

Chapter 6

ESCROW ACCOUNT

INTRODUCTION

The establishment of an escrow account is offered as a support and financial incentive to families for participation in the FSS program. Under this incentive, the amount of an increase in family rent resulting from an increase in earned income is escrowed. That is, usually a family's rent or share of the rent goes up when the family experiences an increase in earned income. In the FSS program, this is still the case, and the part of the rent representing the increase is deposited into an account as an escrow credit. The funds from this escrow account then become available to FSS families upon successful completion of their contracts of participation and may become available earlier at the housing authority's option.

This chapter explains how the FSS escrow account works, including calculating the amount of the escrow credit, disbursing the funds, and the proper way for the PHA to manage and report on the account.

This chapter contains two parts:

Part I: The Escrow Account: This part provides an overview of how the escrow account works, including calculating the escrow credit and disbursing the funds upon completion of the contract of participation.

Part II: Escrow Fund Accounting and Reporting: This part describes the requirements for managing the escrow account, including both accounting and reporting requirements.

PART I: THE ESCROW ACCOUNT

6-I.A. OVERVIEW

As an integral incentive to the FSS program, it is especially important to have clear-cut policy spelling out how the escrow account works. This includes policy regarding the calculation of the FSS credit amount, the disbursement of FSS account funds, the use of account funds for homeownership, and forfeiture of the FSS escrow account.

6-I.B. CALCULATING THE FSS CREDIT AMOUNT

Determination of Baseline Annual Earned Income and Baseline Monthly Rent

When determining the family's baseline annual earned income and the baseline monthly rent amounts for purposes of computing the FSS escrow credit, the PHA must use the amounts on the family's most recent income reexamination in effect.

For purposes of determining the FSS credit, baseline monthly rent for families paying an income-based rent is the family's Total Tenant Payment (TTP) as of the effective date of the FSS contract.

For families in public housing who are paying either flat or ceiling rent, family rent is the amount of the flat rent (including the applicable utility allowance) or ceiling rent (including any hardship discounts) as of the effective date of the FSS contract [24 CFR 984.103(b)].

EIC Policy

EIC will use the PHA-Web Housing Software System to calculate and track FSS baselines and escrows

Determination of the Escrow Credit

To calculate the FSS credit, the PHA must accurately determine the family's baseline earned income and baseline monthly rent and compare those figures with the family's current earned income and current monthly rent. The FSS credit is the lesser of 30 percent of one-twelfth or 2.5 percent of the amount by which the family's current annual earned income exceeds the family's baseline annual earned income; or the increase in the family's monthly rent. The increase in the family's monthly rent is the lower of either the amount by which the family's current monthly rent exceeds the family's baseline monthly rent, or for Section 8 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 [24 CFR 984.305(b)(2)].

EIC Policy

PHA-Web Housing Software FSS system will be utilized to calculate and track earned escrows

Determination of Escrow Credit for Families Who Are Not Low Income

FSS families who are not low-income families are not entitled to any FSS credit [24 CFR 984.305(b)(2)].

Increases in FSS Family Income [24 CFR 984.304]

As described in the FSS credit calculations above, any increases in family earned income resulting in increases in family rent are deposited in the escrow account. For this reason, and because of the nature of the FSS account, any increase in the earned income of an FSS family during its participation in an FSS program may not be considered as income or an asset for purposes of eligibility of the FSS family for other benefits, or amount of benefits payable to the FSS family, under any other program administered by HUD.

Cessation of FSS Credit [24 CFR 984.305(b)(4)]

The PHA will not make any additional credits to the FSS family's FSS account when the family has completed the contract of participation, when the contract of participation is terminated, when the family is not low-income, or during the time a Section 8 family is in the process of moving to a new unit.

6-I.C. DISBURSEMENT OF FSS ACCOUNT FUNDS

Disbursement before Completion of Contract

The PHA may at its sole option disburse FSS account funds before completion of the contract if the family needs a portion of the funds for purposes consistent with the contract of participation and the PHA determines that the FSS family has fulfilled certain interim goals established in the contract of participation. These interim disbursements could include, and are not limited to, using the funds to assist the family in meeting expenses related to completion of higher education (e.g., college, graduate school) or job training, or to meet start-up expenses involved in creation of a small business [24 984.305(c)(2)(ii)].

EIC Policy

EIC will disburse 33% of the FSS escrow account funds before completion of the CoP when the family has met certain interim goals, which means the family has met all its obligations under the CoP to date, including completion of the ITSP interim goals and tasks to date, and:

Requested funds are needed to complete an interim goal or task within the CoP and are not ongoing expenses.

OR

The family has demonstrated that a one-time payment of otherwise ongoing expenses such as rent, utilities, telephone, cell phone, pager, car payments, car maintenance, insurance, or childcare is needed to complete an interim goal, a final goal, or a task related to such goals.

Disbursement at Completion of Contract [24 CFR 984.305(c)(1) and 24 984.305(c)(2)(i)]

When the contract has been completed, at or before the expiration date, according to regulation, the amount in the FSS account in excess of any amount the FSS family owes to the landlord or PHA in public housing under the lease will be paid to the head of the FSS family. To receive the disbursement, the head of the FSS family must submit a certification (as defined in 24 CFR 984.103) to the PHA at the time of contract completion that, to the best of his or her knowledge and belief, no member of the FSS family is a recipient of welfare assistance.

The PHA is not required to confirm with the landlord that the FSS participant family owes no debts prior to graduation and escrow disbursement. However, if the landlord or owner has reported any outstanding debts to the PHA, the debt amount may be deducted from the final escrow disbursement prior to disbursement and the PHA will use it to pay the landlord to reduce the debt owed by the participant. PHA will use it to pay the landlord or owner to reduce or settle the debt owed by the participant. The PHA may set a policy to consult with the landlord prior to graduation to determine if the FSS participant family owes debts under the lease [24 CFR 984.305(c) and FAQ on FSS Final Rule Implementation 7/23/23, End8].

EIC Policy

Escrow funds will be disbursed upon completion and verification of the contract.

Disbursement at Contract Termination [24 CFR 984.305(c)(3)]

The PHA must disburse to the family its FSS escrow account funds in excess of any amount owed to the PHA under the HCV or public housing lease when the contract has been terminated in certain circumstances. These circumstances include when services are not available to the family that the PHA and the FSS family have agreed are integral to the FSS family's advancement towards self-sufficiency, when the head of the FSS family becomes permanently disabled and unable to work during the period of the contract (unless the PHA and the FSS family determine that it is possible to modify the contract to designate a new head of the FSS family), or when an FSS family moves outside the jurisdiction of the PHA and continuation of the CoP after the move is not possible according to the regulations. In circumstances where a family is not able to continue in FSS after the move, it is also possible for the PHA and the family to determine if the contract can be modified to make completion and receipt of the escrow monies, possible. PHAs must be consistent in their determinations of whether a family has good cause for a termination with FSS escrow disbursement.

Verification of Family Certification at Disbursement

The PHA must verify that the family has met the requirements of either interim, final, or termination of contract with escrow distributions. Interim disbursement may only occur after the family has completed certain interim goals and funds are needed to complete other interim goals. Final disbursement can only occur after the family has completed the contract of participation and all members are welfare-free as defined by regulation. Disbursement at contract termination only occurs if the family circumstances involve a missing integral service, the disability of the FSS head of household, or an FSS family porting out of the jurisdiction of the PHA and HUD regulations do not allow continuation of the FSS contract. In each of these circumstances, it follows that the PHA may require verification for the completion of interim goals or contract of participation.

At interim disbursement and before final disbursement of the FSS account funds to the family, the PHA may verify that the FSS family is no longer a recipient of welfare assistance by requesting copies of any documents which may indicate whether the family is receiving any welfare assistance, and by contacting welfare agencies [24 CFR 984.305(c)(4)].

HUD provides verification guidance in Notice PIH 2018-18. This guidance is mandatory for the Section 8 and public housing programs. The PHA's Administrative Plan or ACOP must contain verification policies following the hierarchy in this notice. The policies contained in the PHA's ACOP and Administrative Plan cover verification policies related to the FSS program in general. However, determining the need for interim disbursements may require more clarification as to what constitutes an acceptable third-party source.

EIC Policy

EIC will require verification that the FSS family has completed certain interim goals, has completed the contract of participation, including requirements regarding non-payment of rent, has met the requirements for termination with disbursement of escrow, and the FSS family is no longer a recipient of welfare assistance, as relevant, before making interim and final disbursements.

EIC will follow HUD's verification hierarchy set forth in Notice PIH 2023-27 to make these verifications, including the guidance therein regarding documentation. The PHA will use a knowledgeable professional as a third-party source to verify the need for interim disbursements.

EIC will follow HUD's verification hierarchy to verify with the HCV landlord full payment of monies owed under the lease at the time of completion of the CoP. If the landlord or owner reports any outstanding debts to the PHA, the debt amount will be deducted from the final escrow disbursement prior to disbursement and the PHA will use it to pay the landlord/owner to reduce/settle the debt owed by the participant [FAQ on FSS Final Rule Implementation 7/23/23, End8].

6-I.D. SUCCESSION TO FSS ACCOUNT [24 CFR 984.305(d) and FR Notice 5/17/22]

FSS account funds should be disbursed to the head of the FSS family. However, if the head of the FSS family no longer resides with the other family members in Section 8 or public housing, the remaining members of the FSS family, after consultation with the PHA, have the right to designate another family member to receive the funds.

If the head of the FSS family dies before the CoP is completed, both the law and the FSS regulations state that the escrow may be withdrawn by the participating family. An estate is not considered to be a participating family; therefore, the escrow may not be distributed to the estate of the FSS head of household.

HUD will consider waiver requests, as has been the case prior to this rulemaking. The regulations for requesting regulatory waivers are found in Notice PIH 2013-20.

EIC Policy

EIC will forward a request for waiver when "good cause" warrants when an FSS participant dies before completing the CoP. The PHA will apply its definition of *good cause* in Chapter 2 of this Action Plan in its decision to forward such a request to HUD. The regulations for requesting regulatory waivers are found in Notice PIH 2013-20.

6-I.E. USE OF FSS ACCOUNT FUNDS FOR HOMEOWNERSHIP

According to regulation, a Section 8 or public housing FSS family may use the final distribution of FSS account funds for the purchase of a home, including the purchase of a home under one of HUD's homeownership programs, or other federal, state, or local homeownership programs, unless the use is prohibited by the statute or regulations governing the particular homeownership program [24 CFR 984.305(e)].

Homeownership is just one possibility for use of the FSS account funds. PHAs may not restrict the use of escrow funds at contract completion.

6-I.F. FORFEITURE OF FSS ACCOUNT FUNDS

Amounts in the FSS account will be forfeited when the contract of participation is terminated without escrow disbursement, or when the contract of participation is completed by the family (see Section 5-II.D. of this action plan) but the FSS family is receiving welfare assistance at the time of expiration of the term of the contract of participation, including any contract extension [24 CFR 984.305(f)(1)].

Use of forfeited escrow accounts is described in detail in Section 3-I.F. of this FSS Action Plan.

Treatment of Forfeited FSS Account Funds

FSS escrow account funds forfeited by the FSS family must be used by the PHA for the benefit of the FSS participants. These funds may only be used for support for FSS participants in good standing. These supports include transportation, childcare, training, testing fees, employment preparation costs, and other costs related to achieving obligations outlined in the CoP; or training for FSS Program Coordinator(s). Forfeited FSS escrow accounts may not be used for salary and fringe benefits of FSS Program Coordinators, general administrative costs of the FSS program, for the overall implementation of the FSS program, or for housing assistance payments (HAP) expenses or public housing operating funds. Accounting Brief 26 describes the accounting requirements in the treatment of forfeited escrow accounts.

PART II: ESCROW FUND ACCOUNTING AND REPORTING

6-II.A. OVERVIEW

Regulations set forth specific requirements involving the accounting and reporting for the FSS escrow account. This part describes those requirements and the PHA policy necessary for managing the account from the PHA perspective.

6-II.B. ACCOUNTING FOR FSS ACCOUNT FUNDS

When establishing FSS escrow accounts, the PHA must deposit the FSS account funds of all families participating in the PHA's FSS program into a single depository account for each (Section 8 or public housing) program. These funds are determined at each reexamination after the effective date of the contract and must be deposited each month to each family's subsidiary line item in the PHA's escrow account. In addition, the funds held in this account must be invested in one or more of the HUD-approved investments [24 CFR 984.305].

Crediting the Escrow Account [24 CFR 984.305(a)(2)(i)]

The total of the combined FSS account funds will be supported in the PHA accounting records by a subsidiary ledger showing the balance applicable to each FSS family. During the term of the contract of participation, the PHA must credit the amount of the FSS credit (see Section 6-I.B.) to each family's FSS account every month.

Proration of Investment Income [24 CFR 984.305(a)(2)(ii)]

Because the FSS account funds are to be invested, the investment income for those funds in the FSS account will also need to be credited to each family's account subsidiary line item. By regulation, these funds are to be prorated and credited to each family's FSS account based on the balance in each family's FSS account at the end of the period for which the investment income is credited.

EIC Policy

Annually the full amount of the investment income funds in the Economic Improvement Council FSS account will be prorated and credited to each family's subsidiary line item after the deduction of unpaid rent and any other amounts due under the Section 8 program

Investment income expected for the FSS Accounts of EIC, Inc. Are in the form of interest earned from the bank account.

Reduction of Amounts Due by FSS Family [24 CFR 984.305(a)(2)(iii) and FAQ on FSS Final Rule Implementation 7/23/23, End9]

At Completion for Monies Owed to the PHA or HCV Landlord by the Family

If the FSS family has not paid the family contribution towards rent, or other amounts, if any, due under the public housing or Section 8 lease, the balance in the family's FSS account shall be reduced by that amount (as reported by the owner to the PHA in the Section 8 FSS program) at the time of final disbursement of FSS escrow funds. The FSS family must comply with the terms and conditions of their public housing or Section 8 lease. The family must be "current" with their rent or, if rent is owed, the family must become current with a repayment agreement in order to graduate from FSS and receive disbursed escrow funds.

During the Contract of Participation

If during the CoP, a family owes money to the landlord in HCV or the PHA in public housing, the PHA may not unilaterally take escrow funds from the family's escrow to pay rent or other debts owed to the owner or PHA [FAQ on FSS Final Rule Implementation 7/23/23, End15].

Before Completion for Underreported Income

At Baseline When the Family Joins FSS for Underreported Income

If the FSS family is found to have underreported income in the reexamination used to set the baseline, the PHA will recalculate escrow for the entire period of the CoP using the correct income to set the baseline and then calculate subsequent escrow amounts.

After Baseline When Family is in FSS for Underreported Income

If the FSS family has been found to have underreported income after the baseline annual earned income was set, the amount credited to the FSS escrow account will be based on the income amounts originally reported by the FSS family.

6-II.C. REPORTING ON THE FSS ACCOUNT

Each PHA must make a report, at least once annually, to each FSS family on the status of the family's FSS account.

At a minimum, the report must include [24 CFR 984.305(a)(3)]:

- The balance at the beginning of the reporting period
- The amount of the family's rent payment that was credited to the FSS account, during the reporting period
- Any deductions made from the account for amounts due the PHA before interest is distributed
- The amount of interest earned on the account during the year
- The total in the account at the end of the reporting period

EIC Policy

EIC will provide FSS participants with an annual statement on the status of their FSS escrow account for the 12-month period ending June 30.