

Financial Management Services in Participant Direction: What are the Different Models?

Financial Management Services are a Participant-Directed Support

Financial Management Services (FMS) are a participant-directed support; they assist program participants to use participant-directed services.

FMS is commonly provided via one of the following FMS models (also see chart on page 3):

Fiscal/Employer Agent (F/EA): With an F/EA model, the program participant or representative is the common law employer of workers hired, trained and managed by the participant/representative. The F/EA serves as the participant employer's *employer agent*. The F/EA pays workers and vendors on the participant's behalf and, using a separate Federal Employer Identification Number (FEIN) for the purpose of serving as an F/EA, the F/EA withholds, calculates, deposits and files withheld Federal Income Tax and both employer and employee Social Security and Medicare Taxes. The F/EA is jointly liable with the participant for any unfulfilled tax obligations for the above mentioned taxes.

The Fiscal/Employer Agent model can be separated into two sub-models, each of which are subject to specific IRS Revenue Procedures. The sub-models of the F/EA model are the *Government F/EA* and *Vendor F/EA* models.

Government F/EA

An F/EA operating per the Government F/EA model must be a Federal, state or local government entity. The Government F/EA obtains a separate FEIN to serve as an employer agent of participant employers. The Government F/EA performs the standard F/EA duties, but the Government F/EA can also file and deposit Federal Unemployment Tax Act (FUTA) taxes in aggregate on behalf of all participant employers represented using a separate FEIN for that purpose. Depending on State requirements, employers represented by a Government F/EA may not need to obtain individual FEINs. Per IRS Notice 2003-70, a Government F/EA can designate Fiscal/Employer Agent duties to a sub-agent who represents the Government F/EA as an *employer agent*. The sub-agent can be a contracted vendor.

Government F/EAs are subject to IRS Revenue Procedures 80-4 and as modified by IRS Proposed Notice 2003-70.

Vendor F/EA

An F/EA operating per the Vendor F/EA model must not be a government entity, but can be a for-profit or non-profit organization. The Vendor F/EA performs the standard F/EA duties, but as of February 2009, the Vendor F/EA can file and deposit



FUTA taxes in aggregate on behalf of all participant employers represented using a separate FEIN for that purpose per *verbal* guidance provided by IRS staff at the December 5, 2005 F/EA Conference and Workshop. The IRS is in the process of developing formal guidance that directs Vendor F/EAs to file and deposit FUTA in the aggregate using the Vendor F/EA's separate FEIN. Employers represented by a Vendor F/EA must always obtain an FEIN to be used to designate the Vendor F/EA as the *agent of employer* using IRS Form 2678, *Employer Appointment of Agent*, under Section 3504 of the Internal Revenue Code. A Vendor F/EA can designate certain wage payment and tax withholding, depositing and filing duties to a reporting agent, but the reporting agent will not incur liability for any unfulfilled Federal tax obligations.

Vendor F/EAs are subject to IRS Revenue Procedure 70-6.

Agency with Choice (AwC): With an AwC model, an agency is the primary employer of workers who provide service to the participant for human resource, payroll and insurance requirements. The program participant or representative serves as the "managing employer" of workers and in that role refers workers to the AwC for hire, participates in training and setting terms and conditions of work, supervises worker activities and discharges the worker from the work site, which is usually the participant's home. The agency may provide supportive services to workers or participants.

Fiscal Conduit: With a Fiscal Conduit model, a government entity or vendor disburses public funds via cash or vouchers to participants or representatives. If the participant chooses to directly hire workers and serve as their common law employer, the participant is responsible for managing all payroll-related duties, including paying wages, tax withholding, calculating, depositing and filing and for doing so in compliance with Federal, State and Local tax, wage and hour rules and regulations. If the participant uses agency or vendor services, the participant is responsible for making payments to the agency or vendor.

Characteristics of Common FMS Models

FMS Model	Operating Entity	Employer of Worker¹	FEIN Required in Participant/ Representative's Name¹?	Specific IRS Guidance in Addition to Internal Revenue Code, Regulations and IRS Publication Circular E
Government F/EA	State or Local Government Entity	Participant or Representative	Not always. Depends on state requirements.	IRC Section 3504, Rev. Proc. 80-4 as modified by Notice 2003-70
Vendor F/EA	Vendor	Participant or Representative	Yes	IRC Section 3504, Rev. Proc. 70-6
Agency with Choice	Agency	Agency	No	No
Fiscal Conduit	State/Local Government Entity or Vendor	Participant or Representative	Yes	IRC Section 3510 (Household Employment Taxes), Notice 95-18

¹ If participant is directly hiring or referring a worker for hire. This does not apply if the participant is only purchasing vendor, agency or independent contractor services.