

Family Self-Sufficiency Program Proposed Rule Questions & Answers (Q&A)

This document is composed of questions generated from the “chat” feature that was included in HUD’s October 8 webinar on the FSS Proposed Rule, as well as other questions received during the following week at HUD’s FSS mailbox FSS@hud.gov. Further questions regarding the webinar may be emailed to FSS@hud.gov throughout the public comment period.

The Public Comment period on the proposed FSS rule is open until November 20, 2020. PLEASE NOTE: These Questions & Answers (Q&A) do NOT constitute an official public comment, and they will not be included in comment summaries published with the final FSS rule. The ONLY way to officially submit public comment into the public record and have it be considered when determining the Final Rule is to submit a Formal Comment via the instructions published in the proposed FSS rule at 85 Fed. Reg. 59234 (September 21, 2020) as shown [here](#). These Q&As are provided merely as guidance; and to the extent there is any conflict with the proposed FSS rule, the proposed rule supersedes this document.

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(v) 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?

Q1. On the slides from the webinar, it says that the restriction to 8(o) in the definition of “eligible families” is required by statute. What specific statutory reference is HUD using to conclude that only families assisted under 8(o) (in addition to those in public or multifamily housing programs) can participate in FSS? Is HUD’s understanding that this would also exclude recipients of Family Unification vouchers and recipients of enhanced vouchers?

The proposed 24 CFR 984.103 defines “eligible families” as meaning “current residents of Public Housing (Section 9) and current Section 8(o) program participants, as defined in this section, including those participating in other local self-sufficiency programs.” This is substantively consistent with the current definition of “eligible families” in 24 CFR 984.103 which was based on an interpretation of section 23(b)(1) of the U.S. Housing Act of 1937 (“1937 Act”), before it was amended by the Economic Growth, Regulatory Relief, and Consumer Protection Act (“Growth Act”) (2018). However, the Growth Act amended section 23 of the 1937 Act and defined eligible families. Per section 23(c)(1) of the 1937 Act, as amended by the Growth Act, “A family is eligible to participate in a local Family Self-Sufficiency program under this section if—(A) at least 1 household member seeks to become and remain employed in

suitable employment or to increase earnings; and (B) the household member receives direct assistance under section 8 or resides in a unit assisted under section 8 or 9.” Thus, the training slide should not have implied that the proposed definition of “eligible families” at proposed 24 CFR 984.103 is the statutory definition.

Pursuant to the 1937 Act, Tenant Protection Vouchers (TPVs) and special purpose vouchers are rental assistance under section 8(o) of the 1937 Act, regardless of whether the particular language is in section 8(o) (as is the case for VASH), section 8(t) (as is the case for Enhanced Vouchers), or section 8(x) (as is the case for Family Unification Program (FUP)). Thus, under the proposed rule (as well as currently), recipients of FUP vouchers and recipients of Enhanced Vouchers would not be precluded from enrolling in FSS based on their assistance type.

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?

Q2. Does it matter what type of recert that starts the 5-year clock? Do interim recerts also count?

The proposed rule does not address this, as is currently the case, escrow is re-calculated every time the income and rent are re-examined, regardless of whether it is an interim or annual certification. Once the statutory change is implemented, any type of rent re-certification would start the 5-year clock – annuals or interims. Please note that HOTMA will be changing requirements around re-certifications.

Q3. Would we be able to calculate escrow at interims? Or now will we be restricted to calculating escrow ONLY at annuals?

HUD has not included in the current FSS proposed rule any changes regarding when escrow may be calculated – any time the family has a change in earned income that results in a change in rent. However, as rent calculation rules change, they may impact when income changes must be reported and how they impact rent. This would not be a function of FSS.

Q4. What are the primary impacts of HOTMA changes on the FSS regs? Is it primarily the piece on recertifications or are there other things?

On September 18, 2019, HUD published a proposed rule implementing sections 102, 103, and 104 of the Housing Opportunity Through Modernization Act of 2016 (HOTMA). The proposed rule, which will make a number of changes to income calculations and reviews, is available at <https://www.federalregister.gov/documents/2019/09/17/2019-19774/housing-opportunity-through-modernization-act-of-2016-implementation-of-sections-102-103-and-104>. Please review sections 102, 103, and 104 of HOTMA as well as the proposed rule to better understand the proposed changes to HUD regulations.

Q5. Contract term and effective date: will this statute allow the participant to escrow prior to the first recertification?

No. In order to earn escrow, there must be an increase in earned income and that increase must be reflected in a rent re-certification by the Housing Authority or owner. Any re-certification that would start escrow would ALSO start the 5-year clock.

Q6. For MTW housing authorities whose policy is to complete annuals every two years and three years for senior and disabled Heads of Household (HoH), how will this change take effect?

The FSS proposed rule provides, consistent with the new Economic Growth Act requirement, that the Contract of Participation shall provide that each FSS family will be required to fulfill its obligations no later than 5 years after the first recertification of income after the execution date of the Contract of Participation. Thus, if the first re-certification after the effective date of the Contract of Participation is not for two or three years, then the initial FSS contract term would effectively be 7 or 8 years respectively. But note, the family would not be escrowing during those first 2 or 3 years, because there would not have been a re-certification.

§ 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

Q7. FSS Family Head of Household (HoH): how does this impact adult students?

An adult student may be the FSS HoH. Any adult member of the FSS family can execute the Contract of Participation, including the voucher HoH. However, the statute deems that the HoH is no longer the ONLY person who may execute the FSS Contract of Participation. Employment must be maintained by the FSS HoH (the person who signs the CoP), but not the voucher HoH if, another adult executes the Contract of Participation. If a student's income is being excluded, that will not change due to the FSS program requirements and is not being proposed as a change from the current regulation.

Q8. FSS Family Head of Household (HoH): after graduation can another adult in the household sign up for FSS participation?

The current FSS regulation allows for multiple Individual Training and Services Plans (ITSPs) under the family's Contract of Participation (as is currently the case). Also, as is currently the case, each PHA may decide, and codify in their FSS Action Plan, whether a family may re-enroll in FSS after either graduating or otherwise leaving the program. There is guidance on this decision in the FSS Guidebook <https://www.hudexchange.info/resources/documents/FSS-Program-Guidebook.pdf>.

Q9. Regarding another household member executing the COP, what happens if the Head of Household has them move out of their household?

As with any situation where the FSS participant leaves housing assistance, the FSS Contract of Participation could be taken over by another adult member of the household (as is the case currently). If there are no other household members able or willing to take the CoP, the CoP would be terminated. As in all cases, the FSS Program Manager should be working with the FSS participant to evaluate whether the requirements of the Contract of Participation have been met prior to exiting rental assistance.

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

Q10. Escrow reduction: would this allow for the family to receive more housing assistance payments compared to a family who is not in FSS?

The proposed rule would remove the requirement to reduce a family's escrow balance by amounts due by the family for rent or other amounts due under the lease each time investment income is prorated. However, under the proposed rule the escrow account balance would still be reduced by such amounts at the time of the final disbursement of FSS escrow funds. It's not apparent how the proposed change would result in increased housing assistance payments for FSS families.

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

Q11. Defining family rent: how does the minimum rent align with this rule for HCV families? If a PHA has a minimum rent, is that the TTP?

Total tenant payment (TTP) is the highest of: (1) 30 percent of the family's monthly adjusted income; (2) 10 percent of the family's monthly income; (3) If the family is receiving payments for welfare assistance from a public agency and a part of those payments, adjusted in accordance with the family's actual housing costs, is specifically designated by such agency to meet the family's housing costs, the portion of those payments which is so designated; or (4) The minimum rent, as determined in accordance with § 5.630.

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

Q12. So, are you saying that Ameri Corps money earned, currently excluded, would be added back in as income for the basis of escrow?

The FSS proposed rule does not address what income is excluded from annual income per 24 CFR 5.609. Income exclusions are still applied when determining the baseline income. However, any applicable earned income disregard associated with self-sufficiency incentives such as the Earned Income Disregard (EID) and the Jobs Plus Earned Income Disregard (JPEID) is included for the purposes of calculating the FSS baseline earned income.

Q13. In the definition of baseline annual earned income, what is HUD’s intention for disregarding other self-sufficiency incentives? What programs/policies would be captured in this definition? Would HUD consider using prior year earned income for recertifications under HOTMA, which were meant to be a self-sufficiency incentive, as falling under this definition?

Under the FSS proposed rule, the definition of “baseline annual earned income” would include any disregarded earnings associated with self-sufficiency incentives that may be applicable to the determination of annual income. This definition is intended to capture all earned income when the family enrolls in FSS. Based on HUD’s current income disregards, the definition in the proposed rule would include the “self-sufficiency incentives” of Earned Income Disregard (EID) (which would sunset with the implementation HOTMA) and the Jobs Plus Earned Income Disregard (JPEID). As is currently the case, FSS does not alter income and rental calculations.

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

Q14. About the escrow amount not exceeding the payment standard and gross rent...I normally post escrow monthly to the participant's account. So, I just have to make sure that the monthly escrow amount does not exceed the gross rent and payment standard?

Under the proposed rule, the FSS credit amount is the lower of: (i) Thirty (30) percent of one-twelfth (1/12) (i.e., two and a half (2.5) percent) of the amount by which the family's current annual earned income exceeds the family's baseline annual earned income; or (ii) The increase in the family's monthly rent. In the second part of the calculation, under the proposed rule, the increase in the family's monthly rent could not be more than the lower of the gross rent or payment standard (for HCV families) or the gross rent (for PBV families). Specifically, the increase in the family's monthly rent is the lower of: (A) The amount by which the family's current monthly rent exceeds the family's baseline monthly rent; (B) For HCV families, the 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; or (C) For PBV families, the difference between the baseline monthly rent and the current gross rent (i.e., rent to owner plus any utility allowance).

The escrow calculation worksheet, under the proposed rule, would address all aspects of this calculation, including this cap on increases in the family rent. If your agency chooses not to use the escrow calculation worksheet, you would be required, if the proposed rule was adopted as final, to ensure that the tool used by your agency tracks the calculation, including these caps on the increase on family rent.

Multifamily Concerns



CHALLENGES OF A PROGRAM
COORDINATING COMMITTEE (PCC)



CHALLENGES OF CONSULTATION
WITH LOCAL GOVERNMENT

Q15. For multifamily does each site need to be part of a PCC? Or is it that the owner just needs to be in one PCC even if they have multiple different sites running FSS?

Under the proposed FSS rule, each FSS program that is voluntarily established **will be required** to work with a Program Coordinating Committee (PCC) when available.

Q16. Multifamily is currently not required to have PCC, will that now be a requirement? Any waivers on this?

No, the proposed Multifamily Housing regulation at 887.105(a)(4) states that each program “shall work with a Program Coordinating Committee (PCC), as described in § 984.202, when available”, but it would not require an owner each program to create its own PCC.

Q17. For Project-Based Rental Assistance (PBRA) properties (i.e. multifamily assisted housing), do the Developments need to have their own PCC or join the PHA's FSS PCC?

Under the proposed rule, 24 CFR 887.105(a)(4) would require each program to consult with a PCC in most cases, but it would not require each program to create its own PCC under proposed 24 CFR 984.202.

Q18. Would all these changes apply to participants in the Family Unification Program (FUP) Demo? Would they be eligible for contract extensions?

In general, the rules surrounding the longevity of the FUP Housing Choice Vouchers for youth themselves are not impacted by the proposed FSS Rule. However, in cases where programs like the FUP Demo for youth have policies that allow a voucher to be maintained beyond the statutory time limit as long as the voucher holder is an FSS participant, all changes to FSS regulations regarding enrollment and extensions to the FSS Contract of Participation would apply the same to such FUP voucher holders as to standard voucher tenants.

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

Q19. Can someone explain what is nullification? I am not familiar with the term.

Pursuant to proposed 24 CFR 984.303(e)(2)(ii), if services integral to the FSS family's advancement toward self-sufficiency are unavailable, the PHA or owner would be required to declare the Contract of Participation "null and void." When the Contract of Participation is declared "null and void," it means the contract is no longer in effect and the FSS family has no continued obligations under the contract. Upon "nullification" of the Contract of Participation, per proposed 24 CFR 984.303(k)(2), escrow funds would be required to be disbursed to the family (in accordance with proposed 24 CFR 984.305(c)(3)). The Proposed Rule proposes to expand the bases upon which a Contract could be nullified (see proposed 24 CFR 984.303(k)) and make a change so that the family would receive the accrued escrow upon nullification (as opposed to it being forfeited).

Q20. Regarding nullification, did you say that monies could go to the minors?

HUD explained one recent situation where a waiver of the current FSS rule had to be sought in order for the escrow to go to a disabled adult child when the single parent (FSS participant) passed away. The proposed FSS rule seeks to address this issue. Pursuant to proposed 24 CFR 984.303(k)(1)(ii), if the head of the FSS family becomes permanently disabled and unable to work or dies during the period of the contract and it is not possible to modify the contract to designate a new head of the FSS family, then the Contract of Participation would be nullified and

the escrow funds would be disbursed to the family (in accordance with proposed 24 CFR 984.305(c)(3)).

Q21. Anytime a contract is nullified for any reason, the household would get the escrow?

Yes, under the proposed rule, if the Contract of Participation is nullified (rather than terminated), the escrow funds would be required to be disbursed to the family (in accordance with proposed 24 CFR 984.305(c)(3)).

Q22. Given these changes, will you be updating the language in the 50058 form Section 17 to coincide with the proposed/final rule changes?

The Final Rule would include updated forms for the Contract of Participation and Sample Escrow Calculation Worksheet. However, we do not anticipate that the changes in regulation due to the new statute will require changes to the 50058 Section 17 (FSS Addendum). If you do, please submit formal comment.

Q23. Can you post the link to the escrow worksheet?

The link to the worksheet is in the FR Notice. It can be found on the HUD FSS webpage https://www.hud.gov/program_offices/public_indian_housing/programs/hcv/fss

Q24. Is there a new FSS contract out? The last FSS Contract ended 8/2020.

The current contract with no changes, just an updated expiration date, was published for a 60-day notice, received no comments, and is now moving toward publication for the required 30-day notice. The expiration date will be changed once the Paperwork Reduction Act requirements are complete. The Final Rule would include a revised Contract of Participation to reflect new regulations.

Q25. What is the timeframe for implementation of many of these new protocols?

We hope to have the Final Rule by mid-2021. The Final Rule would include implementation instructions e.g. whether the changes take effect immediately, starting in the next grant cycle, retroactively, etc.

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

Q26. Can you please explain this part of the rule?

The existing FSS regulation at 24 CFR 984.304(b) states that any increase in earned income of an FSS family may not be considered as income or a resource (asset) for purposes of eligibility of the FSS family for HUD programs, unless the FSS family's income equals or exceeds 80 percent of AMI. The proposed FSS rule at 24 CFR 984.304(b), adopts the Economic Growth Act amendments to the FSS statute, to remove the exception when the FSS family's income equals or exceeds 80 percent of AMI; any increase in earned income may not be considered as income or a resource for purposes of eligibility of the FSS family for HUD programs, regardless of whether the FSS family's income equals or exceeds 80 percent of AMI. However, section 23(e)(2) of the 1937 Act, the FSS statute, continues to say that HUD "shall not escrow any amounts for any family whose adjusted income exceeds 80 percent of the [AMI,]" and this restriction is reflected in proposed 24 CFR 984.305(b)(3).