD-approved investments. Investment income is to be credited periodically, but no less than annually, to each family's FSS Account. (Although the program guidelines contemplate separate accounts for each participating family, it is our understanding that one account will be maintained on behalf of all the families with respect to each PHA/IHA. If the funds in the one account exceed \$100,000, another account will be opened to ensure that all funds receive FDIC insurance coverage.)

The FSS program generally is optional with PHAs/IHAs in fiscal years 1991 and 1992. As of October 1, 1992, however, each PHA/IHA, unless exempted by HUD, must operate an FSS program of a required size, subject to the availability under appropriations acts of budget authority for the rental voucher, rental certificate, public and Indian housing programs.

The Act does not address the funding for the FSS Accounts; however, the participating families pay the same amount for housing as is paid by non-participating families. Therefore, the transaction could be viewed as one in which the participating families pay increased rent from which a contribution is made by HUD to the escrow account.

The amount in a participating family's FSS Account in excess of any amount owed to the PHA/IHA is distributed when: (1) the PHA/IHA determines that the participating family has met its obligations under the contract of participation; and (2) the head of the family certifies that, to the best of his or her knowledge and belief, members of the participating family no longer receive any federal, state, local, or other public assistance or housing.

The amount in the FSS Account is forfeited if: (1) the family has failed to meet its obligation under the contract of participation, including failure to meet its responsibilities because the family moved outside the area of jurisdiction of the PHA/IHA; or (2) the family is no longer under a contract of

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participation and is still receiving any Federal, state, local or other public assistance for housing ten years from the commencement of the contract of participation.

The amounts forfeited by a public or Indian housing or section 8 participant will be treated as program receipts for such program, and the funds will be used in accordance with HUD requirements governing the use of program receipts.

## II. Applicable law and conclusions.

### A. Tax treatment of the FSS Accounts.

Section 641 of the Internal Revenue Code provides that the tax imposed by section 1(e) applies to the taxable income of any kind of property held in trust.

Section 1.641(a)-0(a) of the Income Tax Regulations provides that Part I of Subchapter J, which contains rules for the taxation of trusts, has no application to any organization that is not classified for tax purposes as a trust under section 301.7701-4(a) of the Regulations on Procedure and Administration.

Section 671 of the Code provides that a grantor or another person shall include in computing the taxable income and credits of the grantor or other person those items of income, deductions, and credits against tax of a trust which are attributable to that portion of the trust of which the grantor or the other person is treated as the owner. Therefore, unless an organization is classified as a trust, the grantor trust rules do not apply.

Section 301.7701-4(a) of the Regulations on Procedure and Administration provides, in part, that an arrangement will generally be treated as a trust under the Code if it can be shown that the purpose of the arrangement is to vest in trustees the responsibility for the protection and conservation of property for beneficiaries who cannot share in the discharge of this responsibility.

Funds held by the PHAs/IHAS in the FSS Accounts may be invested only in HUD-approved investments. The PHAs/IHAS are required by HUD to credit investment income periodically, but no less than annually, to each participating family's FSS Account. Escrow funds may only be disbursed by the PHAs/IHAS when participating families have completed the obligations to which they agreed in their Contracts of Participation. The duties and authority of the PHAs/IHAS to manage and administer the FSS Accounts are limited and the PHAs/IHAS do not have broad discretionary powers.

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Therefore, an escrow arrangement of the kind described in the program guidelines will not be considered a trust under section 641(a) of the Code and section 301.7701-4(a) of the regulations and the PHAs/IHAS are not required to report the interest earned in the FSS Accounts as income subject to taxation under section 641(a) of the Code. Because the FSS Accounts are not trusts, the accounts are not grantor trusts.

However, section 468B(g) of the Code states that "[n]othing in any provision of law shall be construed as providing that an escrow account, settlement fund, or similar fund is not subject to current income tax. The Secretary shall prescribe regulations providing for the taxation of any such account or fund whether as a grantor trust or otherwise." Section 468B(g) applies to funds established on or after August 16, 1986.

On February 14, 1992, the Service issued proposed regulations under section 468B(g) of the Code. These proposed regulations, however, do not address escrow accounts of a type similar to the FSS Accounts. Therefore, we cannot provide a definitive answer at this time as to whether the FSS Accounts may be subject to potential liability under section 468B(g) of the Code.

B. Income Tax Consequences of the FSS Account to the FSS Family.

Under section 61 of the Code, gross income means all income from whatever source derived including compensation for services, fringe benefits, interest, and similar items.

Welfare benefits are not included in a taxpayer's gross income. The Service first addressed the question of excluding welfare benefits in I.T. 3230, 1938-2 C.B. 136, holding that unemployment compensation was not included in the recipient's gross income. Since 1938, the Service has examined various programs to determine if payments to participants are welfare benefits. When considering whether a program's disbursements fall within the welfare benefits exclusion, four factors must be examined: (1) the source of the funds for the program; (2) the circumstances of the beneficiaries of the program; (3) whether the payments are compensation for services; and (4) the intent of Congress in establishing the program.

First, to qualify as a welfare benefit, the disbursements generally must come from a local, a state, or the federal government. Under the FSS program, HUD funds the escrow accounts, based upon increases in the participating family's earned income. Thus, the FSS program meets the funding criteria.

The Honorable Jack Kemp

Second, to qualify as a welfare benefit, the disbursements must be means or needs tested. For example, benefit payments under the Alaska Longevity Bonus Act to persons continuously residing in Alaska for 25 years and reaching the age of 65 were included in the recipients' gross income because the payments were not needs based. See Rev. Rul. 76-131, 1976-1 C.B. 16. Under the FSS program, participating families must be either residents of public housing or applicants for that housing. Eligibility for public housing is needs based upon strict income formulas. Thus, the FSS program meets the needs or means test criteria.

Third, to qualify as a welfare benefit, the recipient cannot be compensated for services. For example, if a recipient enrolls in a "workfare" type program and benefits are based upon the number of hours the recipient works, the recipient must include those benefits in gross income. Under the FSS program, participating families receive the benefits when they satisfy the terms of their contracts with the PHA or the-IHA. Although the contract will require the head of that family to seek and maintain employment, the ultimate benefit amount is not based upon the number of hours worked and employment is not the sole requirement of the contract. Historically, the Service has excluded from recipient's gross income stipends received while in job training programs. See Rev. Rul. 63-136, 1963-2 C.B. 19 (weekly payments to participants in job training program not included in gross income); Rev. Rul. 72-340, 1972-2 C.B. 31 (stipends to probationers enrolled in job training program not included in gross income). Thus, the FSS program benefits should not be considered compensation for services.

Last, to qualify as a welfare benefit, Congress must intend for the disbursement to be a welfare benefit. The Service's determination that Congress intended to consider a program for the public welfare does not require an express statement by Congress. The Act states that the purpose of the program is to "enable eligible families to achieve economic independence and self-sufficiency." This goal is similar to other public welfare programs that the Service has examined in the past. See Rev. Rul. 63-136, (payments to aid recipients in their efforts to acquire new skills, enabling them to obtain better employment opportunities). See also Rev. Rul. 72-340, (payments to aid individuals to acquire training for new skills); Rev. Rul. 74-205, 1974-1 C.B. 20 (payments to further implement goal of providing a decent and suitable home for every American). Thus, congressional intent strongly indicates that the program is for the public welfare.

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If the PHAs and the IHAs do not establish a separate account for each participant (i.e., assuming the participants have no present interest in the funds held in escrow), and if the benefits are needs based, the disbursements (including the interest) are welfare benefits and are not includible in the gross income of the recipients.

C. Information Reporting.

Under section 6041 of the Code, payors of fixed or determinable gains, profits, and income aggregating \$600 or more are required to file Forms 1099 with the Internal Revenue Service.

Distributions that are not includible in the gross income of the FSS program participants, as discussed above, are not required to be reported on Forms 1099. This conclusion also applies to the accumulated interest in the FSS Accounts unless a portion of the distribution is specifically allocated to interest.

The above opinion is based on the program guidelines and may not apply to any PHA/IHA that establishes an FSS Account that varies from those guidelines. Also, regulations promulgated under section 468B(g) of the Code may affect the current taxation of the interest earned on the FSS Accounts as well as the taxation of any portion of the distributions designated as interest.

We hope this information is helpful in providing guidance both to the PHAs/IHAs and to the FSS families. If any additional assistance or clarification is needed, please contact Michael Montemurro (566-6302) or John McGreevy (535-9365).

Very truly yours,



Glenn R. Carrington  
Assistant Chief Counsel  
(Income Tax & Accounting)