

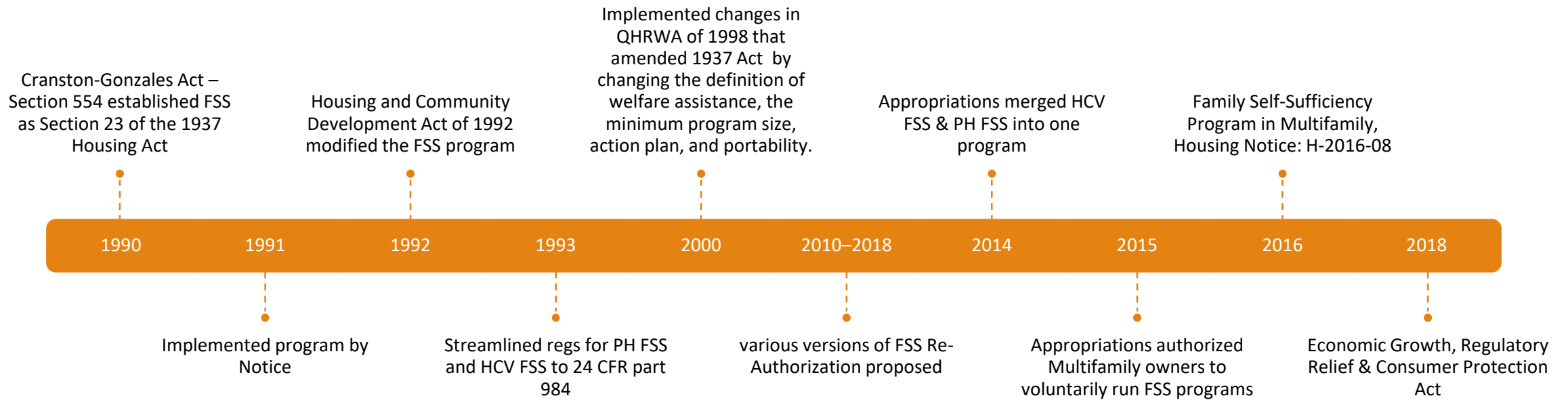
New FSS Regulation - Proposed Rule

Published September 21, 2020

Comments Due November 20, 2020

ECONOMIC GROWTH, REGULATORY RELIEF, AND CONSUMER PROTECTION ACT

05/24/2018 BECAME PUBLIC LAW NO: 115-174 (PROPOSED AS S. 2155)



FSS Legislative & Regulatory History

- Signed into law on May 24, 2018, amending HUD's Family Self-Sufficiency (FSS) program.
- Section 306 of the Act made multiple amendments to the FSS program, including changes to the size calculation for the FSS program, expanding the definition of eligible family to include tenants of certain privately owned multifamily projects subsidized with Project-Based Rental Assistance (PBRA), updating the FSS Contract of Participation (CoP), reducing burdens on Public Housing Agencies (PHAs) and multifamily assisted housing owners, clarifying escrow account requirements, and updating the program coordinator and action plan requirements.
- This proposed rule also includes additional changes to reduce burden and streamline the program for PHAs, owners, and eligible families.

The Economic Growth, Regulatory Relief, and Consumer Protection Act (“the Economic Growth Act”)

Applies to PIH and Multifamily (with a few exceptions)



makes changes to the existing FSS regulations at 24 CFR part 984



adds a new 24 CFR part 887 to address the FSS program for owners of multifamily assisted housing.



updates references to PHAs and owners and clarifies the provisions that would apply to both when operating an FSS program.

Owners would be subject to the requirements only if they are operating a voluntary program pursuant to cross-references in 24 CFR part 887.

How a Statute Becomes a Regulation...

1. Listening Session
2. Office of General Counsel, Office of Legislation and Regulation will draft new regulations
3. Internal HUD Clearance
4. OMB Clearance
5. Congressional Clearance
6. Published in the Federal Register for Public Comment
7. **PUBLIC COMMENT –
DUE NOV 20, 2020**
8. Repeat steps 2-4
9. Publish final regulation

Today's Webinar

What's in the statute

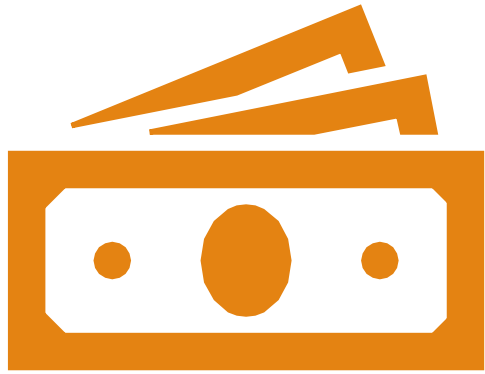
- Statute is non-negotiable (in this forum)

Statute is translated into regulation

- Does the regulation reflect the statute accurately?
- Does the regulation define/address all facets appropriately?
- Does the regulation miss any important nuances?
- Is the regulation too restrictive?

Other changes to regulation

- Are there changes that need to be made that are not addressed?
- Are the proposed appropriate?
- Are there any unintended consequences?



FUNDING

Award Formula (In Statute - not in the Proposed Rule)

(A) BASE AWARD.—An eligible entity serving 25 or more participants...is eligible to receive an award equal to the costs...of 1 full-time family self-sufficiency coordinator position. The Secretary may... determine the policy concerning the award for an eligible entity serving fewer than 25 such participants, including providing prorated awards or allowing such entities to combine their programs under this section for purposes of employing a coordinator.

(B) ADDITIONAL AWARD.—An eligible entity that meets performance standards set by the Secretary is eligible to receive an additional award sufficient to cover the costs of filling an additional family self-sufficiency coordinator position if such entity has 75 or more participating families, and an additional coordinator for each additional 50 participating families, or such other ratio as may be established by the Secretary based on the award allocation evaluation under subparagraph (E).

STATUTE - No Change from current NOFA policy

(i) **FIRST PRIORITY.**—Renewal of the full cost of all coordinators in the previous year at each eligible entity with an existing Family Self-Sufficiency program that meets applicable performance standards set by the Secretary.



(ii) **SECOND PRIORITY.**—New or incremental coordinator funding authorized under this section.

(B) **GUIDANCE.**—If the first priority, as described in subparagraph (A)(i), cannot be fully satisfied, the Secretary may prorate the funding for each eligible entity, as long as—

- (i) each eligible entity that has received funding for at least 1 part-time coordinator in the prior fiscal year is provided sufficient funding for at least 1 part-time coordinator as part of any such proration; and
- (ii) each eligible entity that has received funding for at least 1 full-time coordinator in the prior fiscal year is provided sufficient funding for at least 1 full-time coordinator as part of any such proration.

Funding Priorities

(In statute, not in
Proposed Rule)

STATUTE

(E) AWARD ALLOCATION EVALUATION.—The Secretary shall submit to Congress a report evaluating the award allocation under this subsection, and make recommendations based on this evaluation and other related findings to modify such allocation, within 4 years after the date of enactment of the Economic Growth, Regulatory Relief, and Consumer Protection Act, and not less frequently than every 4 years thereafter. The report requirement under this subparagraph shall terminate after the Secretary has submitted 2 such reports to Congress.

STATUTE

Evaluate the Award Allocation
(In statute - not in Proposed Rule)

Incentives

(In statute - not in Proposed Rule)

(6) INCENTIVES FOR INNOVATION AND HIGH PERFORMANCE.—The Secretary may reserve up to 5 percent of the amounts made available under this subsection to provide support to or reward Family Self-Sufficiency programs based on the rate of successful completion, increased earned income, or other factors as may be established by the Secretary.

STATUTE



984.102 Program Objectives

... The Department will evaluate the performance of a local FSS program using a scoring system that measures criteria such as graduation from the program, increased earned income and program participation, as provided by HUD through a Federal Register notice.

PROPOSED

Reporting

The reporting section is amended to reflect the statutory requirement that reports include the number of families enrolled and graduated, and the number of established escrow accounts and positive escrow balances.

STATUTE



Program Rules

Cooperative Agreement between PHA and PBRA Owner



PHA may enter into a Cooperative Agreement with one or more owners of multifamily properties to voluntarily make an FSS program available to the owner's assisted tenants.

- The PHA would manage the service coordination for eligible families that are covered under the Cooperative Agreement.
- (1) FSS program waiting lists must be open to all eligible families residing in the multifamily properties covered by the Cooperative Agreement;
- (2) escrow amounts must be managed by each owner, including calculating and tracking of the escrow must be done in accordance with § 984.305;
- (3) an owner's assisted families covered by the Cooperative Agreement may be part of the calculation of the FSS award under §§ 984.107 and 984.302;
- (4) FSS funds awarded to the PHA may be used by the PHA to serve an owner's assisted families covered by the Cooperative Agreement; and
- (5) the Cooperative Agreement must clearly specify the terms and conditions of such agreement.

Cooperative Agreements are STATUTE. CONTENTS of AGREEMENTS are PROPOSED

Question 3: HUD specifically requests comments on whether this list is comprehensive or if other items should be required of PHAs and owners entering into a Cooperative Agreement.

Mandatory Program Size

- the proposed rule replaces the complex formula for determining a PHA's program size with the language from the statute indicating that a PHA's program size must equal the total number of families required to be served as of May 24, 2018, as a starting point.

Statute – not changeable

- reduction of the minimum program size by one slot for each family that graduates from the FSS program, from either rental assistance program (Public Housing or Section 8)
 - conforms to section 306 and to HUD's implementation of FSS alternative requirements in the Waivers and Alternative Requirements for the FSS Program Federal Register Notice (79 FR 78100, December 29, 2014).

Not New (since 2014) – proposed language

Mandatory Program Size Exceptions

- HUD has taken this opportunity to change the duration of any HUD-approved exception from three years to five years.
 - if circumstances change within those five years, PHAs are not required to carry through the exception for the full five years.

PROPOSED

Question 2: HUD welcomes feedback regarding this change. Specifically, do commenters agree that five years is a more reasonable duration for a HUD-approved exception? Or is there another timeframe that would more accurately balance changes in circumstances and the PHA's administrative responsibilities at the end of the exception?

PCC Participants



continue to require representatives from the participating PHA to be members of the PCC

require an FSS Coordinator or Coordinators to be PCC members as well.

at least one resident participant from each HUD-assisted program served by FSS is a member of the PCC.

PHAs would no longer be required to formally solicit such participants from the resident groups identified in the regulation. Rather, PHAs may seek such group's assistance, if needed, to identify such participants.

In addition, at least one participant of each HUD-assisted program served by FSS must be consulted in determining whether to use an existing entity as the PCC.

PROPOSED

Excluding income for other programs

§ 984.304 Amount of rent paid by FSS family and increases in family income.

The proposed rule revises the provision concerning increases in family income. Prior to the Economic Growth Act, an FSS family's increases in earned income during their participation in FSS could not be considered as income or a resource for eligibility for other benefits, or amount of benefits payable to the family, under any HUD program, unless the family income equaled or exceeded 80 percent of the area median income. The Economic Growth Act removes this last provision and allows an FSS family's increases in earned income during their participation in FSS to be excluded as income or a resource regardless of whether the family income equals or exceeds 80 percent of the area median income. Additionally, HUD streamlines this section by removing a reference to the calculation of rent for the rental certificate participants because the certificate program is obsolete and adds the regulatory citations for calculation of rent for the PBV program.

STATUTE



Contract of Participation

The term “eligible families” is defined under the proposed rule as current Public Housing residents and families receiving tenant-based or project-based assistance under section 8(o). This means that participants in the Housing Choice Voucher (HCV) homeownership program (under section 8(y) of the U.S. Housing Act of 1937) are not eligible to participate in the FSS program.

THIS CLARIFICATION HAS BEEN IN THE NOFA FOR THE PAST TWO YEARS.

STATUTE – NOT CHANGEABLE

Who can participate?

Contract of Participation Term and Effective Date

The Economic Growth Act changed the term of the FSS contract so an FSS family will be required to fulfill their obligations under the CoP no later than 5 years after the *first recertification of income after the execution date of the contract.*

NEW – STATUTE – NOT CHANGEABLE

HUD is revising the definition of the effective date of the CoP from the first day of the month following the month in which the parties executed the contract to the date the parties execute (sign) the contract.

NEW – PROPOSED – NEEDS COMMENT

Question 1: HUD requests feedback on how the proposed rule defines the effective date of the CoP. Specifically, are there rent or other implications which would cause the proposed definition to be an issue?

§ 984.303 Contract of Participation.

The Economic Growth Act revises the requirement that the Head of Household (for rental assistance purposes) must be the person to execute the Contract of Participation (CoP). Instead, it allows any adult member of the FSS family to execute the CoP. The proposed rule revises paragraph (a) to incorporate this change and clarifies that an adult family member, as designated by the FSS family in consultation with the PHA or owner, is eligible to execute the contract.

NEW - STATUTE – NOT CHANGEABLE

Question 4: While HUD has carefully considered all areas of the regulation that are impacted by this change, and revised them accordingly, HUD requests comment on whether there are other places that such clarification should be included.

Who can sign the Contract of Participation?

Consistent with the change to paragraph (a), paragraph (b)(4) is changed to reflect that employment must be maintained by the head of the FSS family, not the Head of Household,

NEW – STATUTE – NOT CHANGEABLE

Also, as required by the Economic Growth Act, HUD is deleting §984.303(b)(5)(iii), which currently indicates that the PHA could terminate or withhold the family's Section 8 assistance for non-compliance with the COP.

STATUTE - NOT NEW – CHANGE MADE VIA PIH NOTICE 95-5

Contract of Participation

12 Months Welfare-Free?

Currently - must be independent from welfare assistance for 12 months before the expiration of the FSS CoP.

Proposed - a family must be independent from welfare at the time of graduation from FSS but not independent for a specified time period prior to graduating from the FSS program.

This change would ensure that an FSS family's successful graduation, and access to escrow funds, is not jeopardized if they do not meet the 12-month time period, if the family has worked successfully towards all the other goals.

It also provides some administrative relief to PHAs and owners who would no longer have to ensure that families have met the 12-month time period.

PROPOSED

Question 5: Would commenters recommend giving PHAs the discretion to set a specified time period (up to a maximum)? Is 12 months a reasonable maximum? What are some of the benefits and challenges PHAs face with the current 12-month time period?

12 Months Welfare-Free?

Question 6: How would requiring families to be independent from welfare for a specified time period link with Temporary Assistance for Needy Families (TANF) requirements? How would it enhance or obstruct such requirements?

Question X: Would removing the 12-month requirement decrease the incentive for participants to permanently stay off welfare?

Additional Requirements on “Employed”

PHA or owner may not modify or add additional required activities that must be completed by every participant.

Specifically, HUD requires that the CoP represent an individualized training and service plan, and, thus, PHAs and owners should not require a certain number of hours, rate of pay, or other mandatory requirements that apply to all participants across the board.

Not New – Clarification has been in NOFA for several years – Proposed Language

984.103

Definitions: Welfare Assistance

Welfare Assistance does NOT include:

(11) Child-only or non-needy TANF grants made to or on behalf of a dependent child solely on the basis of the child's need and not on the need of the child's current non-parental caretaker.

(This has been true since PIH Notice 2007-20, but is now in the statute)

With respect to 984.303(d), HUD proposes to expand the definition of “good cause” for a contract extension in paragraph (d), to include the active pursuit of a goal that will further self-sufficiency, such as a college degree or credit repair program. Additionally, any extension of the contract must be made pursuant to a current or additional stated goal for the FSS family.

PROPOSED

Question 7: HUD requests comments on whether this definition should be clarified to include additional circumstances, like serious illness or involuntary loss of employment, which are already causes for extension.

Expansion of “Good Cause” for Extension of CoP

Eliminating “30% Rule”

Paragraph (g) is amended to remove the provision that automatically completes the FSS contract when thirty percent (30%) of the family’s adjusted monthly income equals or exceeds the Fair Market Rent (FMR). HUD believes that the thirty percent (30%) provision no longer aligns effectively with current HCV requirements and creates confusion among FSS coordinators and partners. Removal of this provision would allow FSS families to use the FSS program to its full potential.

PROPOSED

Question 8: HUD requests comments on the removal of this automatic completion provision; and, whether there are circumstances where an FSS contract should be automatically completed.

Nullification would occur when the PHA or owner determines that services integral to an FSS family's advancement towards self-sufficiency are unavailable or when the head of the FSS family becomes permanently disabled and unable to work or dies during the period of the contract, unless the PHA or owner and the FSS family determine that it is possible to modify the contract to designate a new head of the FSS family.

PROPOSED

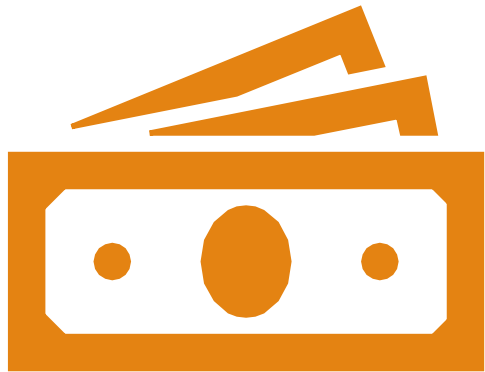
What if HoH becomes permanently disabled or dies?

Current regulation	Proposed rule
<ul style="list-style-type: none">Escrow funds are forfeited if FSS contract is nullified because supportive services integral to the FSS family are unavailable	<ul style="list-style-type: none">Escrow funds must be disbursed to the family upon nullification of the FSS contract

PROPOSED

Question 9: HUD requests comments about the language added regarding the handling of escrow funds in the case of nullification.

Escrow – Contract nullification



Escrow

Current regulation	Proposed rule
PHA credits the escrow amount periodically, but not less than annually	<ul style="list-style-type: none">• PHA calculates escrow at each family reexamination of income• PHA credits (i.e. deposits) escrow amounts each month

Question 10: Is the proposed frequency of depositing escrow amounts to a family's FSS account reasonable? Should HUD consider another frequency, and why?

Escrow –
Frequency of calculation and deposits

What if the family does not pay rent on time?

Question 11: Current regulations do not address whether escrow should be credited to a family's FSS account if the family does not pay rent on time. HUD requests comments on whether the family's FSS account should be credited for late payments. Please provide comments both on regulation and on how the regulation could be implemented, especially in the case of the voucher programs where rent is paid to landlords and not directly to the PHAs.

Current regulation	Proposed rule
<ul style="list-style-type: none">• Family's escrow balance must be reduced before prorating the interest income, by amounts not paid by the family for rent, or any other amounts due by the family under the applicable housing program• Escrow balance also reduced by those amounts at the time of final escrow disbursement	<p>Total balance on a family's FSS escrow account (including interest accrued over the life of the escrow account) is reduced by such amounts only at the time of final escrow disbursement</p>

Escrow –
Reduction of amounts due by family

- PHAs/owners may, at their discretion, complete a new recertification of income prior to FSS contract execution
- PHAs/owners decide what period must have passed between the last income recertification and effective date of the FSS contract
- Previously required by the FSS contract, if more than 120 days had passed between the last income recertification and the effective date of the FSS contract
- Changed by Congress and implemented by HUD in FSS NOFA effective January 2020 → PHAs no longer required to conduct a new recertification

Escrow –
Updating family information (120-day rule)

Escrow –
Updating family
information
(120-day rule)

Question 12: While HUD recognizes that owners would not have the same flexibility that PHAs have for this type of income recertification, HUD requests comments from the public as to whether this should be available to multifamily owners as it is for PHAs.

Current regulation	Proposed rule
<ul style="list-style-type: none">• Adjusted income between 50% and 80% area median income (AMI), escrow capped at the 50% AMI amount• Adjusted income exceeds 80% AMI, escrow contributions cease	<ul style="list-style-type: none">• Adjusted income between 50% and 80% AMI, family may continue to increase their monthly escrow amount• Adjusted income exceeds 80% AMI, escrow contributions cease <p data-bbox="1880 868 2313 925"><i>*Statutory change</i></p>

Escrow – When family escrows

- Escrow limited to increase in the amount of rent paid by family that is attributable to increases in earned income
- In the HCV/PBV programs, family cannot escrow more than gross rent or payment standard, as applicable
- Escrow calculation worksheet updated to reflect changes and made available on https://www.hud.gov/program_offices/public_indian_housing/programs/hcv/fss

Escrow Calculation – Overview

Current regulation	Proposed rule
<ul style="list-style-type: none">• PH → total tenant payment (TTP)• HCV → 30% of adjusted monthly income	<ul style="list-style-type: none">• TTP (for income-based families) or the flat or ceiling rent, including applicable utility allowance and hardship discounts (for PH families)• Baseline monthly rent determined at effective date of CoP• Current monthly rent determined at most recent annual recert after CoP

Escrow – Defining family rent

Baseline earned income → total annual earned income from wages and business income (if any) as of the effective date of the FSS contract. Income exclusions apply, except any applicable earned income disregard associated with self-sufficiency incentives.

Current earned income → total annual earned income from wages and business income (if any) as of the most recent reexamination of income after the effective date of the FSS contract. Income exclusions apply, including any applicable earned income disregard associated with self-sufficiency incentives.

Escrow – Defining earned income

Current regulation	Proposed rule
<p data-bbox="249 382 473 432">Lower of:</p> <ul data-bbox="249 525 1179 918" style="list-style-type: none"><li data-bbox="249 525 1179 782">• 30% of current monthly adjusted income – family rent (obtained by disregarding any increases in earned income from CoP effective date)<li data-bbox="249 803 1179 918">• Current family rent – family rent at start of CoP	<p data-bbox="1294 382 1518 432">Lower of:</p> <ul data-bbox="1294 525 2270 961" style="list-style-type: none"><li data-bbox="1294 525 2270 875">• 30% of 1/12th (i.e. 2.5%) of the amount by which the family’s current annual earned income exceeds the family’s baseline annual earned income<li data-bbox="1294 903 2270 961">• Amount family rent has increased

Escrow – Calculating deposit amounts

Increase in family rent (second part of calculation) is the lower of:

- Difference between the family's baseline monthly rent and the family's current monthly rent
- HCV → difference between the baseline monthly rent and the current gross rent (*i.e.*, rent to owner plus any utility allowance) or the payment standard, whichever is lower
- PBV → difference between the baseline monthly rent and the current gross rent (*i.e.*, rent to owner plus any utility allowance)

Escrow – Calculating deposit amounts

Escrow — Calculating deposit amounts

Question 13: Does the streamlined escrow calculation, as reflected in the regulation and the revised escrow calculation form, effectively simplify the calculation of escrow? Are there elements of the calculation that should be done differently? This includes how to address alternatives to income-based rents and any other specific situations you may encounter at your PHA. If so, why and how?

For PBRA Owners— please comment on any sections of the escrow calculation worksheet that should be modified for PBRA FSS participants. Please submit proposed edits to the form if needed.

Escrow – HCV family searching

Escrow credits cease during an HCV family's search if HCV family moving to a new unit, in accordance with HCV requirements, and family is not under a lease.

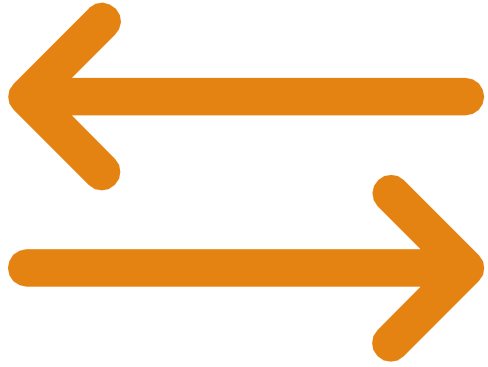
Forfeited Escrow

statutory change under the Economic Growth Act, which provides that forfeited FSS escrow funds must be used for the benefit of FSS participants in good standing. The section provides the following list of activities for which forfeited escrow funds may be used:

- Support for FSS participants in good standing;
- training for program coordinators; and,
- other eligible activities as determined by the Secretary.
- A list of ineligible uses will be included.

STATUTE AND PROPOSED

Question 14: HUD requests comment on what definition should apply for “participants in good standing” and whether HUD should add items to the eligible activities list for which forfeited escrow funds may be used?



Portability

Portability

- Changes the current framework
- Addresses scenarios not previously addressed in the regulation
- Unrelated to statutory changes
- *Question 15: comments requested on all proposed changes and input sought on whether there are more effective ways to balance the administrative complexity and a family's FSS participation*

Current regulation	Proposed rule
<ul style="list-style-type: none">• Receiving PHA may enroll FSS family• Initial PHA may allow continued participation in its FSS program	<ul style="list-style-type: none">• Receiving PHA must enroll FSS family• Initial and receiving PHA may allow continued participation in initial PHA's FSS program

Portability - revisions

Non-FSS Family

Bill → no FSS participation

Absorb → participation at receiving PHA's discretion

Portability - revisions

Receiving PHA
does not
administer FSS



FSS family may
not continue
FSS



Initial PHA
must discuss
options

Portability - revisions

Portability – unchanged

- Family must lease HCV unit for 12 months from CoP effective date before porting. Initial PHA may allow move during this time
- Single FSS escrow account managed by PHA's whose ACC funds the voucher

Portability – unchanged

- One CoP:
 - Family enrolls in receiving PHA's FSS program → receiving PHA executes a new CoP for the term remaining on original contract and initial PHA terminates original CoP
 - Family continues in initial PHA's FSS program → original CoP remains in place

Portability – unchanged

- If family is unable to fulfill FSS obligations after the move, FSS participation terminates and escrow is forfeited. HCV assistance cannot be terminated.
 - NEW – FSS termination must be used only as a last resort
 - NEW - PHA must clearly inform family of loss of escrow if FSS termination is the only option

Multifamily Concerns



CHALLENGES OF A PROGRAM
COORDINATING COMMITTEE (PCC)



CHALLENGES OF CONSULTATION
WITH LOCAL GOVERNMENT

Next Steps

1. Listening Session
2. Office of General Counsel, Office of Legislation and Regulation will draft new regulations
3. Internal HUD Clearance
4. OMB Clearance
5. Congressional Clearance
6. Published in the Federal Register for Public Comment
7. **PUBLIC COMMENT –
DUE NOV 20, 2020**
8. Repeat steps 2-4
9. Publish final regulation

How Can I Submit a Comment?

To submit a comment on the Propose Rule OR the Sample Escrow Credit Worksheet you must go to the Federal Register website.

<https://www.federalregister.gov/documents/2020/09/21/2020-18896/streamlining-and-implementation-of-economic-growth-regulatory-relief-and-consumer-protection-act>



Questions?
