

**Tasks to Be Performed by a Vendor Fiscal/Employer Agent (F/EA) FMS
Provider Operating Under Section 3504 of the IRS Code and Rev. Proc. 70-6,
Proposed Notice 2003-70, as Applicable and REG-137036-08¹**

There are a number of tasks entities must perform when operating as a Vendor F/EA FMS provider under section 3504 of IRS code, Revenue Procedure 70-6 and as modified by the January 13, 2010 IRS *Notice of Proposed Rulemaking Regarding Section 3504 Agent Tax Liability* (REG-137036-08) and Proposed Notice 2003-70, as applicable. The purpose of this document is to provide information that will assist:

- State and local government program agencies in developing Medicaid provider standards for implementing Medicaid provider certification procedures or Request for Proposals and administrative contracts for Vendor F/EA FMS provider services and protocols for assessing a Vendor F/EA provider's initial readiness (certification) to perform the Vendor F/EA FMS provider function and for assessing; and monitoring its ongoing performance; and
- Assist entities who wish to operate as Vendor F/EA FMS providers or to review their current Vendor F/EA FMS operations.

Preparing and Maintaining a Vendor F/EA FMS Provider Policies and Procedures Manual

All Vendor Fiscal/Employer Agents (F/EA) Financial Management Service (FMS) providers should prepare and maintain a *Vendor F/EA FMS Policies and Procedures Manual* that describes the policies, procedures and internal controls for all tasks related to the Vendor F/EA FMS function (including reporting agent role and tasks if used). The Manual should be updated at least annually and as needed. It is recommended that the Manual be developed in an electronic/read-only format so that Vendor F/EA FMS staff can readily access it and the Vendor F/EA FMS can make it available to state program staff when requested.

If a Vendor F/EA FMS provider contracts with and delegates Vendor F/EA FMS tasks to a reporting agent, the Vendor F/EA FMS provider's Policies and Procedures Manual should clearly describe the tasks performed by the Vendor F/EA FMS provider, the reporting agent, and any overlapping or communication and data transmission tasks and the tasks the Vendor F/EA FMS provider will perform when monitoring the reporting agent's ongoing performance. The reporting agent should also have a state-specific policies and procedures manual for the tasks it will be performing on the Vendor F/EA FMS provider's and individuals' behalf in a particular state.

¹ This information is based on IRS documentation related to Vendor F/EA FMS providers, discussions with central and regional office IRS employment tax staff and best practices identified from Vendor F/EA FMS provider operations. This information is subject to change based on future IRS policy clarification/changes related to Vendor F/EA FMS providers and household employers who hire domestic service workers to provide support services and use an F/EA to manage the payroll and bill payment functions.

Staying Up-to-Date with Federal and State Tax, Labor, Immigration Workers' Compensation and Program Requirements

Vendor F/EA FMS providers must have policies, procedures and internal controls in place to stay up-to-date with federal and state tax, labor, immigration, workers' compensation (and mandatory disability insurance in the five states where it is applicable) and program regulations to perform effectively as a Vendor F/EA FMS provider and limit any risk of liability as a result of noncompliance. For example, Federal and state tax procedures forms and instructions can change without prior notice. Reviewing applicable agency web sites on a monthly basis is essential for staying up-to-date in these areas.

Obtaining a Separate FEIN for Federal Tax Filing and Payment Purposes

Entities performing as Vendor F/EA FMS providers should obtain a separate Federal employer identification number (FEIN) for the sole purpose of filing certain federal employment tax forms and making certain federal tax payments. This FEIN should only be used processing wages and federal forms and taxes for the individual-employers it represents as agent and not for processing wages and related federal forms and taxes for employees of parent organization or sub entity. This FEIN really acts as a "dummy" FEIN and is obtained in addition to an F/EA organization's corporate FEIN. A reporting agent uses this separate FEIN when performing Vendor F/EA FMS on behalf of a Vendor F/EA FMS provider.

It should be noted that when the Vendor F/EA FMS provider is a 501(c) (3) entity, having a separate FEIN allows the entity to file FUTA on behalf of the individuals/representative-employers it represents as agent. Typically, a 501(c) (3) entity is exempt from paying FUTA for its employees.

Contracting with and Delegating F/EA Tasks to a Reporting Agent

In the October 2007 revision of the Form 2678, *Agent/Payment Authorization*, IRS announced that agents may contract with a third party, such as a reporting agent or certified public accountant, to prepare or file the returns covered under its authorized appointment or to make any required payments. IRS defines a reporting agent as:

An accounting service, franchiser, bank², service bureau, or other entity authorized to perform one or more of the following functions:

- *Sign and file electronically Forms 940 and 941;*
- *Sign and file on paper Forms 945, 1042, 940 and 941-PR, 941-SS, 943, 943-PR., and Form CT-1; and*

² The IRS Office of General Counsel for Employment Tax staff has reported that credit unions are not considered "banks" under this definition.

- *Make FTDs and FTPs and submit FTD and FTP information electronically for the taxes reported on the Form 720, 940, 941, 943, 945, 990-C, 990-PF, 990-T, 1041, 1042, 1120 and Form CT-1.*

Such a contract may authorize the IRS to disclose confidential tax information of the employer/payer and the agent to the third party. The IRS has prescribed Form 8655, *Reporting Agent Authorization* as the appropriate authorization form for a taxpayer or F/EA to use to designate a reporting agent (IRS Revenue Procedure 2003-69).

The IRS Form 2678 (version 10/2007) discusses the issue of reporting agent liability for any unfulfilled federal tax obligations including penalties and interest. The IRS states that if the third party (the reporting agent) fails to file the returns or make the payments, the F/EA (agent) and the employer/payer (the individual) remains liable. Many states take a similar position regarding reporting agents as it relates to state income tax withholding and employment tax filing and payment requirements.

Vendor F/EA FMS providers using reporting agents to perform some of the agent tasks on the Vendor F/EA FMS provider's behalf must:

- Execute an IRS Form 8655, *Reporting Agent Authorization* between itself and the reporting agent for the purpose of filing IRS Forms 940, 941 and W-2.

Vendor F/EA FMS providers should:

- Execute an IRS Form 8821, *Tax Information Authorization*, between the individual and the Vendor F/EA FMS provider that includes the reporting agent as the second appointee; and
- Execute a signed informed consent statement with each individual the Vendor F/EA FMS provider represents that states that the individual understands the Vendor F/EA FMS provider is using a reporting agent to perform some of the agent tasks; the reporting agent's liability for any unfulfilled federal and state tax obligations including penalties and interest; lists the tasks being performed by the Vendor F/EA FMS provider; and concurs of the Vendor F/EA FMS provider's use of a reporting agent.

When Does a Vendor F/EA FMS provider's Liability for Filing and Depositing Federal Taxes Begin?

The October 2007 IRS Form 2678 instructions state that an agent (Vendor Fiscal/Employer Agent) is not liable for filing any federal tax returns or making any deposits or payments until it receives approval from the IRS (IRS 1997C Letter) to act as an agent for an individual. So during the period from when the agent files the IRS Form 2678 for an individual until the agent receives IRS agent approval for that individual, state program agencies **must** require that the Vendor F/EA FMS provider be responsible for filing and depositing federal taxes (federal income tax withholding, Medicaid and

Social Security (FICA) and federal unemployment insurance taxes (FUTA) and any unfulfilled federal tax obligations, including penalties and interest, and state this requirement in the administrative contracts and/or Medicaid provider agreements they execute with Vendor F/EA FMS providers.

The remaining Vendor F/EA FMS provider tasks are described in the balance of this document. Please note that depending on the operational approach use by a state program agency, the Vendor F/EA FMS provider or its reporting agent may be performing these tasks.

I. Obtaining Federal And State Approval To Be A Vendor Fiscal/Employer Agent (F/EA) Financial Management Service (FMS) Provider

1. Does the Vendor F/EA FMS provider have a separate FEIN specifically to file the IRS Form 2678, *Employer Appointment of Agent* and other federal tax forms and to file and make federal tax payments on individuals' behalf?³
2. Does the Vendor F/EA FMS provider have a system in place for obtaining a federal employer identification number (FEIN) for each individual it represents as agent and for maintaining copies of the individual's FEIN, IRS FEIN notification and the filed Form SS-4, *Application for Employer Identification Number* in the individual's file?⁴
3. Does the Vendor F/EA FMS provider have written policies and procedures for obtaining a federal employer identification number for each individual it represents and for maintaining copies of the individual's FEIN, IRS FEIN notification letter and the filed Form SS-4, *Request for FEIN* in the individual's file?
4. Does the Vendor F/EA FMS provider have a system in place for retiring individuals' FEINs when they are no longer employers (permanently)?⁵
5. Does the Vendor F/EA FMS provider have written policies and procedures for retiring individuals' FEINs when they are no longer employers?
6. Does the Vendor F/EA FMS provider have internal controls documented and in place to monitor the FEIN process, including receipt and retirement of individuals' FEINs,

³ For the purpose of this document, the term "individual" refers to the employer whether it's the individual service recipient or his/her representative, as appropriate. There may be a case where a Vendor F/EA FMS provider may decide to stop performing the function. In this case, the last task the Vendor F/EA FMS provider will need to perform is to retire its separate FEIN with the IRS once it has performed all the required tasks for the applicable tax period for individuals it represents as agent in all states and for all programs. It should be noted that a Vendor F/EA FMS provider only obtains one separate FEIN to be used to file certain federal forms and to file and pay certain federal tax payments on behalf of all individuals it represents in all states and for all publicly-funded self-directed service programs.

⁴ It should be noted that per a phone conversation with Becky Herzog at the IRS in Tax Policy and Procedural Guidance on August 2, 2007, Vendor F/EA FMS providers can not use the IRS online option for getting FEINs for individuals. Rather, they must use either the, mail, phone or fax options.

⁵ In the letter, the IRS specifically would like to know if the individual for whom the FEIN is being retired, is deceased.

including making sure that all individuals have FEINs and the documentation is maintained in each individual's file?

7. Does the Vendor F/EA FMS provider have a system in place for preparing and submitting a signed IRS Form 2678: *Employer/Payer Appointment of Agent* for each individual it represents and for maintaining documentation (copy of IRS Form 2678, Request for Approval Letter and IRS 1997C Letter) on file?⁶
8. Does the Vendor F/EA FMS provider have written policies and procedures for submitting an IRS Form 2678 and for maintaining documentation (copy of IRS Form 2678, Request for Approval Letter and IRS 1997C Letter) on file?
9. Has the Vendor F/EA FMS provider received written authorization (IRS 1997C Letter) from the IRS to be the Agent for each individual it represents and does it have a copy of the written authorization in each individual's file?⁷
10. Does the Vendor F/EA FMS provider have a system in place for revoking the IRS Form 2678 for each individual it no longer represents in accordance with IRS requirements and for maintaining documentation (copy of the IRS Form 2678 completed for revocation and the IRS LTR 4228C acknowledging the revocation) in each individual's file?
11. Does the Vendor F/EA FMS provider have written policies and procedures for revoking the IRS Form 2678 for each individual it no longer represents in accordance with IRS requirements and for maintaining documentation (copy of the IRS Form 2678 completed for revocation and the IRS LTR 4228C acknowledging the revocation) in each individual's file?
12. Does the Vendor F/EA FMS provider have internal controls documented and in place to monitor the preparation and submission and revocation of IRS Forms 2678 in accordance with IRS requirements, and the receipt of IRS approval for all individuals it represents and for maintaining documentation (copy of the IRS Form 2678 completed for revocation and the IRS LTR 4228C acknowledging the revocation) in each individual's file?
13. Does the Vendor F/EA FMS provider have a system in place for filing a signed IRS Form 8821, *Tax Information Authorization* for each individual it represents and for maintaining copies of the Form in each individual's file?⁸

⁶ IRS issued a revised Form 2678 effective May 2007 and again effective October 2007. These revisions clarified a number of issues related to Government and Vendor F/EA FMS provider authorization.

⁷ Agent authorization is effective on the date on the IRS authorization notice. Until that date, IRS does not consider the Vendor F/EA FMS provider liable for any unfulfilled federal tax obligations including penalty and interest. Therefore, it is important that the administrative contract and/or Medicaid provider agreement a state program agency executes with a Vendor F/EA FMS provider holds the Vendor F/EA FMS provider liable for any unfulfilled federal and state tax obligations for the entire contract period including the time from when the Vendor F/EA FMS provider requested approval from the IRS to be an agent until IRS agent approval is received.

14. Does the Vendor F/EA FMS provider have written policies and procedures for preparing and filing IRS Forms 8821 and for maintaining copies of the Form in each individual's file?
15. Does the Vendor F/EA FMS provider have a system in place for renewing IRS Forms 8821 for each applicable individual at the appropriate time and for maintaining copies of the renewals in each individual's file?
16. Does the Vendor F/EA FMS provider have written policies and procedures for renewing IRS Forms 8821 for each applicable individual at the appropriate time and for maintaining copies of the renewals in each individual's file?
17. Does the Vendor F/EA FMS provider have a system in place for revoking an IRS Form 8821 when the Agent no longer represents the individual and for maintaining documentation in each individual's file?⁹
18. Does the Vendor F/EA FMS provider have written policies and procedures for revoking the IRS Form 8821 when the Agent no longer represents the individual and for maintaining documentation in each individual's file?
19. Does the Vendor F/EA FMS provider have internal controls documented and in place to monitor the process for obtaining, filing, renewing and revoking IRS Forms 8821 and maintaining documentation in each individual's file?
20. Does the Vendor F/EA FMS provider have a system in place for obtaining a state power of attorney (for state income tax, unemployment tax or both, as required by the state) from each individual it represents, and for maintaining documentation in each individual's file?¹⁰

⁸ Vendor F/EA FMS providers should consider listing all of the forms that it regularly files or may file with the IRS on the IRS Form 8821 including IRS Forms 940, 941, 941-X, IRS Form 941 and 940 Schedule R, W-2, W-2(c), W-3, and W-3(c). Line 3 box c should include the proper dates per IRS Form instructions. Line 3, box d should state "Tax Liability." If the Vendor Fiscal/Employer Agent contracts with and delegates agent tasks to a reporting agent, it should include the reporting agent on the Form 8821 as the second appointee.

⁹ IRS Form 8821 instructions require a current original signature on Forms that are revoked. This can be a problem for Vendor F/EA FMS providers, particularly if the individual is deceased. One possible solution to this problem might be for the Vendor F/EA FMS provider to obtain two forms with original signatures, one dated and one not dated to be used when the form is revoked in the future. If individual is deceased, then it should be noted on a copy of the most recent Form executed that includes the individual's signature.

¹⁰ If the Vendor F/EA FMS provider uses a reporting agent (e.g., payroll processor), it should have a discussion with the relevant state tax agency staff about who should hold the state power of attorney, the Vendor F/EA FMS provider or the reporting agent or both. In addition, if the Vendor F/EA FMS provider is using a reporting agent, the IRS Form 8821 should be executed between the Vendor F/EA FMS provider and the individual with the reporting agent listed as the second appointee.

21. Does the Vendor F/EA FMS provider have written policies and procedures for obtaining a state power of attorney (for state income tax, unemployment tax or both, as required by the state) from each individual it represents, and for maintaining documentation in each individual's file?
22. Does the Vendor F/EA FMS provider have a system in place for revoking a state power of attorney (for state income tax, unemployment tax or both, as required by the state) when it no longer represent an individual, and for maintaining documentation in each individual's file?
23. Does the Vendor F/EA FMS provider have a written policies and procedures for revoking a state power of attorney (for state income tax, unemployment tax or both, as required by the state) when it no longer represent an individual, and for maintaining documentation in each individual's file?
24. Does the Vendor F/EA FMS provider have internal controls documented and in place to monitor the filing and revocation of state powers of attorney forms (for state income tax, unemployment tax or both, as required by the state) for each individual it represents, and maintaining documentation in each individual's file?
25. If the Vendor F/EA FMS provider uses a reporting agent to perform some of the agent tasks, does it have a system in place for executing an IRS Form 8655, *Reporting Agent Authorization* between itself and the reporting agent and for maintaining documentation in each individual's file?
26. If the Vendor F/EA FMS provider uses a reporting agent to perform some of the agent tasks, does it have a written policy and procedure in place for executing an IRS Form 8655, *Reporting Agent Authorization* between itself and the reporting agent and for maintaining documentation in each individual's file?
27. If the Vendor F/EA FMS provider uses a reporting agent to perform some of the agent tasks, does it have a system in place for revoking an IRS Form 8655, *Reporting Agent Authorization* between itself and the reporting agent when it no longer uses a reporting agent and for maintaining documentation in each individual's file?
28. If the Vendor F/EA FMS provider uses a reporting agent to perform some of the agent tasks, does it have a written policy and procedure in place for revoking an IRS Form 8655, *Reporting Agent Authorization* between itself and the reporting agent when it no longer uses a reporting agent and for maintaining documentation in each individual's file?
29. If the Vendor F/EA FMS provider uses a reporting agent to perform some of the agent tasks, does it have an internal control documented and in place to monitor the receipt and revocation of an IRS Form 8655, *Reporting Agent Authorization* between itself and the reporting agent and for maintaining documentation in each individual's file?

30. If the Vendor F/EA FMS provider uses a reporting agent to perform some of the agent tasks, does it have a system in place for obtaining a signed informed consent statement from each individual the Vendor F/EA FMS provider represents stating that the individual knows the Vendor F/EA FMS provider is using the reporting agent to perform some of the agent task; lists the tasks the reporting agent will perform, describes the reporting agent's liability for any unfulfilled federal and state tax obligations including penalties and interest; and states that the individual concurs with this and for maintaining the statement in each individual's file?
31. If the Vendor F/EA FMS provider uses a reporting agent to perform some of the agent tasks, does it have a written policy and procedure in place for obtaining a signed informed consent statement from each individual the Vendor F/EA FMS provider represents stating that the individual knows the Vendor F/EA FMS provider is using the reporting agent to perform some of the agent task; lists the tasks the reporting agent will perform, describes the reporting agent's liability for any unfulfilled federal and state tax obligations including penalties and interest; and states that the individual concurs with this and for maintaining the statement in each individual's file?
32. If the Vendor F/EA FMS provider uses a reporting agent to perform some of the agent tasks, does it have an internal control documented and in place to monitor the receipt of informed consent statements from individuals it represents related to the use of a reporting agent and for maintaining a copy of these statements in each individual's file?

II. Preparing and Distributing Individual-Employer Enrollment Packets and Support Worker Employment and Individual-directed Goods and Services Vendor Engagement Packets and Collecting and Processing Required Information and Documents

Individual Enrollment Packets

1. Has the Vendor F/EA FMS provider developed a Individual-employer Enrollment Packet that contains information about the Vendor F/EA FMS provider's services and operations (e.g., roles and responsibilities of the Vendor F/EA FMS provider, hours of operation, key contact information, federal and state forms the individual must complete, sign and return to the Agent [e.g., IRS Forms SS-4, 2678, 8821, and state power of attorney form(s) as applicable] and other applicable consent and agreement forms)?
2. Does the Vendor F/EA FMS provider have a system in place for producing and distributing Individual-employer Enrollment Packets?
3. Does the Vendor F/EA FMS provider have written policies and procedures for producing and distributing Individual-Employer Enrollment Packets?

4. Does the Vendor F/EA FMS provider have internal controls documented and in place to monitor the production and distribution of Individual-Employer Enrollment Packets?
5. Does the Vendor F/EA FMS provider have a system in place for collecting and processing the information contained in Individual-employer Enrollment Packet?¹¹
6. Does the Vendor F/EA FMS provider have written policies and procedures for collecting and processing the information contained in the Individual-employer enrollment packet?
7. Does the Vendor F/EA FMS provider have internal controls documented and in place to monitor the collection, and processing the information contained in the Individual-employer Enrollment Packet?

Support Worker Employment and Individual-directed Goods and Services Vendor Engagement Packets

1. Has the Vendor F/EA FMS provider developed a Support Worker Employment and Individual-directed Goods and Services Vendor Engagement Packet for individuals' employees and individual-directed goods and services vendors that contain all required information about the Vendor F/EA FMS provider, employment application, vendor information form, federal and state forms and instructions, agreements and informed consent documents to enroll employees into the Vendor F/EA FMS provider's payroll system (e.g., employment application, IRS Form W-4, state Form W-4, if applicable, USCIS Form I-9, IRS Notice 797, time sheet and instructions, time sheet due date and payday schedule) and individual-directed goods and services vendors (e.g., vendor information form, invoice submission form, invoice due date and payment schedule, IRS Forms W-9, as necessary) into its vendor payment system?¹²
2. Does the Vendor F/EA FMS provider have a system in place for producing and distributing Support Worker Employment and Individual-directed Goods and Services Vendor Engagement Packets that contain all required general information about the Vendor F/EA FMS provider, employment application, federal and state forms and instructions, agreements and informed consent documents to enroll employees into the Vendor F/EA FMS provider's payroll system (e.g., employment application, IRS Form W-4, state Form W-4, if applicable, USCIS Form I-9, IRS Notice 797, time sheet and instructions, time sheet due date and payday schedule) and individual-directed goods and services vendors (e.g., vendor information form,

¹¹ Section IV, #1-21 further describe the human resource related tasks.

¹² At the bottom of the IRS Publication 797 it is recommended the Vendor F/EA FMS provider add: If you think you are eligible to receive federal advanced EIC, please contact (name contact person and phone number) and an IRS Form W-5 will be sent to you to complete and return for processing.

invoice submission form, invoice due date and payment schedule, IRS Forms W-9, as necessary) into its vendor payment system?

3. Does the Vendor F/EA FMS provider have written policies and procedures for producing and distributing employment packets for individual's employees that contain all required general information about the Vendor F/EA FMS provider, employment application, federal and state forms and instructions, Medicaid provider and other agreements and informed consent documents to enroll employees into the Vendor F/EA FMS provider's payroll system (e.g., employment application, IRS Form W-4, state Form W-4, if applicable, USCIS Form I-9, IRS Notice 797, time sheet and instructions, time sheet due date and payday schedule) and individual-directed goods and services vendors (e.g., vendor information form, invoice submission form, invoice due date and payment schedule, IRS Forms W-9, as necessary) into its vendor payment system?
4. Does the Vendor F/EA FMS provider have internal controls documented and in place to monitor the production and distribution of employment packets for individual's that contain all required information about the Vendor F/EA FMS provider, employment application, federal and state forms and instructions, Medicaid provider and other agreements and informed consent documents to enroll employees into the Vendor F/EA FMS provider's payroll system (e.g., employment application, IRS Form W-4, state Form W-4, if applicable, USCIS Form I-9, IRS Notice 797, time sheet and instructions, time sheet due date and payday schedule) and individual-directed goods and services vendors (e.g., vendor information form, invoice submission form, invoice due date and payment schedule, IRS Forms W-9, as necessary) into its vendor payment system?
5. Does the Vendor F/EA FMS provider has a system in place for collecting and processing all required human resource and vendor forms and information contained in the Support Worker Employment and Individual-directed Goods and Services Vendor Packets and for maintaining copies in each support worker's/vendor's file?
6. Does the Vendor F/EA FMS provider have written policies and procedures for collecting and processing all required human resource forms and information contained in the Support Worker Employment and Individual-directed Goods and Services Vendor Packets and for maintaining copies in each support worker's/vendor's file?
7. Does the Vendor F/EA FMS provider have internal controls documented for monitoring the collection and processing all required human resource forms and information contained in the Support Worker Employment and Individual-directed Goods and Services Vendor Packets and for maintaining copies in each support worker's/vendor's file?

III. Management of Individuals' Budget Funds and Invoicing the Government for Services Rendered

1. Is the Vendor F/EA FMS provider a Medicaid enrolled provider, when required?
2. Does the Vendor F/EA FMS provider have a system in place for receiving and maintaining individuals' initial and updated service plans and budgets?
3. Does the Vendor F/EA FMS provider have written policies and procedures for receiving and maintaining individuals' initial and updated service plans and budgets?
4. Does the Vendor F/EA FMS provider have internal controls document for monitoring the receipt and maintenance of individuals' initial and updated service plans and budgets?
5. Has the Vendor F/EA FMS provider established a bank account into which all payments received from the state for self-directed services are immediately deposited and that allows for electronic funds transfer?¹³
6. Does the Vendor F/EA FMS provider maintain the bank account, to the extent permissible, in a manner that prevents creditors of the Vendor F/EA FMS provider from in any way encumbering or acquiring funds in the bank account?
7. Does the Vendor F/EA FMS provider have systems, policies, procedures and internal controls in place that prohibit the withdrawal of funds except for payment of self-directed services and Vendor F/EA FMS provider administrative fees, per state directive?
8. Does the Vendor F/EA FMS provider have an information system in place to receive and disburse individuals' Medicaid budget funds and track budget funds received, disbursed and any remaining balances for each individual individually and in the aggregate?¹⁴
9. Does the Vendor F/EA have written policies and procedures for receiving and disbursing individuals' Medicaid budget funds and tracking individuals' budget funds received, disbursed and any remaining balances for each individual and in the aggregate?

¹³ The Vendor F/EA FMS provider must have rules for the withdrawing funds from this bank account and reporting all activity per state program requirements.

¹⁴ The Vendor F/EA FMS provider's system should include the preparation and submission of periodic reports of bank account activity to the state, per state requirements. Reports should include a summary of bank activity for the reporting period, reconciliation of the back balance to the General Ledger, and reconciliation of any amounts advanced from the state. The Vendor F/EA FMS provider must ensure that funds deposited into the bank account are not used by it or any other agent or third party to satisfy temporarily or otherwise, any Vendor F/EA FMS provider liability or for any other purpose, except as instructed by the state. Finally, the Vendor F/EA FMS provider must not co-mingle other funds into the bank account.

10. Does the Vendor F/EA FMS provider have internal controls in place to monitor the receipt and disbursement of budget funds and any remaining balances for each individual?¹⁵
11. Does the Vendor F/EA FMS provider have a system in place for billing the State's Medicaid Management Information System or other designated entity for direct care services (e.g., support worker payroll and approved individual-directed goods and services vendor payment) provided to individuals and for Vendor F/EA FMS services rendered?
12. Does the Vendor F/EA FMS provider have a written policies and procedures for billing the State's Medicaid Management Information System or other designated entity for direct care services (e.g., support worker payroll and approved individual-directed goods and services vendor payment) provided to individuals and for Vendor F/EA FMS services rendered?
13. Does the Vendor F/EA FMS provider have internal controls documented for monitoring billing the State's Medicaid Management Information System or other designated entity for direct care services (e.g., support worker payroll and approved individual goods and services vendor payment) provided to individuals and for Vendor F/EA FMS services rendered?
14. When applicable, does the Vendor F/EA FMS provider have a system in place for processing individuals' co-share payments?
15. When applicable, does the Vendor F/EA FMS provider have written policies and procedures for processing individuals' co-share payments?
16. When applicable, does the Vendor F/EA FMS provider have internal controls documented for monitoring the processing of individuals' co-share payments.

IV. Payroll Process

1. Does the Vendor F/EA FMS provider have a system in place for collecting and processing an IRS Form W-4 from each worker it processes payroll and for maintaining a copy of the form in each support worker's file?
2. Does the Vendor F/EA FMS provider have written policies and procedures for collecting, and processing an IRS Form W-4 for each worker it performs payroll for and for maintaining a copy of the form in each support worker's file?
3. Does the Vendor F/EA FMS provider have internal controls documented and in place to monitor the collection and processing of IRS Forms W-4 for each worker it

¹⁵ An important internal control for this task is segregation of duties.

performs payroll for and for maintaining a copy of the form in each support worker's file?

4. Does the Vendor F/EA FMS provider have a system in place for collecting and processing an IRS Form W-5 from each eligible worker it processes Federal Advanced EIC for and for maintaining a copy of the form in each support worker's file?¹⁶
5. Does the Vendor F/EA FMS provider have written policies and procedures for collecting and processing an IRS Form W-5 from each eligible worker it processes Federal Advanced EIC for and for maintaining a copy of the form in each support worker's file?
6. Does the Vendor F/EA FMS provider have internal controls documented and in place to monitor the collection, processing of IRS Forms W-5 for each applicable worker and for maintaining a copy of the form in each support worker's file?
7. Does the Vendor F/EA FMS provider have a system in place for collecting and processing a completed and signed state version of the Form W-4, when applicable, from each individual it represents and for maintaining a copy in each support worker's file?
8. Does the Vendor F/EA FMS provider have a written policy and procedure for collecting and processing a completed and signed state version of the Form W-4, when applicable, from each individual it represents and for maintaining a copy in each support worker's file?
9. Does the Vendor F/EA FMS provider have an internal control documented and in place to monitor the receipt of a completed and signed state version of the For W-4, when applicable, from each individual it represents and for maintaining a copy in each support worker's file?
10. Does the Vendor F/EA FMS provider have a system in place to assist individuals in verifying worker's citizenship and alien status by collecting and maintaining a completed US CIS Form I-9, *Employment Eligibility Verification* for every worker it processes payroll for in each worker's file and for maintaining a copy of the form in each support worker's file?¹⁷
11. Does the Vendor F/EA FMS provider have written policies and procedures for assisting individuals in verifying workers' citizenship and alien status and for

¹⁶ It is suggested that Vendor F/EA FMS providers consider including IRS Publication 797 in the employment packets that explains what federal advanced earned income credit is.

¹⁷ It is suggested that if a Vendor F/EA FMS provider maintains copies of workers' identification information on file attached to the completed US CIS Form I-9 (e.g., copies of driver's license, social security number, passport, etc), the Agent should obtain written permission from the workers' to do so.

collecting and maintaining completed US CIS Form I-9 for each worker it processes payroll for and for maintaining a copy of the form in each support worker's file?

12. Does the Vendor F/EA FMS provider have an internal control documented and in place to monitor the completion and processing of US CIS Forms I-9 for each worker the individual employs and for maintaining a copy of the forms in each support worker's file?
13. Does the Vendor F/EA FMS provider have a system in place to process criminal background checks on prospective support workers (as required by the state or requested by the individual), notifying the state of the results and for maintaining copies of the documentation in the support workers' files as required by the state?
14. Does the Vendor F/EA FMS provider have written policies and procedures for processing criminal background checks on prospective support workers (as required by the state or requested by the individual), notifying the state of the results and for maintaining copies of the documentation in the support workers' files as required by the state?
15. Does the Vendor F/EA FMS provider have an internal control documented and in place to monitor the processing of criminal background checks on prospective support workers (as required by the state or requested by the individual), notifying the state of the results and for maintaining copies of the documentation in the support workers' file as required by the state?
16. Does the Vendor F/EA FMS provider have a system in place for verifying each support worker's social security number and for maintaining the appropriate documentation in each support worker's file?
17. Does the Vendor F/EA FMS provider have written policies and procedures for verifying each support worker's social security number and for maintaining the appropriate documentation in each support worker's file?
18. Does the Vendor F/EA FMS provider have internal controls documented and in place to monitor the verification of each support worker's social security number and for maintaining the appropriate documentation in each support worker's file?
19. Does the Vendor F/EA FMS provider have a system in place for verifying the state of residence for each support worker and for maintain the appropriate documentation in each support worker's file?
20. Does the Vendor F/EA FMS provider have written policies and procedures for verifying the state of residence for each support worker and for maintain the appropriate documentation in each support worker's file?

21. Does the Vendor F/EA FMS provider internal controls documented and in place to monitor the verification of the state of residence for each support worker and for maintain the appropriate documentation in each support worker's file?
22. Does the Vendor F/EA FMS provider have a system in place to ensure support workers are paid in compliance with federal and state Department of Labor wage and hour rules for regular and overtime pay?
23. Does the Vendor F/EA FMS provider have written policies and procedures to ensure support workers are paid in compliance with federal and state Department of Labor wage and hour rules for regular and overtime pay?
24. Does the Vendor F/EA FMS provider have an internal control documented and in place to monitor that support workers are paid in compliance with federal and state Department of Labor wage and hour rules for regular and overtime pay?
25. Does the Vendor F/EA FMS provider have a system in place to report new hires per state requirements and maintain documentation in the individual's file?
26. Does the Vendor F/EA FMS provider have written policies and procedures for reporting new hires per state requirements and maintain documentation in the individual's file?
27. Does the Vendor F/EA FMS provider has an internal control documented and in place to monitor the reporting of new hires per state requirements and maintain documentation in the individual's file?
28. Has the Vendor F/EA FMS provider designed and produced a timesheet and instructions for support workers?
29. Does the Vendor F/EA FMS provider have a system in place for producing, distributing, collecting, verifying and processing support workers' timesheets and maintaining copies in the support worker's file?
30. Does the Vendor F/EA FMS provider have written policies and procedures for producing, distributing, collecting verifying and processing support workers' timesheets and maintaining copies in the support worker's file?
31. Does the Vendor F/EA FMS provider have an internal control documented and in place for monitoring the production, distribution, collection, verification and processing of support workers' timesheets and maintaining copies in the support worker's file?
32. Does the Vendor F/EA FMS provider have a system in place for developing and maintaining a database that is effective for tracking and responding to occurrences of

time sheet over billing and timesheets that can not be paid due to missing or erroneous information?

33. Does the Vendor F/EA FMS provider have written policies and procedures for developing and maintaining a database that is effective for tracking and responding to occurrences of time sheet over billing and timesheets that can not be paid due to missing or erroneous information?
34. Does the Vendor F/EA FMS provider have internal controls to monitor the development and maintenance of a database that is effective for tracking and responding to occurrences of time sheet over billing and timesheets that can not be paid due to missing or erroneous information?
35. Does the Vendor F/EA FMS provider, have a system in place for determining if the individuals' support workers are family members who might be exempt from paying into FICA, FUTA and SUTA and for processing them accordingly?¹⁸
36. Does the Vendor F/EA FMS provider, have written policies and procedures for determining if the individuals' support workers are family members who might be exempt from paying into FICA, FUTA and SUTA and for processing them accordingly?
37. Does the Vendor F/EA FMS provider, have internal documented and in place to monitor the identification and processing of family members who are paid support workers who might be exempt from paying into FICA, FUTA and SUTA?
38. Does the Vendor F/EA FMS provider have a system in place for withholding FICA (Medicare and social security taxes) and federal income tax withholding for all individuals it represents and their support workers per payroll period and for maintaining documentation in the Vendor F/EA FMS provider's files?
39. Does the Vendor F/EA FMS provider have written policies and procedures for withholding FICA (Medicare and social security taxes) and federal income tax withholding for all individuals it represents and their workers per payroll period and for maintaining documentation in the Vendor F/EA FMS provider's files?
40. Does the Vendor F/EA FMS provider have internal controls documented and in place to monitor the withholding of FICA (Medicare and social security taxes) and federal income tax withholding for all individuals it represents and their workers per payroll period and for maintaining documentation in the Vendor F/EA FMS provider's files?
41. Does the Vendor F/EA FMS provider have a system in place for filing FICA (Medicare and social security taxes) and federal income tax withholding using an IRS Form 941, *Employers Quarterly Federal Tax Return*, quarterly in the aggregate with

¹⁸ See IRS Publication 15, Circular E, Employer's Tax Guide, Chapter 3, "Family Employees" and check with State SUTA agency for how these and any additional family exemptions may apply.

its separate FEIN for all individuals it represents, along with the IRS Forms 941 Schedule R and Schedule B as appropriate, and maintaining a copy of each IRS Form 941, Schedule R and B filed and other documentation in the Vendor F/EA FMS provider's files?¹⁹

42. Does the Vendor F/EA FMS provider have written policies and procedures for filing FICA (Medicare and social security taxes) and federal income tax withholding using an IRS Form 941 quarterly in the aggregate with its separate FEIN for all individuals it represents, along with the IRS Forms 941 Schedule R and Schedule B as appropriate, and for maintaining a copy of each IRS Form 941, Schedule R and B filed and other documentation in the Vendor F/EA FMS provider's files?
43. Does the Vendor F/EA FMS provider have internal controls documented and in place to monitor the filing of FICA (Medicare and social security taxes) and federal income tax withholding using an IRS Form 941 quarterly in the aggregate using its separate FEIN for all individuals it represents, along with the IRS Forms 941 Schedule R and Schedule B as appropriate, and for maintaining a copy of each IRS Form 941, Schedule R and B filed and other documentation in the Vendor F/EA FMS provider's files?
44. Does the Vendor F/EA FMS provider have a system in place for depositing FICA and federal income tax withholding in the aggregate for all individuals it represents using the Vendor F/EA FMS provider's separate FEIN, in accordance with IRS depositing rules and for maintaining documentation in the Vendor F/EA FMS provider's files?
45. Does the Vendor F/EA FMS provider have written policies and procedures for depositing FICA and federal income tax withholding in the aggregate for all individuals it represents using its separate FEIN, in accordance with IRS depositing rules and for maintaining documentation in the Vendor F/EA FMS provider's files?
46. Does the Vendor F/EA FMS provider have internal controls documented and in place for monitoring the depositing of FICA and federal income tax withholding in the aggregate for all individuals it represents using the Vendor F/EA FMS provider's

¹⁹ IRS Rev. Proc 70-3, section .03 states that the Vendor F/EA FMS provider should state "This return is filed under authorization granted in accordance with Section 3504 of the IRS code of 1954" either as an attachment or printed at the top of the form.

To make corrections to the IRS Form 941, Vendor F/EA FMS providers should use the IRS Form 941-X, first implemented by the IRS in January 2009.

Effective 1/1/2010, Vendor F/EA FMS providers must file an IRS Form 941 Schedule R with each quarterly return. A Schedule R may be filed electronically if it reports 10,000 or fewer individual-employers' information. If the Schedule R reports more than 10,000 individual employers, the Schedule R must be filed in paper form.

A Vendor F/EA FMS provider depositing schedule is based on the Vendor F/EA FMS provider's aggregate federal tax liability to be deposited, not each individual/representative-employer. Therefore an IRS Form 941, Schedule B is required to be filed with the IRS Form 941 in most cases.

separate FEIN, in accordance with IRS depositing rules and the maintenance of documentation in the Vendor F/EA FMS provider's files?

47. Does the Vendor F/EA FMS provider have a system in place for withholding Federal Unemployment Tax (FUTA) for all individuals it represents per payroll period and maintaining documentation in the Vendor F/EA FMS provider's files?
48. Does the Vendor F/EA FMS provider have written policies and procedures for withholding FUTA for all individuals it represents per payroll period and maintaining documentation in the Vendor F/EA FMS provider's files?
49. Does the Vendor F/EA FMS provider have internal controls documented and in place to monitor the withholding FUTA for all individuals it represents per payroll period and maintaining documentation in the Vendor F/EA FMS provider's files?
50. Does the Vendor F/EA FMS provider have a system in place for filing FUTA using an IRS Form 940, *Employer's Annual Federal Unemployment Tax Report*, annually in the aggregate using the F/EA's separate FEIN for all individuals it represents and maintaining documentation in the Vendor F/EA FMS provider's files?²⁰
51. Does the Vendor F/EA FMS provider have written policies and procedures for filing FUTA using an IRS Form 940 annually, in the aggregate using its separate FEIN for all individuals it represents and maintaining documentation in the Vendor F/EA FMS provider's files?
52. Does the Vendor F/EA FMS provider have internal controls documented and in place to monitor the filing FUTA using an IRS Forms 940 annually in the aggregate using its separate FEIN for all individuals it represents and maintaining documentation in the Vendor F/EA FMS provider's files?
53. Does the Vendor F/EA FMS provider have a system in place for depositing FUTA in the aggregate using its separate FEIN quarterly for all individuals it represents and for

²⁰ On December 5, 2005 IRS staff reported at the National F/EA Workshop in Baltimore, MD that as of calendar tax year 2006, Vendor F/EA FMS provider should file and pay FUTA in the aggregate (contrary to language in Proposed Notice 2003-70). The Service formalized this guidance in writing in the January 13, 2010 *Proposed Notice of Rulemaking Section 3504 Agent Tax Liability* (REG-1370036-08).

The IRS will issue an IRS Form 940 Schedule R that a Vendor F/EA will prepare and submit with their annual IRS Form 940 from 2010 forward. Vendor F/EA FMS providers will be able to file the IRS Form 940 Schedule R electronically if it includes 10,000 or less employers. If the Schedule R includes more than 10,000 employers, it must be filed by paper.

Note: If Vendor F/EA FMS provider is a (501) (c) (3) entity, if the Government F/EA FMS provider receives a notice from the IRS stating that FUTA is not required for wages paid to individuals' support worker, the notice is erroneous. Whether a Vendor F/EA FMS provider is a 501 (c) (3) entity or not, the entity MUST file and pay FUTA on behalf of individual-employers using its separate FEIN.

maintaining documentation in the Vendor F/EA FMS provider's files (see footnote 20)?

54. Does the Vendor F/EA FMS provider have a written policy and procedure for depositing FUTA in the aggregate quarterly using its separate FEIN for all individuals it represents and for maintaining documentation in the Vendor F/EA FMS provider's files?
55. Does the Vendor F/EA FMS provider have internal controls documented and in place to monitor the depositing of FUTA in the aggregate using its separate FEIN quarterly for all individuals it represents and for maintaining documentation in the Vendor F/EA FMS provider's files?
56. Does the Vendor F/EA FMS provider have a system in place for managing Federal Advanced Earned Income Credit (EIC) for each eligible worker in an accurate and timely manner and for maintaining documentation in the Vendor F/EA FMS provider's files?²¹
57. Does the Vendor F/EA FMS provider have written policies and procedures for managing Federal Advanced EIC for each eligible worker in an accurate and timely manner and maintaining documentation in the Vendor F/EA FMS provider's files?
58. Does the Vendor F/EA FMS provider have an internal control documented and in place to monitor the management of Federal Advanced EIC for each eligible worker in an accurate and timely manner and maintaining documentation in the Vendor F/EA FMS provider's files?
59. Does the Vendor F/EA FMS provider have a system in place for registering individuals' as employers, establishing an account and obtaining an identification number²² for income tax filing and payment purposes for each individual it represents and maintaining documentation in the individual's file?²³
60. Does the Vendor F/EA FMS provider have written policies and procedures for registering individuals' as employers, establishing an account and obtaining an identification number for state income tax filing and payment for each individual it represents and maintaining documentation in the individual's file?

²¹ Note that as of 1/1/2011, IRS will be eliminating the federal advanced earned income credit so tasks 56-58 will no longer be required of Vendor and Government Fiscal/Employer Agent FMS providers.

²² Some state revenue and unemployment tax agencies may opt to use the individual's federal employer identification number for state tax filing and depositing purposes, however, many issue state agency specific account numbers. The Vendor F/EA FMS provider should confirm the correct procedure with the appropriate tax agencies.

²³ It should be noted that some states have a combined employer registration process for state income tax withholding and unemployment taxes.

61. Does the Vendor F/EA FMS provider have internal controls documented and in place to monitor the state employer registration process, including the establishment of accounts and receipt of identification numbers for each individual-employer for state income tax and the maintenance of documentation in the individual's file?
62. Does the Vendor F/EA FMS provider have a system in place for registering individuals as employers, establishing an account and obtaining an identification number for state unemployment tax filing and payment purposes for each individual it represents and maintaining documentation in the individual's file?²⁴
63. Does the Vendor F/EA FMS provider have written policies and procedures for registering individuals as employers, establishing an account and obtaining an identification number for state unemployment tax filing and payment and maintaining documentation in the individual's file?
64. Does the Vendor F/EA FMS provider have internal controls documented and in place to monitor the state employer registration process, the establishment of accounts and receipt of identification numbers for state unemployment tax purposes for individual-employers and the maintenance of documentation in the individual's file?
65. Does the Vendor F/EA FMS provider have systems in place for retiring an individual's state income tax account and identification number when the individual no longer is the employer of support workers (permanently) and maintaining documentation in the individual's file?
66. Does the Vendor F/EA FMS provider have written policies and procedures for retiring an individual's state income tax account and identification number when the individual no longer is the employer of support workers (permanently) and maintaining documentation in the individual's file?
67. Does the Vendor F/EA FMS provider have internal controls documented for monitoring the retirement of an individual's state income tax account and identification number when the individual no longer is the employer of support workers (permanently) and maintaining documentation in the individual's file?
68. Does the Vendor F/EA FMS provider have a system in place for retiring an individual's state unemployment tax account and identification number when the individual no longer is the employer of support workers (permanently) and maintaining documentation in the individual's file?
69. Does the Vendor F/EA FMS provider have written policies and procedures for retiring an individual's state unemployment tax account and identification number

²⁴ Five states (California, Hawaii, New Jersey, New York and Rhode Island) have mandatory disability insurance coverage for workers. The tasks associated with this type of insurance along with the written policies and procedures and internal controls should be addressed by the Vendor F/EA FMS provider in the applicable states.

when the individual no longer is the employer of support workers (permanently) and maintaining documentation in the individual's file?

70. Does the Vendor F/EA FMS provider have internal controls documented for monitoring the retirement of an individual's state unemployment tax account and identification number when the individual no longer is the employer of workers (permanently) and maintaining documentation in the individual's file?
71. Does the Vendor F/EA FMS provider have a system in place for withholding state income tax individually for each individual it represents and for maintaining documentation in the individual's file?²⁵
72. Does the Vendor F/EA FMS provider have written policies and procedures for withholding state income taxes individually for each individual it represents per state requirements and for maintaining documentation in the individual's file?
73. Does the Vendor F/EA FMS provider have internal controls documented and in place to monitor the withholding of state income taxes for each individual it represents per state requirements and for maintaining documentation in the individual's file?
74. Does the Vendor F/EA FMS provider have a system in place for filing state income tax individually for individuals it represents per state requirements and for maintaining documentation in the individual's file?²⁶
75. Does the Vendor F/EA FMS provider have written policies and procedures for filing state income taxes individually for each individual it represents per state requirements and for maintaining documentation in the individual's file?
76. Does the Vendor F/EA FMS provider have internal controls documented and in place to monitor the filing state income taxes for each individual it represents per state requirements and for maintaining documentation in the individual's file?
77. Does the Vendor F/EA FMS provider have a system in place for depositing state income tax individually for each individual it represents per state requirements and for maintaining documentation in the individual's file?
78. Does the Vendor F/EA FMS provider have written policies and procedures for depositing state income taxes individually for each individual it represents per state requirements and for maintaining documentation in the individual's file?

²⁵ It should be noted that some states do not have state personal income tax requirements (AK, FL, NV, SD, TX, WA and WY. NH and TN only tax dividends and interest).

²⁶ The Vendor F/EA FMS provider has to have a system, policy and procedure and internal control documented and in place for filing and depositing the last state income tax filing for individuals per state department of revenue instructions.

79. Does the Vendor F/EA FMS provider have internal controls documented and in place to monitor the depositing of state income taxes for each individual it represents per state requirements and for maintaining documentation in the individual's file?
80. Does the Vendor F/EA FMS provider have a system in place for filing and depositing out-of-state income tax withholding, as required by the state or requested by the worker, for workers who reside outside of the state they work in and for maintaining documentation in the support worker's file?²⁷
81. Does the Vendor F/EA FMS provider have written policies and procedures for filing and depositing out-of-state income tax withholding, as required by the state or requested by the worker, for workers who reside outside of the state they work in and for maintaining the documentation in the support worker's file?
82. Does the Vendor F/EA FMS provider have internal controls documented and in place to monitor the withholding, filing and depositing of out-of-state income tax withholding, as required by the state or requested by the support worker, for support workers who reside outside of the state they work in and the maintaining documentation in the support worker's file?
83. Does the Vendor F/EA FMS provider have a system in place for withholding state unemployment insurance tax individually for each individual it represents and for maintaining documentation in the individual's file?
84. Does the Vendor F/EA FMS provider have written policies and procedures for withholding state unemployment insurance taxes individually for each individual it represents and maintaining documentation in the individual's file?
85. Does the Vendor F/EA FMS provider have internal controls documented and in place monitoring the withholding of state unemployment taxes individually for each individual it represents and for maintaining documentation in the individual's file?
86. Does the Vendor F/EA FMS provider have a system in place for filing state unemployment insurance tax individually for each individual it represents per state requirements and for maintaining documentation in the individual's file?²⁸
87. Does the Vendor F/EA FMS provider have written policies and procedures for filing state unemployment insurance taxes individually for each individual it represents per state requirements and maintaining documentation in the individual's file?

²⁷ Some states have agreements with adjoining states on how to process SIT for nonresident workers. For example, WV has agreements with KY, MD, OH, PA, & VA on the process to be used to process SIT for individuals working in WV who are not WV residents.

²⁸ The Vendor F/EA FMS provider should have a system, policy and procedure and internal control documented and in place that address the process for making the last state unemployment tax filing and deposit for an individual per state unemployment insurance agency instructions.

88. Does the Vendor F/EA FMS provider have internal controls documented and in place monitoring the filing of state unemployment taxes individually for each individual it represents per state requirements and for maintaining documentation in the individual's file?
89. Does the Vendor F/EA FMS provider have a system in place for paying state unemployment taxes individually for each individual it represents per state payment schedule and for maintaining documentation in the individual's file?
90. Does the Vendor F/EA FMS provider have written policies and procedures for paying state unemployment taxes individually for each individual it represents per state payment schedule and maintaining documentation in the individual's file?
91. Does the Vendor F/EA FMS provider have internal controls documented and in place to monitor the payment of state unemployment taxes for each individual it represents per state payment schedule and for maintaining documentation in the individual's file?
92. If applicable, does the Vendor F/EA FMS provider have a system in place for withholding and filing locality taxes related to employment and for maintaining documentation in the individual's and/or support worker's file?²⁹
93. If applicable, does the Vendor F/EA FMS provider have written policies and procedures for withholding and filing locality taxes related to employment and for maintaining documentation in the individual's and/or support worker's file?
94. If applicable, does the Vendor F/EA FMS provider have internal controls documented and in place for monitoring the withholding and filing of locality taxes related to employment and for maintaining documentation in the individual's and support worker's file?
95. If applicable, does the Vendor F/EA FMS provider have a system in place for depositing locality taxes related to employment and for maintaining documentation in the individual's and/or support worker's file?³⁰
96. If applicable, does the Vendor F/EA FMS provider have written policies and procedures for depositing locality taxes related to employment and for maintaining documentation in the individual's and/or support worker's file?
97. If applicable, does the Vendor F/EA FMS provider have internal controls documented and in place for monitoring the depositing of locality taxes related to employment and for maintaining documentation in the individual's and/or support worker's file?

²⁹ A few states have these taxes (i.e., Pennsylvania, West Virginia).

³⁰ A few states have these taxes (i.e., Pennsylvania, West Virginia).

98. Does the Vendor F/EA FMS provider have a system in place for managing the application of all garnishments, levies and liens on workers' payroll checks in an accurate and timely manner and for maintaining documentation in the individual's and support worker's file?
99. Does the Vendor F/EA FMS provider have written policies and procedures for managing the application of all garnishments, levies and liens on workers' payroll checks in an accurate and timely manner and for maintaining documentation in the individual's and support worker's file?
100. Does the Vendor F/EA FMS provider have an internal control documented and in place to monitor the accuracy and timeliness of the application of garnishments, levies and liens on support workers' payroll checks in an accurate and timely manner and for maintaining documentation in the individual's and support worker's file?
101. If applicable, does the Vendor F/EA FMS provider have a system in place for withholding and paying union dues for each support worker and for maintaining documentation in the support worker's file?
102. If applicable, does the Vendor F/EA FMS provider have a written policies and procedures for withholding and paying union dues for each support worker and for maintaining documentation in the support worker's file?
103. If applicable, does the Vendor F/EA FMS provider have internal controls documented and in place to monitor the withholding and paying union dues for each support worker and for maintaining documentation in the support worker's file?
104. Does the Vendor F/EA FMS provider have a system in place to pay individuals' workers within the time period required by the state department of labor (e.g., per State "Payday" requirement) and for maintaining documentation in each support worker's file?
105. Does the Vendor F/EA FMS provider have written policies and procedures to pay individuals' workers within the time period required by the state department of labor (e.g., State "Payday" requirement) and for maintaining documentation in each support worker's file?
106. Does the Vendor F/EA FMS provider have an internal control documented and in place to monitor the paying of individuals' workers within the time period required by the state department of labor (e.g., State "Payday" requirement) and for maintaining documentation in the support worker's file?
107. Does the Vendor F/EA FMS provider have a system in place for processing workers' direct deposit and for maintaining the documentation in the support worker's file?³¹

³¹ A growing number of Vendor F/EA FMS providers are offering debit cards as an option for workers to receive their payroll checks.

108. Does the Vendor F/EA FMS provider have written policies and procedures for processing direct deposits for support workers and for maintaining documentation in the support worker's file?
109. Does the Vendor F/EA FMS provider have an internal control documented and in place to monitor the direct deposit process and for maintaining documentation in the individual's file?
110. Does the Vendor F/EA FMS provider have a system in place for processing wage information requests from federal and state agencies and other qualified entities and maintaining documentation and correspondence in the support worker's file?
111. Does the Vendor F/EA FMS provider have written policies and procedures for processing wage information requests from federal and state agencies and other qualified entities and maintaining all correspondence and documentation in the support worker's file?
112. Does the Vendor F/EA FMS provider have internal controls documented and in place to monitor the processing wage information requests from federal and state agencies and other qualified entities and the maintenance all documentation and correspondence in the support worker's file?

V. End of Year Federal Tax Processes

1. Does the Vendor F/EA FMS provider have a system in place for refunding over collected FICA to applicable individual-employers (or state or county government) and employees in accordance with IRS requirements and for maintaining documentation in the Vendor F/EA FMS provider's and support worker's files?³²
2. Does the Vendor F/EA FMS provider have written policies and procedures for refunding over collected FICA to applicable individual-employers (or state or county

³² Around the end of October each year, a Vendor F/EA FMS provider should review its payroll records to determine which workers will not earn the FICA wage threshold amount from each of their employers by December 31st of the calendar tax year. Then the Vendor F/EA FMS provider should verify that it has the current mailing address for each worker who may be due a refund of over collected FICA. FICA refunds only should be issued to workers for whom the Vendor F/EA FMS provider has an accurate and current address for. Then the Vendor F/EA FMS provider should file an IRS Form 941-X for each quarter in which over collected FICA has occurred and attach an IRS Schedule R to the 941-X listing the applicable individual-employers with wage and federal tax, advanced earned income credit and deposit/COBRA payments made. The Vendor F/EA FMS provider can either request a refund of the employer and employee share of over collected FICA or have the over collected FICA applied as a credit to the Form 941 for the tax period for which the Form 941-X is being filed. This process should be repeated for each quarter in which FICA was over collected. FICA refunds should be issued to each applicable employee at the end of the applicable calendar tax year and the state needs to determine how the Vendor F/EA FMS provider will reimburse the state for the employer portion of over collected FICA.

government) in accordance with IRS requirements and employees and maintaining documentation in the Vendor F/EA FMS provider's and support worker's files?

3. Does the Vendor F/EA FMS provider have internal controls documented and in place to monitor the refunding of over collected FICA to applicable individual-employers (or state or county government) and employees and for maintaining documentation in the Vendor F/EA FMS provider's and support worker's files?
4. Has the Vendor F/EA FMS provider a system in place for preparing, filing and distributing IRS Forms W-2, *Wage and Tax Statement*, for individuals' support workers per IRS instructions for agents, for electronic filing when processing 250 or more IRS Forms W-2 and for maintaining documentation in the support worker's file?³³
5. Does the Vendor F/EA FMS provider have written policies and procedures for preparing, filing and distributing IRS Forms W-2 for individuals' support workers in accordance with IRS instructions for agents, for electronic filing when processing 250 or more IRS Forms W-2 and for maintaining documentation in the support worker's file?
6. Does the F/EA have a system in place for preparing, filing and distributing IRS Forms W-3, *Transmittal of Wage and Tax Statement*, in the aggregate for all individuals the Agent represents per IRS instructions and for maintaining documentation in the Vendor F/EA FMS provider's files?³⁴
7. Does the F/EA have written policies and procedures for preparing and distributing IRS Forms W-3 in the aggregate for all individuals the Agent represents per IRS instructions for agent and for maintaining documentation in the Vendor F/EA FMS provider's files?
8. Does the Vendor F/EA FMS provider have internal controls documented and in place to monitor the preparation and distribution of IRS Forms W-2 and 3 in accordance with IRS instructions for agents and for maintaining documentation in the Vendor F/EA FMS provider's files?
9. Does the Vendor F/EA FMS provider have a system in place for processing returned payments (support worker payroll or individual-directed goods and services vendor payments) in accordance with the state's Unclaimed Property Law and maintaining documentation in the Vendor F/EA FMS provider's file?

³³ Vendor F/EA FMS providers must report the individual's state income tax account identification number in Box 15 on the IRS Form W-2 since the F/EA does not obtain a separate state income tax account identification number from the State.

³⁴ Vendor F/EA FMS providers must leave Box 15 blank on the IRS Form W-3 because the state does not issue the Vendor F/EA FMS provider a separate state income tax employer ID number.

10. Does the Vendor F/EA FMS provider have written policies and procedures for processing returned payments (support worker payroll or individual-directed goods and services vendor payments) in accordance with the state's Unclaimed Property Law and maintaining documentation in the Vendor F/EA FMS provider's file?
11. Does the Vendor F/EA FMS provider have internal controls documented and in place to monitoring the processing of returned payments (support worker payroll or individual-directed goods and services vendor payments) in accordance with the state's Unclaimed Property Law and for maintaining documentation in the Vendor F/EA FMS provider's file?

VI. Processing Payment for Independent Contractors Who Provide Services and Supports To Individuals and Their Representatives

In general, IRS considers unskilled home-based care workers as employees and not independent contractors. However, there may be an occasion where an individual may contract with a bonafide independent contractor to receive an approved individual-directed good or service. If there is a question regarding a vendor or worker's employment status, the Vendor F/EA FMS provider should require that the individual file an IRS Form SS-8, *Determination of Worker Status for Purposes of Federal Employment Taxes and Income Tax Withholding* and submit the IRS decision to the Vendor F/EA FMS provider before the support worker or vendor is processed and paid as an independent contractor.³⁵

1. Does the Vendor F/EA FMS provider have a system in place to assist the individual in verifying the employment status of a support worker or individual-directed goods and services vendor?
2. Does the Vendor F/EA FMS provider have a written policy and procedure in place to assist the individual in verifying the employment status of a support worker or individual-directed goods and services vendor?
3. Does the Vendor F/EA FMS provider have an internal control documented and in place for monitoring the employment status of a support worker or individual-directed goods and services vendor?
4. If a support worker or vendor has been determined to be an independent contractor, does the Vendor F/EA FMS provider have a system in place to obtain a completed and signed IRS Form W-9, *Request for Taxpayer Identification Number Certification* from each independent contractor working for an individual and for maintaining a copy of the form in each applicable independent contractor's file?

³⁵ Some states' departments of labor have their own Determination of Worker Employment Status Form. Vendor F/EA FMS providers should find out if the state will recognize the IRS Form SS-8 and decision received or if the individual also has to file the state form and get a separate decision. In addition, the IRS decision is applied to individual support workers or vendors and not groups of support workers or vendors.

5. If a support worker or vendor has been determined to be an independent contractor, does the Vendor F/EA FMS provider have a written policy and procedure for obtaining a completed and signed IRS Form W-9 from each independent contractor working for an individual and for maintaining copies of the form in each applicable independent contractor's file?
6. If a support worker or vendor has been determined to be an independent contractor, does the Vendor F/EA FMS provider have an internal control documented and in place to monitor the receipt of completed and signed IRS Forms W-9 from each independent contractor working for an individual and for maintaining copies of the form in each applicable independent contractor's file?
7. For each independent contractor who has been paid \$600 or more in a calendar year, does the Vendor F/EA FMS provider have a system in place for processing an IRS Form 1099-Misc for that independent contractor and for maintaining documentation in each independent contractor's file?
8. For each independent contractor who has been paid \$600 or more in a calendar year, does the Vendor F/EA FMS provider have a written policy and procedure for processing an IRS Form 1099-Misc for these independent contractors and for maintaining documentation in each independent contractor's file?
9. For each independent contractor who has been paid \$600 or more in a calendar year, does the Vendor F/EA FMS provider have an internal control documented and in place to monitor the processing of IRS Forms 1099-Misc for these independent contractors for maintaining documentation in each independent contractor's file?

VII. Customer Service System

1. Does the Vendor F/EA FMS provider have a customer service system in place that includes:
 - A toll free phone number and TYY number (or alternative method for communicating with individuals that are hearing impaired.
 - A fax,
 - Web-based information regarding F/EA FMS services,
 - Internet/e-mail communication,
 - Methods for receiving and processing enrollment, employment and other information from individuals and support service workers,
 - Ability to provide translation and interpreter services (i.e. American Sign Language and services for persons with Limited English Proficiency),
 - Materials available in alternate formats,
 - Methods for receiving, returning and tracking calls from individuals and support service workers during and after regular business hours,

- Methods for receiving, responding to and tracking complaints from individuals and support service workers within a reasonable time period,
 - Methods for acting as a mandatory reporter, particularly for financial fraud and abuse issues, to the appropriate state agencies,
 - Developed and implement orientation and skills training for individuals their represent,
 - Developed and implemented customer services training for Vendor F/EA FMS (and or reporting agent staff as applicable) staff,
 - Developed and implemented a individual/representative satisfaction survey,
 - Conduct individual/representative satisfaction surveys at least annually and analyze and summarize results for submission to the designated state program agency,
 - Develop and implement a plan of correction process, based on the summary of annual individual/representative satisfaction survey results to implement continuous quality improvement of Vendor F/EA FMS provider operations, as appropriate, and
 - Developed and implemented policies and procedures that emphasize the application of the philosophy of consumer direction and being culturally sensitive in all business practices in order to communicate effectively with a diverse population of participants of all ages and with a variety of needs, disabilities and chronic conditions.
2. Does the Vendor F/EA FMS provider have a system in place and written policies and procedures for producing distributing and collecting Individual-employer Employment Packets as described in Section II, *Preparing and Distributing Program Individual-employer Enrollment and Support Worker Employment and Individual-directed Goods and Services Vendor Engagement Packets* and internal controls documented to monitor the process as described in Section II.
 3. Does the Vendor F/EA FMS provider have a system in place and the written policies and procedures for producing, distributing, collecting and processing *Individual-employer Enrollment and Support Worker Employment and Individual-directed Goods and Services Vendor Engagement Packets* and internal controls documented to monitor the process as described in Section II, Payroll.
 4. Does the Vendor F/EA FMS provider have a system in place for implementing the components of its customer service system?
 5. Does the Vendor F/EA FMS provider have written policies and procedures for implementing the components of its customer service system?
 6. Does the Vendor F/EA FMS provider have internal controls documented and in place to monitor the implementation of its customer service system?

VIII. Record Management Process

1. Does the Vendor F/EA FMS provider have a system in place for establishing and maintaining current individual, support worker, individual-directed goods and services vendor and Vendor F/EA FMS provider files in a secure and confidential manner as required by federal and state rules and regulations (e.g., meet any applicable HIPAA requirements)?
2. Does the Vendor F/EA FMS provider have written policies and procedures for establishing and maintaining current individual, support worker, individual-directed goods and services vendor and Vendor F/EA FMS provider files in a secure and confidential manner and for the proscribed period of time as required by federal and state rules and regulations (e.g., federal and state record retention rules and any applicable HIPAA requirements)?
3. Does the Vendor F/EA FMS provider have internal controls documented and in place to monitor the establishment and maintenance of current individual, support worker, individual-directed goods and services vendor and Vendor F/EA FMS provider files?
4. Does the Vendor F/EA FMS provider have a system in place for establishing and maintaining archived individual, support worker, individual-directed goods and services vendor and Vendor F/EA FMS provider files in a secure and confidential manner as required by federal and state rules and regulations (e.g., meet any applicable HIPAA requirements)?
5. Does the Vendor F/EA FMS provider have written policies and procedures for establishing and maintaining archived individual, support worker, individual-directed goods and services vendor and Vendor F/EA FMS provider files in a secure and confidential manner and for the proscribed period of time as required by federal and state rules and regulations (e.g., federal and state record retention rules and any applicable HIPAA requirements)?
6. Does the Vendor F/EA FMS provider have internal controls documented and in place to monitor the establishment and maintenance of archived individual, support worker, individual-directed goods and services vendor and Vendor F/EA FMS provider files?
7. Does the Vendor F/EA FMS provider have a disaster recovery plan for electronic and hard copy files in place and documented?
8. Does the Vendor F/EA FMS provider have a system in place for testing, executing and updating its disaster recovery plan for electronic and hard copy files?
9. Does the Vendor F/EA FMS provider have written policies and procedures for testing, executing and updating its disaster recovery plan?

10. Does the Vendor F/EA FMS provider have internal controls documented for testing, executing and updating its disaster recovery plan?

IX. Brokering Workers' Compensation Insurance

1. Does the Vendor F/EA FMS provider have a system in place to process and pay workers' compensation insurance policies for each individual it represents in accordance with the state's workers' compensation insurance law and for maintaining the documentation in each individual's file?³⁶
2. Does the F/EA have written policies and procedures in place for processing and paying workers' compensation insurance premium for each individual it represents in accordance with the state's workers' compensation insurance law and for maintaining documentation in each individual's file?
3. Does the F/EA have an internal control documented and in place to monitor the processing and paying of workers' compensation insurance premiums for each individual it represents in accordance with the state's workers' compensation insurance law and for maintaining documentation in each individual's file?
4. Does the Vendor F/EA FMS provider have a system in place for providing wage information to worker's compensation insurers to determine support workers' benefits when a claim has been submitted accordance with the state's workers' compensation insurance law and for maintaining the documentation in each individual's file?
5. Does the Vendor F/EA FMS provider have written policies and procedures for providing wage information to worker's compensation insurers to determine support workers' benefits when a claim has been submitted accordance with the state's workers' compensation insurance law and for maintaining the documentation in each individual's file?
6. Does the Vendor F/EA FMS provider have internal controls documented for monitoring the provision of wage information to worker's compensation insurers to determine support workers' benefits when a claim has been submitted accordance

³⁶ Brokering workers compensation (WC) typically does not mean purchasing an umbrella WC policy for all individuals because this would make the Vendor F/EA FMS provider look like the employer of the worker. Under the Vendor F/EA FMS provider model, all individual employers have their own policy according to insurance agents interviewed. Brokering does mean facilitating the receipt of WC policies and renewals for individuals, paying annual premiums on individuals' behalf with public funds and providing wage information to the state workers' compensation insurance agency to determine workers' benefits and being the site for the workers' compensation insurance annual audit. State program agencies also have to determine if they will require individuals to obtain workers' compensation insurance policies in states where their support workers are considered domestic service workers who are exempt from the state's WC law.

with the state's workers' compensation insurance law and for maintaining the documentation in each individual's file?

X. Preparing and Maintaining a Vendor Fiscal/Employer Agent Policies and Procedures Manual and Staying Up-to-Date With Federal and State Rules and Regulations Regarding Vendor Fiscal/Employer Agents and Household Employers

1. Does the Vendor F/EA FMS provider have a comprehensive Vendor F/EA FMS provider policies and procedures manual that includes all policies and procedures related to the tasks associated with performing the F/EA functions, including the role and tasks of any reporting agent used, any overlapping communication and data transmission tasks and tasks related to monitoring the reporting agent's performance, and internal controls for monitoring the completion of all Vendor F/EA FMS provider and reporting agent tasks, when applicable. The document should be available in an electronic format.
2. Does the Vendor F/EA FMS provider have a system in place, written policies and procedures and internal controls for maintaining and updating its Vendor F/EA FMS provider policies and procedures manual at least annually, and as needed.
3. Does the Vendor F/EA FMS provider, have a system in place for reviewing and updating all IRS forms, instructions, notices and publications related to Vendor F/EA FMS providers, household employers and domestic service workers and preparing, filing and depositing federal taxes on behalf of individual household employers it represents at www.irs.gov?
4. Does the Vendor F/EA FMS provider, have written policies and procedures for reviewing and updating all IRS forms and instructions, notices and publications related to Vendor F/EA FMS providers, household employers and domestic service workers and preparing, filing and depositing federal taxes on behalf of individual household employers it represents at www.irs.gov?
5. Does the Vendor F/EA FMS provider, have an internal control documented and in place to monitor the updating of all IRS forms and instructions, notices and publications related to Vendor F/EA FMS providers, household employers and domestic service workers and preparing, filing and depositing federal taxes on behalf of household employers/individuals it represents at www.irs.gov?
6. Does the Vendor F/EA FMS provider have a system in place for reviewing and updating all applicable US Citizenship and Immigration Service (US CIS) rules, forms (i.e., Form I-9, *Employment Eligibility Verification*) and instructions (Key web site: www.uscis.gov)?

7. Does the Vendor F/EA FMS provider have written policies and procedures for reviewing and updating all applicable US Citizenship and Immigration Service (US CIS) rules, forms (i.e., Form I-9, *Employment Eligibility Verification*) and instructions (Key web site: www.uscis.gov)?
8. Does the Vendor F/EA FMS provider have internal controls documented for monitoring the review and updating all applicable US Citizenship and Immigration Service (US CIS) rules, forms (i.e., Form I-9, *Employment Eligibility Verification*) and instructions (Key web site: www.uscis.gov)?
9. Does the Vendor F/EA FMS provider have a system in place for reviewing and updating all applicable federal Department of Labor rules, forms and instructions related to household employers and domestic service employees pertaining to the Federal Fair Labor Standards Wage and Hour rules (Key website: www.dol.gov)?
10. Does the Vendor F/EA FMS provider have a written policies and procedures for reviewing and updating all applicable federal Department of Labor rules, forms and instructions related to household employers and domestic service employees pertaining to the Federal Fair Labor Standards Wage and Hour rules (Key website: www.dol.gov)?
11. Does the Vendor F/EA FMS provider have internal controls documented for monitoring the review and updating all applicable federal Department of Labor rules, forms and instructions related to household employers and domestic service employees pertaining to the Federal Fair Labor Standards Wage and Hour rules (Key website: www.dol.gov)?
12. Does the Vendor F/EA FMS provider, have a system in place for reviewing and updating all state income tax withholding forms, instructions and manuals related to Vendor F/EA FMS providers, household employers and domestic service workers and preparing, filing and depositing state taxes on behalf of individual household employers it represents at the appropriate state web sites?
13. Does the Vendor F/EA FMS provider, have written policies and procedures for reviewing and updating all state income tax withholding forms, instructions related to Vendor F/EA FMS provider, individual household employers and domestic service workers and preparing, filing and depositing state taxes on behalf of individual household employers it represents the appropriate state web sites?
14. Does the Vendor F/EA FMS provider, have internal controls documented for monitoring the review and updating all state income tax withholding forms, instructions related to Vendor F/EA FMS provider, individual household employers and domestic service workers and preparing, filing and depositing state taxes on behalf of individual household employers it represents the appropriate state web sites?

15. Does the Vendor F/EA FMS provider, have a system in place for reviewing and updating all state unemployment insurance tax forms, instructions and manuals related to Vendor F/EA FMS providers, individual household employers and domestic service workers and preparing, filing and depositing state taxes on behalf of individual household employers it represents at the appropriate state web sites?
16. Does the Vendor F/EA FMS provider, have written policies and procedures for reviewing and updating all state unemployment insurance tax forms, instructions related to Vendor F/EA FMS provider, individual household employers and domestic service workers and preparing, filing and depositing state taxes on behalf of individual household employers it represents the appropriate state web sites?
17. Does the Vendor F/EA FMS provider, have internal controls documented for monitoring the review and updating all state unemployment tax forms, instructions related to Vendor F/EA FMS provider, household employers and domestic service workers and preparing, filing and depositing state taxes on behalf of individual household employers it represents the appropriate state web sites?
18. Does the Vendor F/EA FMS provider have a system in place for staying up-to-date with the state's new hire registration process (paper or electronic filing options)?
19. Does the Vendor F/EA FMS provider have written policies and procedures for staying up-to-date with the state's new hire registration process (paper or electronic filing options)?
20. Does the Vendor F/EA FMS provider have internal controls documented for staying up-to-date with the state's new hire registration process (paper or electronic filing options)?
21. Does the Vendor F/EA FMS provider have a system in place for staying up-to-date with state workers' compensation insurance laws pertaining to individual household employers who hire personal care and other support workers?
22. Does the Vendor F/EA FMS provider have written policies and procedures for staying up-to-date with state workers' compensation insurance laws pertaining to individual household employers who hire personal care and other support workers?
23. Does the Vendor F/EA FMS provider have internal controls documented to monitor its process for staying up-to-date with state workers' compensation insurance laws pertaining to individual household employers who hire personal care and other support workers?
24. Does the Vendor F/EA FMS provider have a system in place for staying up-to-date with state mandatory disability insurance laws pertaining to individual household employers who hire personal care and other support workers, when applicable?

25. Does the Vendor F/EA FMS provider have written policies and procedures for staying up-to-date with state mandatory disability insurance laws pertaining to household employers who hire personal care and other support workers, when applicable?
26. Does the Vendor F/EA FMS provider have internal controls documented to monitor its process for staying up-to-date with mandatory disability insurance laws pertaining to household employers who hire personal care and other support workers, when applicable?

XI. Managing Invoices for Individual-directed Goods and Services Rendered and Included in Individuals' Service Plans and Budgets

1. Does the Vendor F/EA FMS provider have a system in place for receiving, verifying, processing and paying invoices for individual-directed goods and services rendered and included in individuals' individual service plans and budgets?
2. Does the Vendor F/EA FMS provider have written policies and procedures for receiving, verifying, processing and paying invoices for individual-directed goods and services rendered and included in individuals' individual service plans and budgets?
3. Does the Vendor F/EA FMS provider have internal controls documented and in place to monitor the receipt, verification, processing and payment of invoices for individual-directed goods and services rendered and included in individuals' individual service plans and budgets?³⁷
4. Does the Vendor F/EA FMS provider have a system in place for developing and maintaining a database that is effective in processing invoices for individual-directed goods and services and tracking and responding to occurrences of invoices for goods and services that can not be paid due to missing or erroneous information?
5. Does the Vendor F/EA FMS provider have written policies and procedures for developing and maintaining a database that is effective in processing invoices for individual-directed goods and services and tracking and responding to occurrences of invoices for goods and services that can not be paid due to missing or erroneous information?
6. Does the Vendor F/EA FMS provider have internal controls to monitor the development and maintenance of a database that is effective in processing invoices for individual-directed goods and services and tracking and responding to occurrences of invoices for goods and services that can not be paid due to missing or erroneous information?

³⁷ Proper segregation of tasks is a very important internal control for these tasks.

XII. Preparing and Submitting Required Reports To State/County Government and Individual/Representative-Employers

1. Does the Vendor F/EA FMS provider have a system in place to prepare and submit the required reports to the state/county government and individuals/representatives?³⁸
2. Does the Vendor F/EA FMS provider have a written policies and procedures for preparing and submitting the required reports to the state/county government and individuals/representatives?
3. Does the Vendor F/EA FMS provider have internal controls documented and in place to monitor the preparation and submission of required reports to the state/county government and individuals/representatives?

XIII. Procedure for the Treatment of Federal Taxes When an Individual Changes F/EA During a Calendar Tax Year

When an individual/representative-employer changes Vendor F/EA FMS provider in a calendar tax year a bifurcated federal and state tax year occurs. This is not optimum and it is highly recommended that whenever possible, individual/representative-employers change Vendor F/EA FMS provider effective January 1st. However, when bifurcated federal and state tax year occurs, the current and new Vendor F/EA FMS providers must work together to make sure the transition happens in an accurate and timely manner and seem “seamless” to the individual/representative-employer.

The transition from Vendor F/EA FMS provider to another often occurs in a straight forward manner for state income tax withhold and employment tax purposes. This is because in general, these taxes are filed and paid for each individual/representative-employer using his or her separate FEIN and state income tax withholding and unemployment tax account numbers.³⁹ However, the current Vendor F/EA FMS provider must make sure to retire any state Powers of Attorney or Authorization it might have for the particular individual/representative-employer for SIT and SUI filing and payment once all state taxes are filed and paid for the period in which the current Vendor F/EA

³⁸ The Vendor F/EA FMS provider will want to identify the reports it (or its reporting agent) will produce for its use and for enrolled individuals and their representatives, and these requirements will vary by state.

³⁹ A small number of state departments of revenue permit the Vendor F/EA FMS provider to obtain a special state income tax (SIT) employer registration number to file and make SIT payments on behalf of the individual/representative-employers it represents as agent (for a publicly-funded participant-directed service program(s)) in a particular state. In these states, the Vendor F/EA FMS provider must contact the state department of revenue to determine how the transition from one agent to another must occur, particularly during a bifurcated tax year.

FMS provider served the individual/representative-employer. The new Vendor F/EA FMS provider then must make sure it obtains the necessary state Powers of Attorney or Authorization it needs for SIT and SUI to represent the applicable individual /representative-employer from the date that they begin performing as their agent. Coordination between the current and new Vendor F/EA FMS provider is key.

Vendor F/EA FMS provider must have systems in place and written policies, procedures and internal controls for the tasks they must perform when transferring an individual/representative-employer from one Vendor F/EA FMS provider to another. This means they should have these for when they are receiving an individual/representative-employer who has transferred to them from another Vendor F/EA FMS provider and when an individual/representative-employer is transferring from them to another Vendor F/EA FMS provider.

The following are the procedures for Federal income tax withholding and employment tax filing and payment and processing IRS Forms W-2 and over-collected FICA when an individual/representative-employer and his/her support worker(s) transfer from one Vendor F/EA FMS provider to another during a calendar year. It was developed based on a conversation on August 6, 2009 with Judy Davis and Pam Salas in the Small Business/Self-Employed Division of the Internal Revenue Service (IRS). ***The IRS Forms W-2 proposed procedure assumes that Social Security Administration (SSA) Form W-2 e-filing rules will be revised to allow Vendor F/EA FMS providers to electronically file IRS Forms W-2 with FICA wages greater than zero but below the FICA wage threshold when an individual/representative-employer is served by two Vendor F/EA FMS providers in a calendar year. Discussions have been initiated with IRS and SSA to address this issue.***

1. Vendor F/EA FMS provider 1 makes deposits to IRS for any employee portion of FICA (Medicare and Social Security taxes) and Federal income tax withheld, and calculates and deposits the employer portion of FICA (i.e., all Federal employment tax liabilities) throughout year.
2. Vendor F/EA FMS provider 1 files IRS Form 941 quarterly in the aggregate using its separate FEIN and files a Form 941 Schedule R showing each individual/representative-employer's federal employment tax liabilities.⁴⁰
3. For any individual/representative-employer who is transferring from Vendor F/EA FMS provider A, Vendor F/EA FMS provider A provides Vendor F/EA FMS provider B with all information on wages paid to the individual/representative-employer's support worker(s) and federal employer and employee FICA and Federal income taxes withheld and deposited.

⁴⁰ A Vendor F/EA FMS provider depositing schedule is based on the Vendor F/EA FMS provider's aggregate federal tax liability to be deposited, not each individual/representative-employer. Therefore an IRS Form 941, Schedule B is required to be filed with the IRS Form 941 in most cases.

- a. At the time of transfer, Vendor F/EA FMS provider A **does not** refund any FICA to transferring individual/representative-employers and their applicable support workers who did not earn wages equal to or in excess of the FICA wage threshold nor does the Vendor F/EA FMS provider A issue IRS Forms W-2 for the support workers.⁴¹
4. Vendor F/EA FMS provider B records wages paid to the individual/representative-employer's support worker(s) by Vendor F/EA FMS provider A. Vendor F/EA FMS provider B will include wages paid by Vendor F/EA FMS provider A when determining if an individual/representative-employer and his/her support worker(s) are eligible for a refund of over collected FICA at the end of the calendar tax year.
 - a. Vendor F/EA FMS provider B takes particular note of any individual/representative-employer's support workers who have not yet been paid wages equal to or in excess of the FICA wage threshold. These individual/representative-employers and support workers may qualify for a refund of over collected FICA if one or more support workers do not earn wages equal to or in excess of the FICA wage threshold during the calendar tax year after Vendor F/EA FMS provider B finishes paying wages to the applicable support workers on behalf of the individual/representative-employer at the end of the calendar tax year.⁴²
5. By November 1st each year, Vendor F/EA FMS provider B provides Vendor F/EA FMS provider A with a report of wages it has paid and taxes it has deposited for all transferred individual/representative-employers and their support workers.
 - a. Based on what each Vendor F/EA FMS provider has paid transferred individual/representative-employers' support workers and the information each Vendor F/EA FMS provider receives from the other about what the wages they have paid to these support workers, Vendor F/EA FMS provider A and B determine which individual/representative-employers and support workers are likely to be eligible to receive a refund of over collected FICA for the particular calendar tax year.
 - b. Each Vendor F/EA FMS provider verifies each applicable support worker's address using the standard address verification process.
 - c. At year end, refunds of over collected FICA (employer and employee portions) are issued only to eligible individual/representative-employers (most likely the state) and support workers (i.e., support workers who have

⁴¹ The FICA wage threshold effective 1/1/2010 is \$1,700, and IRS may update it annually. IRS Forms W-2 are processed and distributed by January 31st (February 1st in 2010).

⁴² A support worker's wages received from a specific individual/representative-employer must be less than the FICA wage threshold for the calendar tax year in order to qualify for a FICA refund.

been paid wages less than FICA wage threshold) and whose addresses has been verified.⁴³

6. After the last payroll in the calendar tax year, Vendor F/EA FMS provider B determines if any additional support workers transferred from Vendor F/EA FMS provider A have been paid wages by Vendor F/EA FMS provider A and B equal to or in excess of the FICA wage threshold for that calendar tax year or not.
 - a. Vendor F/EA FMS provider B provides wage information for applicable support workers to Vendor F/EA FMS provider A.
7. For each support worker that has not earned wages equal to or in excess of the FICA wage threshold in the calendar tax year for services provided to their individual/representative-employer, both Vendor F/EA FMS provider A and B determine the total employer and employee share of FICA that was over-collected by each Vendor F/EA FMS provider and that is to be refunded by each Vendor F/EA FMS provider.
8. Each Vendor F/EA FMS provider should process all FICA refund checks for the employee portion of FICA to the applicable support workers prior to issuing IRS Forms W-2.
9. The State may require each Vendor F/EA FMS provider to refund the employer portion of FICA either to the individual/representative-employer or the State (the majority of states currently choose to receive these funds).⁵ The State must determine whether the State or the individual/representative-employer will receive the employer portion of over collected FICA, the procedure for doing so and inform the Vendor F/EA FMS providers.
10. Each Vendor F/EA FMS provider should file an IRS Form 941-X for each quarter in which over collected FICA has occurred and attach an IRS Schedule R. ***The IRS Schedule R should only list the applicable individual/representative-employers (i.e., those eligible for a refund of over collected FICA) with wage and federal tax, advanced earned income credit and deposit/COBRA payments made.***
 - a. Each Vendor F/EA FMS provider can either request a refund of the employer and employee share of over collected FICA or have the over collected FICA applied as a credit to any current or future IRS Form 941

⁵ States would rather not receive a lump sum check for the employer portion of a FICA refund because they have to make adjustments to the Medicaid matching funds they claim to CMS. Instead, states often reduce future payments to the Vendor F/EA FMS provider until all the employer FICA refund is recouped. Some state program managers may see a benefit to having the employer portion of over collected FICA go into the individual's individual budget to cover needed services. However, often the FICA refunds are issued after the service year in which they were paid and do not related to the individual's current service plan.

the Vendor F/EA FMS provider files. This process should be repeated for each quarter in which FICA was over collected.

- b. FICA refunds from each Vendor F/EA FMS provider should be issued to each applicable employee at the end of the applicable calendar tax year. The state needs to determine who will receive the employer portion of over collected FICA and if the state is to receive it, how each Vendor F/EA FMS provider will reimburse the state.
- c. This process must be completed prior to each Vendor F/EA FMS provider issuing IRS Forms W-2 to employees, the State Department of Revenue and the Social Security Administration.

- 11. Any FICA refund checks that are returned to either Vendor F/EA FMS provider should be reported per the state's unclaimed property law.
- 12. When a support worker does not receive wages equal to or in excess of the FICA wage threshold, they still can receive an IRS Form W-2. In the case where an individual/representative-employer transfers Vendor F/EA FMS provider in a calendar tax year, the support worker will receive an IRS Form W-2 from Vendor F/EA FMS provider A and B. Both Vendor F/EA providers should report FICA wages paid to the support worker on the IRS Form W-2 they prepare and issue, completing the rest of the Form per IRS instructions for agents.

However, it should be noted that currently the Social Security Administration (SSA) will not allow a Vendor F/EA FMS provider to electronically file an IRS Form W-2 if the Form reports FICA wages greater than zero but below the FICA wage threshold. However, Vendor F/EA FMS providers that file 250 or more Forms W-2 must file electronically or be penalized \$50 per Form filed in hardcopy. Discussions currently are underway with IRS to see if SSA will adjust their Form W-2 e-filing rules so as to allow Vendor F/EA FMS providers to electronically file IRS Forms W-2 that report FICA wages that are greater than zero but below the FICA wage threshold.