



U.S. Department of Housing and Urban Development

Office of Public and Indian Housing

Special Attention:
Directors, Offices of
Public Housing; and
Public Housing Agencies
Administering
Section 8 Programs
Indian Housing Authorities
Administrators, Offices of ONAP

Notice PIH 97-45 (HA)

Issued: September 3, 1997
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Cross References:

Subject: State or Area Office Approval of Exceptions to Section 8 and Public Housing Family Self-Sufficiency (FSS) Programs of the Mandatory Minimum Size

1. **PURPOSE.**

This Notice provides updated guidance on the approval of exceptions to the FSS program mandatory minimum size. This Notice establishes the reasons that the Department of Housing and Urban Development (HUD) will consider for granting an exception to a public housing agency (HA) for implementing an FSS program of the mandatory minimum size. The Notice establishes procedures for HA submissions and HUD approval of requests for either a full exception or a partial exception for a reduced FSS program size. It also identifies the information that should be provided to HUD, as well as the actions that must be taken by HUD in determining whether to approve the HA request.

2. **BACKGROUND.**

Section 554 of the National Affordable Housing Act (NAHA) created the FSS program to promote the development of local strategies that coordinate the use of public housing development assistance and housing assistance under the Section 8 rental certificate and voucher programs with public and private resources, to enable families to achieve economic independence and self-sufficiency.

Beginning in Fiscal Year (FY) 1993, HAs that received new increments of Section 8 rental vouchers and certificates, or funds for new public housing rental units, were required to implement an FSS program unless granted an exception by HUD. For the public housing and Section 8 programs, the minimum FSS program size that must be established and operated is cumulative and is based on the number of new units funded in FY 1993 and subsequent years, plus the number of any FY 1991 and 1992 FSS Incentive Award units.

Section 554 of NAHA provides that when establishment of a local FSS program is not feasible, HUD shall not require HAs to carry out a local FSS program. Section 106(b) of the Housing and Community Development Act of

1992 amended NAHA. It clarifies circumstances in which establishment and operation of a local FSS program may not be feasible, which may justify exception of an HA from operation of an FSS program.

3. **APPLICABILITY.**

a. **PROGRAMS.**

This Notice applies to the approval of exceptions for HAs, including approval to implement an FSS program smaller than the required minimum program size, for the Section 8 rental certificate, rental voucher, or public housing programs.

b. **INDIAN HOUSING AUTHORITIES (IHAs).**

The Housing and Community Development Act of 1992 (1992 HCD Act) makes implementation of an FSS program optional for Indian housing authorities (IHAs) that received funding for units in Fiscal Year 1993 or in subsequent years. Implementation of an FSS program is still required for IHAs that received Fiscal Year 1991 or 1992 Incentive Award funding.

This Notice does not apply to approval of exceptions for IHAs that received FY 1991 or 1992 Incentive Award funding. IHAs that received Indian housing units or Section 8 FSS Incentive Award funding should contact their area Office of Native American Programs for guidance on FSS exceptions.

4. **HA CERTIFICATION IN CONNECTION WITH A REQUEST FOR EXCEPTION FROM FSS PROGRAM IMPLEMENTATION OR MINIMUM PROGRAM SIZE.**

HAs seeking either a full or partial exception from the required implementation of an FSS program should submit a written request to the appropriate Public Housing Office Director in their local HUD State or Area Office, herein referred to as the HUD Office. The exception request should:

- o Include an HA certification to HUD that explains the circumstances that make it impossible to establish and operate an FSS program of the required minimum program size.

The HA certification should:

- o Describe the actions the HA has taken to overcome each identified problem, including actions it has taken to gain information on the successful implementation of an FSS program (e.g. attendance at FSS conferences, consulting with HAs that have implemented successful FSS programs).
- o State the program size the HA wishes to establish if the HA is requesting a partial exception to operate a program of reduced size.
- o Describe the evidence the HA has on file to support its request for an exception.

Upon request from the HUD Office, the HA should verify its certification by making the documented evidence available for inspection by HUD and the public, as appropriate.

5. **HUD REVIEW AND TECHNICAL ASSISTANCE.**

A discussion of the reasons HUD will consider for granting exceptions, and information that should be provided to HUD by the HA requesting an exception, is provided in 6.a. through 6.e. below. The HUD Office staff must review and evaluate the request and, prior to approval, must offer technical assistance to the HA to resolve any problems. The HUD Office staff should share with the HA information about techniques used by other HAs, refer the HA to other HAs that have successfully implemented FSS programs and assure that the HA has tried different approaches. An HA having difficulty establishing a program of the required minimum size may combine its FSS program with that of another HA so that both can share available supportive services and administrative resources.

If no solution can be found and the HUD Office finds good cause, the HUD Office may either grant a complete exception or a partial exception to operate a program of reduced size. **Full or partial exceptions must not be provided prior to, or in conjunction with, funding requests that require the HA to initially implement an FSS program.** All HAs should try to implement an FSS program of the initial minimum program size prior to approval of a complete or partial exception. The HUD Office letter to the HA authorizing an exception must state the number of families under the HA's original FSS obligation, the new FSS obligation and the expiration date of the exception.

6. **REASONS FOR EXCEPTION.**

The minimum information that should be provided to the HUD Office by the HA in supporting its request for an exception is discussed below.

a. **Lack of Family Interest.**

HUD will not grant a complete exception for this reason. When requesting a reduced-size program, an HA should explain how it advised families about the program, indicate any special outreach efforts and incentives it offered to families, and state how many families expressed an interest in participating or declined to participate. HUD Office staff must analyze whether changes in the HA's family selection policies for FSS might increase the number of interested families, and whether additional outreach techniques should be tried. Especially in this era of welfare reform, including time limits on welfare benefits, families on welfare can be expected to be interested in programs to help them increase their self-sufficiency. Therefore, lack of family interest should rarely be justification for approving a smaller FSS obligation.

b. **Lack of Supportive Services.**

The HA should describe what it has done to obtain supportive services, including what organizations were contacted, numbers and types of organizations (e.g., Federal, state and local government programs, including Community Development Block Grant (CDBG); private industry; nonprofit organizations; churches; private industry council.) The HA should also describe its efforts at coordinating with other programs.

HAs should contact local welfare agencies to find out the services they provide to welfare families, and determine if these services provide adequate support to welfare families, precluding the need to identify other supportive services for families on welfare. Since two or more HAs wishing to establish a combined FSS program may be in a better position to obtain needed services than a single HA, the HA should describe any efforts to contract other HAs and the reasons other HAs gave for not wanting to participate.

c. Lack of Funding for Reasonable Administrative Costs.

HUD now provides funding to smaller HAs for FSS Program Coordinators. To qualify for these funds, HAs must meet the eligibility criteria published in the Notice of Funding Availability, which generally is limited to HAs operating a Section 8 program with fewer than 1,000 rental vouchers and certificates.

HAs not eligible for these funds should consider other sources such as their Section 8 administrative fee reserves, funding from nonprofit groups and private industry. In some cases, services may be provided by volunteers or another agency may be able to assume responsibility for some functions. In addition, as indicated in paragraph 6.b. above, two or more HAs may join together to establish a combined FSS program.

An HA still seeking an exception due to a lack of funds for reasonable administrative cost should explain all sources of funding it has considered in addition to the Section 8 administrative fees, administrative fee reserves and public housing operating subsidies it will receive. The HA should explain any actions it has taken in connection with efforts to receive any sources of funding outside the HA, such as written requests or meetings.

Based on its knowledge of resources that other HAs in its jurisdiction have been able to use, the HUD Office must attempt to identify, and advise the HA of, other funding sources which the HA has not considered.

d. Lack of Cooperation by Units of State and Local Government.

The HA should describe the efforts it has made to gain cooperation of units of state or local government, including identification of the officials contacted, the type of cooperation sought and why the lack of cooperation harms the program to the extent that it cannot be carried out. The HA should request help from the head of the unit of local government in the area where the HA is located. Prior to approval of an exception for a

Section 8 or public housing FSS program based on this criterion, the HUD

State Representative or Area Office Coordinator must contact appropriate local officials on behalf of the FSS program. The Office of Fair Housing and Equal Opportunity should also be contacted to determine if the lack of cooperation violates any applicable Fair Housing Planning, if the community is an Entitlement Jurisdiction.

e. Impact of New Funding Increments Providing Assistance for Expiring Subsidy Contracts on Minimum FSS Program Size.

New Section 8 rental certificate or rental voucher funding provided to an HA in connection with the demolition of public housing units or the expiration of Section 8 contracts, and owners opting out of Section 8 contracts in the past, increased the minimum FSS program size obligation of the HA. Funding increments for these purposes will often impose additional, large FSS obligations which are beyond the reasonable capacity of an HA to administer. The determination to except certain new funding increments from the FSS program requirement is considered an appropriate other circumstance as authorized under Section 106(b)(D). Accordingly, with the exception described below in item f, funding for rental vouchers and certificates provided in connection with the following are not counted when determining an HA's minimum FSS program size:

- families affected by the termination, expiration, or owner opt-outs under Section 8 loan management set-aside, new construction, substantial rehabilitation, moderate rehabilitation, and moderate rehabilitation single room occupancy HAP contracts;
- families affected by the demolition or disposition of a public housing project and replacement of public housing projects;
- families affected by the conversion of assistance to residents of Section 23 leased housing or housing assistance payments projects to the tenant-based programs;
- families affected by the sale of a HUD-owned project;
- families affected by the prepayment of a mortgage or voluntary termination of mortgage insurance; or
- the renewal of expiring funding increments under the Section 8 program (except the renewal of funding increments that initially carried an FSS program obligation).

If an HA received funding in the above categories in the past which increased their minimum FSS obligation, they may request to have their obligation reduced by that amount, but not below the number of families currently enrolled in their FSS program.

f. Exception to Item e.

If an HA has no FSS obligation other than that imposed by receipt of funds for the categories in item e, they may not be granted a full exception to FSS. They may be granted a partial exception to operate a program of reduced size. Consistent with item 5, they are required to make an effort to implement an FSS program. If appropriate, they may subsequently apply to a partial exception for a reduction in their obligation in accordance with the criteria in this Notice.

g. Other.

If an HA requests an exception for reasons other than specified in paragraphs a. through e. above, the request must include detailed justification for HUD review and consideration. If HUD Offices have other considerations they believe would warrant an exception, they should contact HUD Headquarters for approval.

7. **REPORTING.**

HUD Offices must report to the Assistant Secretary of Public and Indian Housing the total number of new exceptions approved each quarter and the justifications for each exception. The report must identify the HA by name and state the number of FSS families the HA was originally required to assist in its FSS program, and the number of families under the HA's reduced minimum FSS program size based on the HUD approved exception. A copy of the approval letter must accompany the report, which should be submitted to Headquarters, Attention: Director, Operations Division, Office of Rental Assistance, no later than 15 days after the end of the quarter when the exception was approved.

8. **TERM OF EXCEPTION.**

The expiration dates of both full and partial exceptions will be three years from the date of HUD's approval. An HA seeking continued exceptions beyond the three year period should submit a new request and a new certification to HUD for consideration.

9. **EFFECTIVE DATE.**

The policies stated in this Notice are effective upon publication.

/s/
Kevin Emanuel Marchman
Acting Assistant Secretary of
Public and Indian Housing