

**DEPARTMENT OF HOUSING AND  
URBAN DEVELOPMENT**

**24 CFR Parts 887 and 984**

[Docket No. FR-6114-F-03]

RIN 2577-AD09

**Streamlining and Implementation of  
Economic Growth, Regulatory Relief,  
and Consumer Protection Act Changes  
to Family Self-Sufficiency (FSS)  
Program**

**AGENCY:** Office of the Assistant Secretary for Public and Indian Housing and Office of the Assistant Secretary for Housing—Federal Housing Commissioner, Department of Housing and Urban Development (HUD).

**ACTION:** Final rule.

**SUMMARY:** This final rule amends HUD's regulations to implement changes to the Family Self-Sufficiency (FSS) program made by the Economic Growth, Regulatory Relief, and Consumer Protection Act ("the Economic Growth Act" or "the Act"). Section 306 of the Act made multiple amendments to the FSS program, including changes to the methodology for determining the size of the FSS program, expanding the definition of eligible families to include tenants of certain privately owned multifamily properties subsidized with Project-Based Rental Assistance (PBRA), updating the FSS Contract of Participation (CoP), reducing burdens on Public Housing Agencies (PHAs) and multifamily assisted housing owners, clarifying escrow account requirements, and updating the FSS Action Plan requirements. After consideration of public comments, this final rule incorporates these changes, responds to public comments, and further revises HUD's FSS regulations to further streamline the program for PHAs, multifamily property owners, and eligible families, including providing that families participating in the Housing Choice Voucher Homeownership Program and all Section 8 programs can participate in the FSS program, revising certain definitions that apply to the program to align with commenters' suggestions, making changes to the CoP provisions, revising the lists of activities for which forfeited escrow funds may be used, and making changes to portability provisions.

**DATES:**

*Effective date:* June 16, 2022.

*Compliance date:* Public Housing Authority and Owner compliance with this rule is required no later than November 14, 2022.

**FOR FURTHER INFORMATION CONTACT:** For Public and Indian Housing (PIH) FSS contact Anice S. Chenault, Office of Public and Indian Housing, U.S. Department of Housing and Urban Development, 451 7th Street SW, Room 4120, Washington, DC 20410; telephone number 502-618-6163 (this is not a toll-free number); and for Multifamily FSS contact Elizabeth Fernandez, Office of Multifamily Housing Programs, U.S. Department of Housing and Urban Development, 451 7th Street SW, Room 6182, Washington, DC 20410; telephone number 202-402-6763 (this is not a toll-free number). The public is encouraged to email questions to [FSS@hud.gov](mailto:FSS@hud.gov) or [MF\\_FSS@hud.gov](mailto:MF_FSS@hud.gov).

**SUPPLEMENTARY INFORMATION:**

**I. Background**

In 1990, section 554 of the Cranston Gonzalez National Affordable Housing Act (Pub. L. 101-625, approved November 28, 1990) amended the United States Housing Act of 1937 by adding a new section 23 (42 U.S.C. 1437u) to create the FSS program. The FSS program requires that PHAs and Indian Housing Authorities<sup>1</sup> use Public and Indian Housing assistance and Section 8 Housing assistance rental voucher programs, together with public and private resources, to provide supportive services, case management, and an escrow account to participating families, with the intent to help families achieve economic independence and self-sufficiency. The program's goal is to enable participating low-income families to increase their earned income, achieve economic stability, and reduce or eliminate their need for welfare assistance and rental subsidies. FSS Program Coordinators create plans with participating families to achieve goals and connect them with services that will assist the family in making progress toward economic security. As the family's earnings increase, the difference between the original rent and the increased rent due to increased earned income is credited to an interest-bearing escrow account on the family's behalf. Families that meet program requirements and successfully complete the FSS program receive their accrued FSS escrow funds, plus interest. No regulatory restrictions exist on the use of the escrowed funds. Many families use the funds to help with the purchase of a home, debt reduction, post-

secondary education, or to start a new business.

On May 24, 2018, the Economic Growth, Regulatory Relief, and Consumer Protection Act (the "Economic Growth Act" or "the Act") was signed into law (Pub. L. 115-174), and section 306 of title III of the Act, Protections for Veterans, Consumers, and Homeowners, amended the United States Housing Act of 1937 (42 U.S.C. 1437, *et seq.*), FSS program, which required HUD to issue regulations to update its program requirements and provide new provisions for private owners of multifamily assisted housing to set up their own FSS programs. Additional details about the FSS program may be found in the background of the "Streamlining and Implementation of Economic Growth, Regulatory Relief, and Consumer Protection Act Changes to Family Self-Sufficiency (FSS)" at 85 FR 59234 (September 21, 2020).

**II. The September 21, 2020, Proposed Rule**

On September 21, 2020 (85 FR 59234), HUD published a proposed rule to implement changes required by the Economic Growth Act and streamline the FSS program. The public comment period closed on November 20, 2020, and HUD received 105 public comments. The proposed rule makes changes to the existing FSS regulations at 24 CFR part 984 and adds a new 24 CFR part 887 to address the FSS program for owners of multifamily assisted housing. The proposed rule also updates references to PHAs and owners and clarifies the provisions that would apply to both when operating an FSS program. Owners would be subject to the requirements only if they are operating an FSS program.

The changes include updating the mandatory size of a PHA's required FSS program and available exceptions; updating the definition of eligible families; allowing family members other than the Head of Household for rental assistance purposes to sign the Contract of Participation (CoP) and to meet the employment obligation; amending the definition of supportive services; changing the term of the CoP; amending the requirements pertaining to the management of the escrow account, including the requirements for forfeiture of the escrow funds; and, amending reporting requirements. Also, the Economic Growth Act provided new provisions for private owners of multifamily assisted housing to set up their own FSS program or enter into a Cooperative Agreement with another private owner or PHA to offer an FSS

<sup>1</sup> The Native American Housing Assistance and Self-Determination Act of 1996 (25 U.S.C. 4101 *et seq.*) (NAHASDA) removed the application of the FSS program to Indian Housing Authorities.

program to the owner's assisted residents. For more information about the specific proposed changes to conform with the Economic Growth Act see the background of the "Streamlining and Implementation of Economic Growth, Regulatory Relief, and Consumer Protection Act Changes to Family Self-Sufficiency (FSS)" at 85 FR 59234 (September 21, 2020).

HUD also proposed changes, that were not statutorily required, to streamline the program, including removing references to the establishment of mandatory programs; requiring an FSS Program Coordinator as a Program Coordinating Committee (PCC) member; requiring that at least one resident participant from each HUD-assisted program served by FSS is a member of the PCC; revising the amount of time a family must be independent from welfare assistance prior to expiration of the CoP; expanding the definition of "good cause" for a contract extension to include the active pursuit of a goal that will further self-sufficiency, such as a college degree or credit repair program; removing the provision that automatically completes the FSS contract when thirty percent (30%) of the family's adjusted monthly income equals or exceeds the Fair Market Rent (FMR); requiring that nullification would occur when the PHA or owner and participant determine that services integral to an FSS family's advancement towards self-sufficiency are unavailable or when the head of FSS family becomes permanently disabled and unable to work or dies during the period of the contract, with exceptions; differentiating between "determining the FSS escrow amount" and "crediting that FSS escrow amount" to a family's FSS escrow account and requiring that, during the term of the FSS contract, the PHA or owner credits the escrow amount to each Family's FSS escrow account on a monthly basis; revising the provision concerning reduction of amounts due by the FSS family; and revising several provisions concerning FSS families that move with continued housing choice voucher (HCV) assistance from the jurisdiction of one PHA to the jurisdiction of another PHA under portability. HUD also reminded PHAs and owners that they may not establish mandatory goals or requirements for all participants other than the two mandatory goals set in regulation (seek and maintain suitable employment, and be independent from welfare assistance), and that all other goals must be set on an individual basis.

After the publication of the proposed rule, HUD determined that changes to

the information collection requirements described in it would be necessary. As a result, on November 15, 2021, at 86 FR 62964, HUD published a supplemental notice of proposed rulemaking re-opening the public comment period on the information collection requirements in the September 21, 2020, proposed rule. HUD received only one comment, which spoke about affordable housing generally and not about FSS or information collection requirements.

### III. Changes Made at the Final Rule Stage

In response to public comments, a discussion of which is presented in Section IV, and in further consideration of issues addressed at the proposed rule stage, HUD is publishing this final rule adopting the September 21, 2020, proposed rule as final with the following changes.

*A. Purpose, applicability, and scope.* As part of this final rule, HUD updates the list of public housing and voucher programs through which families can participate in the FSS program in § 984.101. Public commenters noted that the change in the Economic Growth Act provided HUD with further flexibility to allow participants beyond those being funded under 8(o) of the U.S. Housing Act of 1937. After further consideration, HUD amends § 984.101 to provide that families participating in the HCV Homeownership Program under section 8(y) of the U.S. Housing Act of 1937 will also be allowed to participate in the FSS program. Additionally, this final rule includes Moderate Rehabilitation and Moderate Rehabilitation Single Room Occupancy for homeless individuals under 24 CFR part 882 in the list of programs under which families can participate in FSS, as these are also Section 8-assisted housing. The final rule also explicitly identifies Family Unification Program (FUP) assistance under section 8(x) of the 1937 Act as a program under which families can participate in FSS; the proposed rule did not adequately distinguish that FUP is not a section 8(o) program, unlike other special purpose vouchers.

This final rule also clarifies in § 984.101 that participation in the FSS program, or lack thereof, may not be used as cause to terminate rental assistance.

*B. Definitions.* In § 984.103, this final rule maintains the current definition of "effective date of the Contract of Participation" which currently is the first day of the month following the month in which the FSS family and the PHA or owner entered into the Contract of Participation, rather than finalize the proposed rule definition that would

have made this the date the parties sign the contract. HUD revises the definition slightly so the effective date will be the first day of the month following the date in which the FSS family and the PHA or owner entered into the Contract of Participation for clarity, but the change is not substantive. HUD is maintaining the current definition because many commenters requested that the CoP continue to conform with other rental assistance processes that operate on a monthly cycle.

Additionally, this final rule revises the definition of "FSS family in good standing" as recommended by some commenters to mean an FSS family that is in compliance with their FSS CoP, has satisfied or is current on any debts owed the PHA or owner, and is in compliance with the regulations regarding participation in the relevant rental assistance program. The definition under the proposed rule provided that an FSS family is in good standing if it is not in eviction proceedings and is otherwise in compliance with any repayment agreement and the FSS CoP and did not include language noting that the family must also be in compliance with regulations for the relevant assistance program. This final rule also expands the definition of "Personal welfare" in § 984.103 to include health, dental, mental health and health insurance services.

*C. Cooperative Agreements.* In response to public comment, this final rule specifies in §§ 887.107 and 984.106 that Cooperative Agreements between PHAs and owners of multifamily properties must include processes for the entities to communicate with each other about changes in their Action Plans to ensure continued coordination between the participating entities in administering their program.

*D. FSS award funds formula.* This final rule removes language in §§ 887.111 and 984.107 of the proposed rule that stated notice of, and changes to, the FSS Award Funds Formula will be published in the **Federal Register**, as the formula will continue to be published in Notices of Funding Opportunities (NOFO).<sup>2</sup> HUD believes that adding the publication of the funding formula in the **Federal Register** would duplicate the inclusion of the formula that would also need to be

<sup>2</sup> HUD currently uses the term Notices of Funding Opportunity or "NOFO" for documents that would previously have been referred to as Notice of Funding Availability or "NOFAs." This change is based on the terminology used in Office of Management and Budget Management in its Guidance for Grants and Agreements (85 FR 49506, August 13, 2020).

included in the NOFO. This final rule adds the statutory formula to HUD's regulations in § 984.107 for clarity.

E. *FSS Action Plans*. Section 984.201 of this final rule includes examples of policies over which PHAs/owners have discretion. These may be included in the FSS Action Plan to help HUD determine the soundness of the PHA or owner's FSS program.

F. *FSS appropriated funds*. This final rule revises § 984.302 to clarify that FSS appropriated funds awarded pursuant to this statute may be used by PHAs or owners for eligible FSS costs, including when an owner operates an FSS program through a Cooperative Agreement or on its own. Additionally, to ensure that there is no confusion about funding available to PBRA owners who operate an FSS program, this final rule adds a provision at § 887.113(a), that states that owners may also or alternatively use residual receipts to pay for reasonable FSS program operation costs, including hiring an FSS Program Coordinator or coordinators for their FSS program. This new regulatory text implements statutory language of section 23(l) of the U.S. Housing Act of 1937, as amended by the Economic Growth Act, which states that PBRA owners may access funding from any residual receipt accounts for the property to hire an FSS Program Coordinator(s) for their program.

G. *Contract of Participation*. In § 984.303, which covers the "Contract of Participation," this final rule makes various changes and revisions. This clarifies that there will only be one CoP per household, and there may be an Individual Training and Services Plan (ITSP) for as many members of the household that wish to participate, which will be incorporated into the CoP. The rule also revises the regulatory text in paragraph (b)(3) to clarify that all considerations allowed for other residents for repayment agreements and other matters shall also be allowed for FSS participants. The rule revises § 984.303(b)(2) to state that being independent from welfare assistance will be a mandatory final goal instead of an interim goal.

Additionally, the rule revises paragraph (b)(4)(iii) to note that the determination of suitable employment will be made with the agreement of the affected participant, so that the affected participant has input into this matter along with the PHA or owner, and expands the regulation to include that the determination will involve consideration of the receipt of other benefits of the participant, to ensure that new employment will not cause the loss of necessary supports, in addition to the

skills, education, and job training of that participant. Further, in paragraph (a) this final rule eliminates the requirement from the proposed rule that the family consult with the PHA or owner in designating the head of FSS family, as HUD believes that it is generally in the best interests of assisted households to choose the head of FSS family that is most suitable for their individual household circumstances.

This final rule also revises paragraph (d) to clarify that the determination of good cause for a Contract extension can include circumstances beyond the control of the FSS family that impede the family's ability to complete the CoP obligations and can include any circumstance that the PHA or owner determines warrants an extension, as long as the PHA or owner is consistent in its determinations. Further, this final rule provides in paragraph (k) that while the CoP will be terminated, escrow can be disbursed to the family when services that the PHA or owner and the FSS family have agreed are integral to the FSS family's advancement towards self-sufficiency are unavailable. Under the proposed rule language, only the PHA or owner made that determination.

This final rule revises paragraph (f) to clarify that modifications to the CoP must be in writing and signed by the PHA/owner as well as the head of FSS family. Additionally, this final rule revises paragraph (j) to clarify that only non-HUD funds or non-HUD restricted funds can be used by PHAs and owners to offer supportive services to former FSS families that have left assisted housing.

Lastly, this final rule provides in paragraph (k) that a CoP will be terminated but escrow can be disbursed to the family rather than forfeited, if an FSS family in good standing moves outside the jurisdiction of the PHA for good cause, as determined by the PHA, and continuation of the CoP after the move, or completion of the CoP prior to the move, is not possible.

H. *FSS escrow account*. This final rule removes from § 984.305 language that would permit a PHA or owner to set a policy to either conduct a new re-examination of income before the effective date of the FSS contract, or to use the amounts on the family's last income re-examination when setting a participant's baseline rent. This final rule will instead require the PHA or owner to use the amounts on the most recent rent certification. HUD believes this is more in line with congressional intent.

Additionally, this final rule expands the list of eligible activities for which forfeited escrow funds may be used to

include other costs related to achieving obligations outlined in the CoPs of remaining FSS participants and adds to the list of ineligible activities "general administrative costs of the FSS program." HUD has made this change to eliminate any incentive PHAs may have had not to graduate participating families so as to recapture the forfeited escrow funds and to ensure forfeited funds are used to advance participants' goals and not for the overall implementation of the FSS program.

This final rule does not contain language from the proposed rule that would have provided for escrow disbursement to an estate if the head of the FSS family dies before a CoP is completed, as HUD determined that there is no legal authority for this. However, if the head of the FSS family dies before the CoP is completed, another member of the FSS family may take over the CoP.

This final rule also clarifies how the increase in the family's monthly rent is determined when computing the FSS credit amount for Section 8 Moderate Rehabilitation (Mod Rehab) and PBRA families and that, as is the case with Project-Based Vouchers (PBVs), it is the difference between the baseline monthly rent and the current gross rent.

I. *HCV portability requirement*. Due to the fact that PBVs are allocated to a specific unit, a family with a PBV does not have the right to take that rental assistance and move. Generally, after having a PBV for 12 months, the family may apply for and receive Tenant-Based Rental Assistance (TBRA, also known as a Tenant-Based Voucher) if it is available. The proposed rule did not discuss an FSS family's right to move after transitioning from a PBV to TBRA. In § 984.306, this final rule clarifies that a PBV family that has been enrolled in the FSS program for 12 months, and who exercises its right to transfer from the PBV unit to tenant-based rental assistance in accordance with 24 CFR 983.261, may move outside of the jurisdiction of the initial PHA in accordance with standard portability regulations. The PHA's discretion to allow portability moves for TBRA FSS participants within the 12 months following the effective date of the CoP also applies to PBV families who become Tenant-Based voucher families.

Additionally, this final rule provides that a receiving PHA that is already serving the number of families identified in its FSS Action Plan and determines it does not have the resources to manage the additional FSS contract is not required to enroll a porting family. In such cases, the initial PHA must discuss with the family

options available to the family, such as modification of the FSS contract, termination of the FSS contract and forfeiture of escrow, termination of the contract and the release of escrow if the initial PHA determines there is good cause for the move, or locating a receiving PHA that has the capacity to enroll the family into its FSS program. HUD has made this change after considering public comments and determining that a lack of capacity to serve a ported FSS family would be a reasonable justification for a receiving PHA to deny enrollment of the ported FSS family into its FSS program.

Further, in response to comments, this final rule allows a family that was not an FSS participant at the initial PHA to enroll in a receiving PHA's program when the receiving PHA bills the initial PHA if the initial PHA agrees, and the initial PHA manages an FSS program. Under the proposed rule, if the receiving PHA bills the initial PHA, a family that was not an FSS participant at the initial PHA would not have been able to enroll in the receiving PHA's FSS program.

J. *Basic requirements of FSS (for multifamily FSS programs)*. This final rule revises § 887.105 to provide that where a Program Coordinating Committee (PCC) is available, owners can either work with that PCC or create their own, either by themselves, or in conjunction with other owners. This adds flexibility to the language that was in the proposed rule that said owners must work with a PCC when one is available and did not mention an option for such owners to create their own PCCs.

Additionally, under this final rule, multifamily owners are not exempt from the family selection procedures in § 984.203. HUD makes this change from the proposed rule in order to give the owner the option of using certain selection preferences and motivational screening factors and make it easier for an owner to operate an FSS program through a Cooperative Agreement with a PHA that uses selection preferences or motivational screening factors.

K. *Additional grammatical and technical changes*. This final rule makes additional grammatical and technical changes throughout, such as clarifying the usage of the word "jurisdiction" so that it is only used when referring to a PHA's jurisdiction, and not also the community where a PBRA property is located; clarifying that PBRA owners may develop their own FSS Action Plans; including "Head of Household" in the list of definitions defined in part 5 of HUD's regulations; and other minor changes for clarity and conformance.

L. *Delayed compliance date*. This final rule includes a compliance date that provides PHAs and owners with up to six months from the date of publication of this rule to comply with its provisions. HUD encourages PHAs and owners to comply with this new rule's provisions as soon as possible. This means that all FSS Action Plans must be updated by the compliance date. HUD intends to provide guidance on that process and encourages PHAs and Owners to visit the FSS Resources web page at: [https://www.hud.gov/program\\_offices/public\\_indian\\_housing/programs/hcv/fss](https://www.hud.gov/program_offices/public_indian_housing/programs/hcv/fss) and to subscribe to HUD's FSS listserv at <https://public.govdelivery.com/accounts/USHUDPIH/signup/30989>. The requirements in this rule may apply to CoPs that are signed after the effective date of the rule but before the compliance date if the PHA or Owner is in compliance with the new rule. PHAs and Owners may reach an agreement with FSS participants covered by existing CoPs to modify those CoPs on a family-by-family basis, so those contracts are governed by this final rule.

#### IV. Public Comments

The public comment period for the September 21, 2020, proposed rule closed on November 20, 2020. HUD received and reviewed 105 comments on the proposed rule from a wide variety of interested entities, including: Individuals, public housing agencies, affordable housing organizations, housing associations, community development corporations, and investment companies. This section addresses significant issues raised by the public comments and is organized by the proposed rule section, with summaries of the issues followed by HUD's responses. There were also numerous comments received both in support of and opposition to the proposed rule generally, as well as comments that did not address one specific section of the proposed rule. Those comments are organized into general categories and responded to accordingly. Following are the issues raised by the public comments and HUD's responses.

##### *General Support*

Commenters generally supported the proposed rule as beneficial to program participants and to beneficiaries. A commenter supported updating FSS rules so that PHAs do not have to ignore outdated language.

*HUD Response:* HUD appreciates this feedback and the time taken to review the proposed rule.

*Section 984.101: Purpose, Applicability, Scope*

#### Section 8 Participants Eligibility

A commenter asked HUD to clearly state that all Section 8 participants are eligible to participate in FSS, including those with Non-Elderly Disabled (NED), Veterans Affairs Supportive Housing (VASH), and Mainstream Vouchers. The commenter also asked HUD to provide specific instructions on reporting through the PIH Information Center (PIC) and Voucher Management System (VMS), noting that there is no clear direction on how to assist families on Mainstream 5 and the funds used for escrows need to be backed out and submitted as Housing Assistance Payments (HAP) in the Mainstream 5 VMS line. The commenter said when they asked HUD, they were told Mainstream 5 participants were not eligible to participate in FSS as the funds are from the Section 811 Supportive Housing for Persons with a Disability program.

*HUD Response:* As stated in the proposed and this final rule, families assisted under Section 8 voucher programs are eligible to participate in FSS. This includes any applicable special purpose voucher considered rental assistance under section 8(o) or 8(x) of the U.S. Housing Act of 1937 (1937 Act) (such as Family Unification Program (FUP), Foster Youth Initiative (FYI), Veterans Affairs Supportive Housing (VASH), and Mainstream Vouchers). Based on comments received concerning the eligibility of Housing Choice Vouchers (HCV) homeownership families for FSS, HUD has revised the regulatory text to clarify and allow HCV homeownership families to participate in FSS. Additionally, this final rule includes Section 8 Moderate Rehabilitation for low-income families and Moderate Rehabilitation Single Room Occupancy for homeless individuals under 24 CFR part 882 in the list of programs under which families can participate in FSS, as these are also Section 8-assisted housing. For further explanation concerning this change, see the discussion of public comments on § 984.103. As it relates to the reporting concerns raised by a commenter, HUD is in the process of updating VMS to allow PHAs to properly report FSS escrow deposits and forfeitures for Mainstream Voucher participants and will share guidance when it is available.

#### Non-Participation

Commenters supported HUD's addition of language clarifying that a family's rental assistance shall not be

delayed or terminated by reason of a family electing not to participate in the FSS program because families may, despite best efforts, fail to meet the obligations and objectives of the CoP, which would disincentivize participation. A commenter stated that the non-participation clause was too narrow and suggested HUD should affirmatively state that rental assistance cannot be terminated for non-compliance with the FSS program to avoid ambiguity and conform with the statute.

*HUD Response:* This final rule revises § 984.101(d) to be clear that participation in the FSS program, or lack thereof, may not be used as cause to terminate rental assistance. This final rule also revises § 887.101(d) to be clear that assistance under Section 8 Housing assistance payments programs cannot be refused, delayed or terminated because a family chooses not to participate in an FSS program.

#### Mandatory and Voluntary Programs

A commenter stated HUD should leave the language as is and allow the PHA to decide if they want to keep the program voluntary or make it mandatory.

*HUD Response:* As used in the proposed rule and this final rule, the terms “voluntary” and “mandatory” refer to whether PHAs are required to institute an FSS program, not whether residents must participate. All FSS programs must be voluntary for participants.

#### Section 984.102: Program Objectives

##### Graduation Timing

A commenter requested that HUD add a provision allowing a client to graduate at time of verification of full-time/suitable employment or at the time the new wages/income from employment is added to the Form HUD-50058 Family Report.

*HUD Response:* As explained in § 984.303, the CoP is considered completed and a family’s participation in the program is considered concluded when the FSS family has fulfilled all of its obligation under the CoP, on or before the expiration of the Contract term. Section 984.303(b) requires that the head of FSS family under the CoP seek and maintain suitable employment during the term of the contract, but the family may have other obligations under the CoP, as described in § 984.303. Participants may graduate at any time their obligations under the CoP are met. The national average time in the program for graduates is less than four years. HUD notes that the goal of FSS

is self-sufficiency; therefore, a participant being hired for their first job may in fact be only at the beginning of what they can achieve while in the FSS program.

#### Performance Measures

Commenters recommended that HUD allow the public the opportunity to comment on any performance standards. A commenter said any performance standards that will impact new, or renewal funding and incentives should be subject to public comments prior to the effective date. A commenter said that there were issues with HUD’s attempt to implement new performance metrics in the past and asked that HUD’s scoring system not place excessive weight on increased earned income, which may negatively impact FSS program participants that are enrolled in lengthier training and educational programs compared to participants that focus specifically on employment. A commenter said any weighing of graduation rates and earnings performance should be equal to reflect their equal importance. Other commenters expressed concern that the “Composite Score” methodology does not give credit for programs or participants who enter educational pursuits prior to entering employment. Another commenter recommended that the performance measures and criteria for awarding incentives include an FSS family’s successful move to homeownership when graduating.

A commenter stated that HUD received criticism for attempting to implement the performance measurement system and that HUD found inexplicable anomalies between consecutive years of scoring of certain housing authorities. The commenter said that Congress specifically prohibited HUD in an appropriations act from using funding to consider FSS performance measures or scores in determining funding awards. The commenter stated that the system does not account for the diversity of households in educational levels, skills, and employability at enrollment, and that HUD’s own contractor recommended that HUD tailor its performance measurement system to fit the stated structure and goals of the program. The commenter suggested HUD devise a system that: Is not implemented retroactively; does not fail to award points to all the educational, employment and supportive services allowed by statute for program participants; does not score performance until FSS contracts are completed; does not penalize non-metropolitan areas who may have a dearth of employment

opportunities in their markets; does not penalize PHAs that are voluntarily administering an FSS program with no FSS Program Coordinator funding from HUD; and does not prevent PHAs from administering the FSS program at the local level. The commenter also said HUD lacks authority to determine how participants and PHAs will devise their contracts under FSS, and that if HUD wants to limit pre-employment services and educational/job training, it should seek a statutory change. This commenter asked HUD to remove from the final rule the explicit language related to HUD’s proposed measurement system factors—namely graduation from the program, increased earned income, and program participation—since no such language is included in section 306 of the Economic Growth, Regulatory Relief, and Consumer Protection Act.

Two commenters stated the proposed rule is silent about how performance standards would affect coordinator funding awards and said HUD should comply with Congress’ directive by specifying that funding for renewed and additional coordinator positions would be subject to performance criteria. One commenter said it would not be fair to provide agencies serving more families than they are required additional points as other programs may be serving families and individuals that may require more time with a coordinator. Another commenter stated the “Composite Score” accurately evaluates the success of the FSS program outcomes, and that when one looks at the outcomes achieved and not the process then it becomes clear what is being evaluated.

A commenter said it has no objection to HUD using a PIC driven “Composite Score” to evaluate its FSS program but asked that HUD provide detailed reporting guidelines on how and when the data is mined from PIC to ensure they are reporting accurately. Another commenter said that the HUD-commissioned MDRC National FSS Evaluation will provide rich information about FSS program operations and that any changes in evaluation measurements should wait until the results of this study are published so that they may inform best practices for performance measurement. One commenter stated a concern that the proposed rule would not give credit to a program for graduating participants who have never received Temporary Assistance for Needy Families (TANF) or whose wages remained steady throughout the five-year FSS contract. The commenter was also concerned that the performance measure did not address the number of program

participants who did not have TANF within the time of their FSS contract.

Another commenter expressed concern about the potential for developing a tool that is not flexible enough to reflect the complicated nature of the participants in the FSS program, the outside forces that directly impact their ability to meet and reach their ITSP goals, and the non-quantifiable impact of services and supports on their long-term economic stability. The commenter opposed the development of a tool that is applied the same way to all programs, if that tool cannot account for the impact of region, participant enrollment characteristics, short- and medium-term economic realities and changing government priorities.

Commenters stated that the proposed rule did not reference Moving to Work (MTW) agencies as being covered by such an evaluation system, but it also did not indicate that MTW agencies will be exempt or subject to different criteria. The commenters said that the scoring criteria in the proposed rule should not apply to MTW agencies without engaging the MTW Collaborative and the individual MTW PHAs in a collaborative process to develop the tool, ensuring that in drafting scoring criteria HUD will consider the unique circumstances of MTW agencies operating alternative FSS programs. A commenter said that the Form HUD-50058/PIC does not allow for accurate reporting for MTW agencies, and if HUD intends to use Form HUD-50058-MTW for FSS performance scoring, HUD must fix the existing technical issues.

*HUD Response:* The Proposed Family Self-Sufficiency Performance Measurement System (“Composite Score”) Notice requesting public comment was published on December 12, 2017 (82 FR 58434). The Final Notice was published in the **Federal Register** on November 15, 2018 (83 FR 57493). HUD wishes to note that the Performance Management System, as published, is not structured to include MTW agencies, unfunded FSS programs or PBRA FSS programs. The majority of the comments above commented on the current Performance Measurement System, not the proposed rule.

#### *Section 984.103: Definitions*

##### Baseline Annual Earned Income

A commenter agreed with HUD’s proposed definition of “Baseline Annual Earned Income,” stating it aligns with the new Housing Opportunity through Modernization Act (HOTMA) proposal of removing Earned Income Disallowance (EID). One commenter agreed that disregarded

income associated with self-sufficiency incentives should no longer be excluded in calculating baseline annual earned income because families who previously could not build escrow could now do so even if they are in a waiver program. Another commenter stated that instructing PHAs and owners to add back any disregard of earned income associated with self-sufficiency initiatives would have a punitive effect and likely deter rather than encourage participation for the persons with disabilities who could most benefit from FSS. This commenter said that just as HUD is proposing greater consistency across the board by allowing FSS families the opportunity to continue participation during the six-month Zero-HAP window rather than automatically graduating families who meet the 30% rule, HUD should maintain consistency across programs by continuing to extend the EID in calculating the baseline income for FSS CoP purposes.

Commenters requested that HUD clarify the definition and asked specifically about the meaning of “disregard of earned income associated with self-sufficiency initiatives.” One commenter asked if it referenced EID, Jobs Plus, or others, and, if so, that HUD provide a citation to the source of these initiatives so PHAs may easily reference them. Another commenter asked HUD to clarify whether the self-sufficiency initiatives HUD is in the process of implementing from the HOTMA would impact the calculation of FSS escrow.

*HUD Response:* As explained in the proposed rule’s preamble, adding back any disregarded earned income associated with self-sufficiency initiatives at the time that the PHA or owner determines the baseline annual earned income (that is, when the PHA or owner is determining the amount of earned income when the family enrolls in the program), helps ensure that escrow amounts are the result of increases in earned income while the family is in the FSS program. Otherwise, the family’s earned income would be lower at baseline resulting in potential for higher escrow credits based on increases in earned income that happened prior to FSS enrollment. It does not mean that this will necessarily result in all families with a disregard not being able to escrow, but rather, that the calculation will more accurately reflect increases in escrow that are the result of increases in earned income while the family is in FSS. Based on this, HUD has determined not to change the proposed regulatory language. Currently, “self-sufficiency initiatives” includes programs that include financial incentives including the Jobs Plus

Earned Income Disregard and the standard Earned Income Disregard. HUD’s proposed rule implementing sections 102, 103, and 104 of HOTMA (published on September 17, 2019 at 84 FR 48820) would eliminate the standard Earned Income Disregard. Additionally, that proposed rule would change rent calculation, but would not introduce new “self-sufficiency initiatives” (with financial incentives). HUD is not including the name of specific self-sufficiency initiatives in the rule, as we do not wish to limit “self-sufficiency initiatives” to those that exist at present. However, this final rule revises the definition to note that disregarded earned income “or other adjustments associated with self-sufficiency initiatives” may be applied when calculating baseline annual earned income, to account for “self-sufficiency initiatives.” This final rule also clarifies that any disregarded earned income “and other adjustments associated with self-sufficiency initiatives” will be included in calculations of current annual earned income.

##### Certification/Documentation of Goal Attainment and Completion

A commenter stated the certification standard should be consistent with the HCV program of self-certification, and PHAs should strive to get third-party verification to confirm CoP goals were met. Another commenter recommended that HUD reduce unnecessary administrative burdens on housing providers and demonstrate trust in families by clarifying that self-certification is permissible for documenting: (1) Completion of ITSP Goals; and (2) being independent from cash welfare assistance. This commenter recommended that under § 984.305(c), HUD explicitly state that self-certification of goal completion is sufficient evidence.

One commenter asked that HUD further clarify the certification definition to include a verification hierarchy to track ITSP goals with evidence provided by participants, such as third-party authentic documents, to help keep clear, concise record keeping. This commenter supported self-certification only in situations where third-party verification would be difficult.

*HUD Response:* The definition of certification, as written, and 24 CFR 984.305(c)(1) and (2) allows for PHAs and owners to accept self-certification of being independent from welfare assistance from FSS participants and 24 CFR 984.305(c)(4) also gives PHAs and owners the discretion to require third party verification. This final rule notes

that the requirements for the documentation of attainment of ITSP goals will be left to the PHA or owner to determine, and the policy may be included in their FSS Action Plan.

#### Current Monthly Rent

A commenter recommended that HUD allow the current definition of family rent to remain, to decrease the uncertainty FSS Program Coordinators may have when explaining what family rent is to an FSS participant when determining the escrow calculation.

*HUD Response:* HUD declines to accept the commenter's recommendation. The proposed rule does not define "family rent." The definitions of "baseline monthly rent" and "current monthly rent" were updated in the proposed rule and this final rule to reflect the evolution of rent options and nuances since the original regulations were written. The definition in the current regulation does not encompass the current realities.

#### Effective Date of the Contract of Participation (CoP) (Question 1)

Several commenters supported the proposed change to the effective date of the CoP. Commenters suggested that this could cause less confusion about the FSS program start date. One commenter supported the change but noted that software changes may need to be implemented to track these new dates. Two commenters supported the change to define this as the day the head of FSS family and PHA or owner execute the CoP. One commenter stated the current definition creates unnecessary delays for families interested in enrolling in the program. A commenter suggested applying this change prospectively rather than retroactively, as that would cause undue confusion for all parties.

Many commenters opposed the proposed change to the CoP effective date. Commenters stated that the change would make recordkeeping and escrow reporting more complicated, creating an administrative burden. Other commenters said it would be harder to track and monitor progress and end dates for FSS program participants. A commenter requested the option of keeping the effective date as the first of the following month.

Several commenters opposed defining the date of the CoP as the date it is executed, stating the CoP should continue to begin the next first of the month from the date of signing the contract.

Other commenters noted that the change would be inconsistent with rent calculations, which are generally effective the first day of the month. One

commenter noted that Section 8 actions could affect an FSS program participant's income on the day that the Contract of Participation is signed, or the time directly afterwards.

A commenter said there are some Form HUD-50058 (Family Report) actions that are not processed due to household changes, but Contract rent increases or change of unit due to extenuating circumstances such as fire, flooding, or owner possession of unit, and asked how this would impact the CoP start date.

A commenter stated that because the tenant file comes from the Section 8 population to the FSS program, there have always been issues with actions that are in process by the current occupancy specialist and the FSS reporting timelines. For FSS Program Coordinators that do not process their own actions or in some cases do not even have access to those functions in the HCV software, this must be coordinated with the Occupancy Specialist. In the case of the proposed rule, the FSS enrollment addendum, for example, would be entered for the October 15th enrollment date and the pending action would still need to be deleted and reprocessed to include the FSS progress enrollment, so either way there is additional data entry to be done and clear communication with other staff if one is not processing the actions in the software.

Another commenter suggested an option to keep the effective date of the CoP on the first of the following month after signing to allow for easier tracking and PIC submission purposes.

A commenter said that starting the CoP on the date the contract is executed may pose a challenge if the participant has submitted an interim recertification for a rent decrease that has not yet been processed at the time of enrollment. The commenter asked if a recertification that occurred before the execution of the CoP but processed after the execution of the CoP would count as the first recertification of income for the purpose of the CoP? Would the baseline rent be the last rental amount paid by the family or the next rental payment which would reflect the interim recertification? The commenter stated that it is unclear if a family graduates from the program mid-month as to whether an agency would be required to pro-rate the family's escrow credit for the month or not.

One commenter stated that if the effective date of the contract is changed from the date of signing, this affects the monthly rent roll and landlord payments, which would trigger the system to pro-rate payments that were

already issued for that month. A commenter said a new workaround may need to be created to overcome this issue.

*HUD Response:* HUD appreciates the comments on the proposal. Many commenters opposed the change and requested that the CoP continue to conform with other rental assistance processes that operate on a monthly cycle. This final rule does not include the provision to change the effective date to the same date as the enrollment date. The CoP effective date will remain the first of the month following execution of the CoP. HUD does not believe that the rent roll or landlord payments should be impacted by the Contract effective date. The new statute and proposed and final regulation state that the CoP will end no later than 5 years after the first *recertification of income* after the execution date of the CoP. Therefore, a change in rent due to "contract rent increases or change of unit due to extenuating circumstances such as fire, flooding, or owner possession of unit" as suggested by a commenter, would not impact the start date or the length of the CoP. HUD notes that while the statute uses the term "recertification," these regulations use the term "re-examination," and these two terms have the same meaning in this rule.

#### Eligible Families

Commenters requested that HUD not limit eligible voucher recipients to "section 8(o)" program participants in the proposed definition of "eligible families" and should replace this with "Housing Choice Voucher program participants, including families with project-based vouchers and homeownership vouchers." These commenters said that HUD does not explain why the proposed definition excludes these voucher participants. The commenters stated that a HUD Q&A clarifies that families receiving rental assistance through the Family Unification Program, other special purpose vouchers or Tenant Protection Vouchers would still be eligible to participate in FSS.<sup>3</sup> The commenters said the statute does not prohibit these categories of families, and families utilizing the HCV homeownership program still pay income-based rent and could benefit from the additional savings available through the FSS program. These commenters stated HUD would also need to eliminate the

<sup>3</sup> U.S. Department of Housing and Urban Development, *Family Self-Sufficiency Program Proposed Rule Questions & Answers (Q&A)*, [https://www.hud.gov/sites/dfiles/PIH/documents/QA\\_on\\_FSS\\_Proposed%20Rule\\_clean.pdf](https://www.hud.gov/sites/dfiles/PIH/documents/QA_on_FSS_Proposed%20Rule_clean.pdf).

proposed definition of “section 8(o)” and make parallel changes in the definition of “FSS family” and elsewhere in the new regulations. Another commenter advocated that anyone of any income-based program should be eligible for this opportunity because the FSS program’s objective is to help people become independent of welfare assistance and work their way up to homeownership.

A commenter recommended this definition be changed to allow families participating in the HCV homeownership program to have the opportunity to participate in FSS. Another commenter disagreed that those FSS participants who move into homeownership could or should remain on the FSS Program because most of the homeownership programs in their area offer assistance programs in case homeowners face hardship. A commenter recommended that Homeownership participants not be allowed to participate in FSS once they meet their CoP requirements.

A commenter supported the proposed rule change allowing residents at Rental Assistance Demonstration (RAD)-converted properties to participate in the FSS program. Another commenter stated that FSS authorizing documents do not fully support the intentions of the FSS program, especially in RAD-converted properties. The commenter said there is conflicting information regarding the eligibility of former PHA relocated residents within a PHA’s FSS Action Plan between the continuum of RAD Notices, the 2020 FSS Renewal Notice of Funding Availability (NOFA), and HUD’s proposed rule. The commenter said that the NOFA language seemed punitive to the resident and inconsistent with the program’s intentions and asked that HUD consider consistent language to allow continuous resident participation so long as the PHA and post-RAD conversion owner enter into a Cooperative Agreement and that residents be allowed into the program at any time after relocation. The commenter also asked that any new residents to the RAD-converted property also have the option to enroll into FSS and that the NOFA acknowledge these as eligible families.

*HUD Response:* As it concerns the eligibility of HCV homeownership families (under section 8(y) of the U.S. Housing Act of 1937) to participate in FSS, HUD has considered the comments received, which are almost unanimously supportive of such participation. HUD has also determined that while section 23 of the 1937 Act prior to the Economic Growth Act amendments prevented an HCV homeownership family from

participating in FSS, changes to the definition of eligible families under section 23(c)(1) as amended by the Economic Growth Act mean that participants receiving HCV homeownership assistance may also be included in this definition; the statutory definition of FSS eligible families under the Economic Growth Act includes Section 8 participants broadly rather than being limited to Section 8 rental certificate or rental voucher program participants. HUD revised § 984.101 of this rule accordingly, so that participants of the HCV homeownership option are eligible to participate in FSS. Additionally, HUD revised the definition of Section 8 programs to include multifamily assisted housing; tenant-based and project-based rental assistance under section 8(o) of the 1937 Act; the HCV homeownership option under section 8(y) of the 1937 Act; Family Unification Program (FUP) assistance under section 8(x) of the 1937 Act; and Moderate Rehabilitation for low-income families and Moderate Rehabilitation Single Room Occupancy for homeless individuals under 24 CFR part 882. Tenant-based and project-based rental assistance under section 8(o) of the 1937 Act includes any applicable special purpose voucher considered rental assistance under section 8(o) of the 1937 Act (such as FYI, VASH, and Mainstream Vouchers).

The comment about conflicting information regarding eligibility for residents at RAD-converted properties refers to the FY20 Notice of Funding Availability (NOFA). The FY20 NOFA reflects the eligibility of RAD-affected public housing residents prior to the new statute being implemented. The final rule will allow PBRA residents in RAD-converted properties to be served by PHAs with FSS appropriated funds if the PBRA owner enters into a Cooperative Agreement with the PHA and this will be reflected in future NOFOs following implementation of the final rule.

#### Family Self-Sufficiency (FSS) Program

A commenter stated that the definition of “FSS program” is established within its own jurisdiction and the language should be left as is because it gives the PHA more flexibility in defining and managing the program.

Commenters noted that the definition referred to “a program established by a PHA or owner within its jurisdiction” but the phrase “within its jurisdiction” has no applicability to owners and could be read to indicate that a PBRA owner is somehow within the jurisdiction of the local PHA, and

therefore recommended deleting the phrase “within its jurisdiction” from this definition.

*HUD Response:* HUD has clarified its usage of the word “jurisdiction” throughout this rule. In the proposed rule, “jurisdiction” was sometimes used to refer to the community where a PBRA property is located. In this final rule, “jurisdiction” is only used when referring to a PHA’s jurisdiction.

#### Supportive Services

A commenter stated support for HUD’s clarification that PHAs are only required to coordinate the availability of supportive services, not actually provide them, but requested that HUD clarify in its definition that PHAs and owners may directly provide supportive services, such as a childcare center or health clinic. Another commenter asked if, because of this provision, PHAs should no longer provide credit and financial services, even though PHAs are supposed to be trained in them in case an FSS participant faces those obstacles. Lastly, a commenter suggested that the final rule provide the flexibility for services to be conducted onsite or virtually, due to the COVID-19 pandemic.

A commenter suggested that HUD keep intact the full list of services as distinctly listed by Congress so as not to minimize the importance of any one specific service by combining it with other services. The commenter stated that the system fails to account for achievement such as obtaining a college degree and favors an approach that moves participants quickly to employment.

A commenter asked HUD to integrate health as part of the necessary conditions that promote and advance self-sufficiency because a health condition often prevents otherwise eligible families from participating in the FSS program. Before paragraph (ix) (Other services) of the definition, the commenter suggested adding the following: “(ix) Health management and empowerment—where available, the coordination with a Community Health Worker (CHW) as may be necessary to improve the health of the FSS participant, so long as the FSS participant consents in writing. The FSS participant may also withdraw consent, in writing, at any time.”

Another commenter questioned whether FSS families could participate in first-time homebuyer programs while they are in the FSS program and what protections would the regulations provide to protect against possible discrimination while transitioning into homeownership.

*HUD Response:* PHAs and owners may provide FSS services directly using non-FSS appropriated funding, in accordance with the eligible activities of those funds. The FSS program does not impose any restrictions as to the location or modality of the services.

The definition of Supportive Services in the final rule at § 984.103 includes all services as defined in the statute and adds clarifying language. Both education and employment-related supportive services are included, as in the statute. This final rule expands the definition of “Personal welfare” to include health, dental, mental health, and health insurance services.

FSS families may, and often do, participate in first-time homebuyer programs while they are in the FSS program. Participating in a first-time homebuyer program, receiving housing counseling services, or participating in any form of homebuyer education or advocacy program should have no adverse effect on an FSS family’s participation in FSS. Participation in the FSS program would not curtail or impact in any way the protections against discrimination that cover all families.

#### *Section 984.105: Minimum Program Size*

##### Extension of HUD-Approved Exception (Question 2)

A number of commenters supported the proposed change to extend the duration for a HUD-approved exception to five years. A commenter suggested that an annual report should be submitted by the PHAs to HUD concerning the use of the exception. Another commenter stated that the duration of any HUD-approved exception should be left at the PHA’s discretion. When a PHA submits the request for an exception, the PHA should provide a good cause for the requested timeframe since FSS participant family profiles vary between PHAs as well as local circumstances.

*HUD Response:* HUD appreciates the comments received in response to this question and, will keep the five-year limit on exceptions as stated in the proposed rule. In the interest of consistency in HUD’s administration of the FSS program, HUD will not leave the time period of an exception up to each PHA. Under section 23 of the 1937 Act, as amended by the Economic Growth Act, HUD does not have the discretion to grant a permanent exception to the implementation of a Mandatory Program.

#### Proposed Changes to Minimum Program Size

A commenter opposed the proposed change to the minimum program size. A commenter disagreed with the proposal that when determining the minimum program size, the relevant figure is the total number of Public Housing units plus the total number of HCV units because even within the context of a unified FSS program, the calculation of program size for HCV participants should be calculated independently of the total number of public housing units. This commenter said that this has the potential to negatively impact the Section Eight Management Assessment Program (SEMAP) scores of PHAs that are working to comply with mandatory FSS requirements and whose current SEMAP scores derive from their performance serving HCV program participants. This commenter asked whether this change would impact current FSS obligations or would only apply to future obligations.

A commenter asked for more clarification for PHAs to accurately track their mandatory size. A commenter asked HUD to clarify whether HUD will be providing PHAs with the accurate number of required families to be served as of May 24, 2018, and whether all participants who have graduated since October 21, 1998, still reduce the May 24, 2018, mandatory number. Another commenter requested that the final rule provide additional clarification for FSS programs that reduced their size according to existing regulations because the proposed rule does not make it clear as to whether a program that reduces its program size after May 24, 2018, but before the final rule is implemented will be required to revert their program back to the size it was on May 24, 2018, or maintain its current minimum program size. The commenter recommended that HUD allow the minimum size of an FSS program to be either what it was on May 24, 2018, or the lesser amount if, as allowed by current regulations, a family graduated after May 24, 2018, and the FSS program opted not to refill that spot.

*HUD Response:* HUD will calculate each PHA’s minimum program size as of May 24, 2018, by calculating the original minimum program size (including public housing and Section 8) and reducing that number by the number of graduations reflected in PIC since October 21, 1998, to date. HUD plans to communicate these through the Field Offices to PHAs and provide additional forthcoming guidance.

#### *Section 984.106: Cooperative Agreements (Question 3)*

Several commenters stated that the list of requirements for PHAs entering into a Cooperative Agreement with owners of multifamily properties to voluntarily make an FSS program available to the owner’s assisted tenants was comprehensive. One commenter noted that the requirement is being expanded without adequate appropriations to fund the FSS program, which would create an administrative burden for PHAs taking on an additional caseload for eligible families covered under a Cooperative Agreement with owners of multifamily properties. Another commenter opposed the change stating that it makes more sense to have the staff providing direct services to the client track and be knowledgeable about their escrow account, and that having separate hands involved with service coordination and escrow tracking creates an administrative burden on staff. One commenter recommended defining the word “serve” and the statement “FSS funds” to clarify that funds cannot be used for additional service provision like activities or incentives.

*HUD Response:* HUD appreciates commenter feedback on the proposed list’s comprehensiveness and notes that the preponderance of commenters felt it was comprehensive. HUD notes the concerns raised by a commenter regarding coordination between FSS Program Coordinators and staff who track client escrows when these functions are not performed by the same staff; however, HUD does not feel that such challenges are insurmountable, or should prevent a PHA from choosing to serve PBRA residents via Cooperative Agreement. The PBRA owner is ultimately responsible for managing the Federal funds provided through their PBRA contract, for rent calculation, and for the amounts placed in escrow and distributed to FSS families. The rule requires that the Cooperative Agreement between a PHA and an owner set forth the procedures for the sharing of escrow information between the PHA and the owner. HUD recommends that these procedures include the role of the FSS Program Coordinators. Each PHA may choose whether to enter into a Cooperative Agreement with a multifamily owner, assessing its own capacity to take on new participants by expanding the program or integrating them into their current program size. PBRA residents served by a PHA are already incorporated into the “number of residents served” as part of the NOFO funding process. HUD does not believe

it is necessary to define the words “serve” or “FSS funds” in the rule.

#### *Section 984.107: FSS Award Funds Formula*

##### **Incorporation of Formula in the Final Rule**

Commenters stated that HUD should incorporate a formula in the final FSS rule addressing how HUD will approach the discretionary authorities provided in 42 U.S.C. 1437u(i), created by the Economic Growth Act. The commenters encouraged HUD to specify in the final rule the other criteria which may be considered in determining eligibility for base or additional awards, which should include factors such as the planned enrollment level for a new or growing program, or the historic enrollment level for an existing program which may be experiencing a temporary dip in enrollment. One commenter stated that this requirement is mandatory, rather than discretionary.

A commenter urged HUD to detail funding formulas in the final rule, as well as address how it will approach other discretionary funding authorities to give housing providers and service coordinators a clear understanding of the funding parameters and allow them to better prepare for the future.

##### **“Base Awards” Threshold and Prorating the Award Amount**

Commenters suggested that the Secretary use discretion, under the Economic Growth Act to determine the policy concerning awards for eligible entities serving fewer than 25 participants (the threshold for a “base award”) and suggested that such a policy could include prorating the award amount or allowing such entities to combine programs.

A commenter suggested that HUD should clarify that the first priority encompasses only the renewal of the full costs of the same number of full-time and part-time coordinators as were funded by FSS awards in the prior year, with appropriate adjustments for local staffing costs and for year-to-year cost-of-living increases; and that the second priority encompasses all other funding requests, whether for new coordinators, incremental increases from part-time to full-time coordinators, or for existing coordinators not previously funded with FSS award funding.

##### **Criteria for Determining Additional Awards of FSS Program Coordinator Funding**

Commenters urged HUD to address its intended approach to determining awards of “new or incremental

coordinator funding” under the second priority and urged HUD to use fair and reasonable “general principles.” The commenter suggested additional funds appropriated by Congress should be used for program expansion and deploying additional service coordinators.

Commenters recommended that HUD commit in the rule to implementing competitive processes that provide fair and reasonable access to funding for both programs operated by PHAs and programs operated by PBRA owners; and a reasonable balance between incremental awards for existing programs and new awards for previously unfunded programs.

*HUD Response:* This final rule adds the statutory funding formula in regulation. The new statute codifies the formula that HUD has used in NOFOs (previously called “NOFAs”) for many years. All of the areas that are at HUD’s discretion (criteria for funding, policy on award for eligible entities that are serving fewer than 25 participations, amounts available, etc.) in the new statute have been and will continue to be addressed in standard NOFOs. The statute provides that First Priority funding goes to FSS Program Coordinators that qualify as renewals. Beyond that, Second Priority will fund new programs or additional coordinators for renewal grantees. The distribution and priority under the Second Priority will be published in the NOFO each year. HUD has determined that it would be duplicative to publish the funding formula in both the NOFO, which is available to the public on *Grants.gov*, and also in a separate **Federal Register** Notice. Additionally, publishing the formula in a separate **Federal Register** Notice could potentially delay funding awards, and since funding is annual, it is critical that awards be made by December 31 of the year in which it was appropriated. Therefore, this final rule removes language from the proposed rule that provides that HUD will publish a separate notice in the **Federal Register**. Each year, within the bounds of the statute, the implementation of the funding award formula may change slightly to reflect best practices, lessons learned, the needs of the day, etc. All criteria for making awards are shared, in conformance with the HUD Reform Act, with the applicant community via the NOFO.

##### **Incentives for Innovation and High Performance**

Commenters said that the final rule should address HUD’s implementation of new subsection (i)(6) of 42 U.S.C.

1437u(i), created at section 306(a)(11) of the Economic Growth Act, which authorizes the Secretary to reserve up to 5 percent of FSS appropriated funding for use as “incentives for innovation and high performance.”

Commenters recommended that the authorized incentives for innovation and high performance be incorporated within a competitive funding process for allocation of funding to “second priority” requests for new or incremental coordinator funding. The commenters noted that the “incentive” funding under this section, unlike all other funding authorized in subsection (i), is not specifically restricted to use for FSS Program Coordinators, but is more flexibly defined as “to provide support or to reward” FSS programs; and urged HUD to provide in the final rule that it may employ this authority to provide support to innovative or high-performing FSS programs for costs other than coordinator costs, which could include the costs of IT systems, participant incentives, or other costs. Commenters recommended that HUD support programs to establish innovation, cross-sector partnerships to help strengthen the types and quality of services offered to FSS participants (such as partnerships with employers, workforce and career development programs, colleges, etc.). A commenter encouraged flexibility for program providers and the possibility of incentives that may allow them to pursue innovative efforts, which could complement the service coordinators’ work and improve resident outcomes. The commenter suggested that incentive payments permitted under the rules should only be considered after renewals are fully funded.

*HUD Response:* HUD appreciates the comments. At the current time, HUD is focused on Priorities One and Two as stated in the Statute. If HUD chooses to avail itself of the option for Incentives for Innovation and High Performance, we will issue a separate notice. However, at this time, HUD is not including it in this final rule.

##### *Section 984.201: Action Plan*

A commenter requested that HUD state the exact “slight changes” it is making especially since they are not easily identifiable in section 306 of the Economic Growth Act.

*HUD Response:* Compared to the current regulation (24 CFR 984.201), the final rule at § 984.201: (1) Expands requirements for consultation on the FSS Action Plan, as required by section 23, as amended; (2) removes language around FSS Action Plan submission requirements for mandatory programs

(there are no new mandatory programs); (3) adds language to clarify that all voluntary programs are required to have an approved FSS Action Plan, regardless of whether they receive funding (this is not a change, just a clarification); (4) deletes references to outdated programs that no longer exist (e.g., the Job Opportunities and Basic Skills Training Program under part F of title IV of the Social Security Act has been replaced by the Workforce Innovation and Opportunity Act); and (5) removes requirements for policies around “terminating or withholding Section 8 assistance” (as this provision has been removed per other areas of statute). In the final rule, HUD is also adding to § 984.201(d)(13) providing that optional additional information is such other information that would help HUD determine the soundness of the proposed FSS program. Examples of policies that may be included in the FSS Action Plan include:

- Policies related to the modification of goals in the ITSP;
- The circumstances in which an extension of the Contract of Participation may be granted;
- Policies on the interim disbursement of escrow, including limitations on the use of the funds (if any);
- Policies regarding eligible uses of forfeited escrow funds by families in good standing;
- Policies regarding the re-enrollment of previous FSS participants, including graduates and those who exited the program without graduating;
- Policies on requirements for documentation of goal completion;
- Policies on documentation of the household’s designation of the “head of FSS family;” and
- Policies for providing an FSS selection preference for porting families (if the PHA elects to offer such a preference).

*Section 984.202: Program Coordinating Committees (PCCs)*

A commenter said they support the proposal to include service coordinators on PCCs because the committee should have a deep understanding of resident needs, and service coordinators are uniquely skilled at building relationships with residents to understand the complex challenges they may be facing and then swiftly connect them to essential resources. Another commenter agreed that the PCC should include at least one participating FSS family member and an FSS staff coordinator, and stated their agency already includes these individuals as committee members. Another

commenter stated it can be difficult to have a resident participant from a FUP voucher holder group as persons housed with a FUP voucher have multiple ongoing challenges and little time for goals not closely related to their own welfare.

*HUD Response:* HUD appreciates these comments. The requirement is that one participant per type of rental assistance served in the FSS program must be included in the PCC—Public Housing, Housing Choice Vouchers, and/or Multifamily Housing. It is not required that each type of voucher (FUP, VASH, etc.) be represented.

*Section 984.203: FSS Family Selection Procedures*

A commenter objected to § 984.203(d)’s use of “motivation” as a factor in screening candidates, as it would reinforce negative and untrue stereotypes about families. Another commenter suggested leaving the current language regarding “motivation” as is to make sure everyone has an opportunity to participate in the program, and the PHA should be able to determine if a participant is motivated.

*HUD Response:* The original regulation and proposed rule both allowed a PHA (and owner, in the proposed rule) to screen for motivation as an option. There was no change to the original regulation in the proposed rule and HUD is not changing the final regulation as it relates to motivation as a screening factor in this final rule.

*Section 984.302: FSS Funds*

Two commenters stated that § 984.302(c) is somewhat ambiguous and urged HUD to revise it so that it explicitly conveys PBRA owners’ eligibility to access FSS appropriated funds for independently operated FSS programs, consistent with the statutory language and intent. The commenters suggested either deleting the phrase “including through a Cooperative Agreement in accordance with § 984.106;” or adding at the end of the section a new phrase “or through an independently operated PHA or PBRA FSS program.”

*HUD Response:* Subject to funding priorities in section 23(i)(3) and HUD appropriations, HUD may award FSS appropriated funds directly to PBRA owners operating FSS programs independently or in partnership with another PBRA owner. To clarify this, HUD revises § 984.302 to state that FSS appropriated funds may be used by an owner when it operates an FSS program “through a Cooperative Agreement or on its own.” As long as it is permitted in the NOFO, an owner may choose to

subcontract awarded funding to another entity such as another owner or a PHA with whom the owner has a Cooperative Agreement. To ensure that there is no confusion about funding available to PBRA owners who operate an FSS program, HUD added a regulatory provision at § 887.113(a) that states that owners may *also* use residual receipts to pay for reasonable FSS program operation costs, including hiring an FSS Program Coordinator(s) for their program.

*Section 984.303: Contract of Participation*

A commenter said “Seek Employment” should include a requirement for the FSS participant and FSS Program Coordinator to certify that the participant has completed these defined activities, and that any false certification is reason for termination, because in auditing FSS files, this is often an undocumented component.

Another commenter said the new final sentence in § 984.303(b)(3) is confusing and should be rewritten as follows to provide more clarity: “All considerations allowed for other assisted residents for repayment agreements, etc., shall also be allowed for FSS participants.” The commenter also stated § 984.303(i) is mostly repetitive of § 984.303(b)(5). A commenter said that, to make the regulations easier to read, HUD should add the right to a hearing from § 984.303(i) to § 984.303(b)(5) and delete § 984.303(i).

*HUD Response:* HUD appreciates the recommendations provided by commenters for regulatory text changes to clarify requirements and streamline the regulations. HUD has revised the regulatory text in § 984.303(b)(3) as suggested by a commenter. HUD has also revised § 984.303(b)(5), which addresses the form and content of the CoP, to cross-reference § 984.303(i), which addresses actions PHAs may take for non-compliance with the CoP, instead of restating the requirements. As it concerns requiring the FSS participant and coordinator to certify that the Family has completed its defined activities and goals, under current requirements, which continue to apply under this rule, PHAs are already responsible for ensuring that the Family complies with the CoP, including the goals and activities defined in the Family’s ITSP and the final rule includes an option that the PHA include in its FSS Action Plan the policies on documentation of goal completion. See 24 CFR 984.201(d)(13).

Allowing Any Adult Member of the FSS Family, and Not Solely the Head of Household for Rental Assistance Purposes, To Execute the CoP (Question 4)

Many commenters agreed with the proposed change. A commenter noted that allowing any adult to be head of FSS family may increase participation at their PHA. Commenters stated this is a positive change for the program that will make it easier to serve families. A commenter noted this would allow access to the FSS program where the head of household is disabled and unable to work.

A number of commenters said that the proposed change needed more revisions. One commenter suggested guidance on the number of adult members in a family that may be eligible to execute a CoP and the number of times a household can participate in the FSS program. Some commenters stated that without clarity, this could cause confusion as to who was the head of the household under various circumstances. Other commenters said there could be confusion when there are disagreements concerning the beneficiary of the escrow account.

One commenter questioned if PHAs would have discretion on the implementation of this new rule. The commenter also questioned if the head of FSS family successfully completes the FSS contract, and the Head of Household for rental assistance purposes is behind on rent or noncompliant with the lease; can the PHA hold the head of FSS family responsible? One commenter requested explicit guidance on how the proposed change would be operationalized, specifically regarding changes in household composition and distribution of escrow. The commenter further stated that the proposed change could put FSS staff in the position of having to arbitrate as to which household member is the primary FSS participant who signs the CoP. A commenter asked if the HCV Head of Household would be required to sign an addendum to the CoP that states they have designated the other adult member as the head of FSS family.

One commenter recommended that any adult family member who expresses interest in joining the FSS program, and is ultimately enrolled first, be considered the head and designated as the individual allowed to execute the contract and requested guidance on when a family fails to designate an adult family member.

A commenter noted the proposed revision seemed to be missing the

following: who would receive the disbursement; what would happen if the adult family members left the assisted household; if another adult household member could enroll to participate after the Head of Household enrolled and completed FSS; and if consent from the Head of Household would be required regarding who would be entitled to escrow.

One commenter opposed the proposed change. A commenter was concerned that there could be circumstances in which this might not be advisable, such as when there is a coercive dynamic in a household relationship. Another commenter warned that if the head of FSS family is not the Head of Household, they may not have decision-making power over who gets on the lease and lives in the household, including those who may be receiving cash welfare; and therefore, the ability to graduate may be beyond the head of FSS family's control.

*HUD Response:* The change from only the Head of Household for rental assistance purposes being able to sign the CoP to any adult household member being eligible to sign a CoP is statutory. The final rule will reflect a change to clarify that there will be only one CoP per household at any one time. There may be an unlimited number of ITSPs for each Family. The proposed rule stated that the head of FSS family is "as designated by the Family." The final rule will eliminate "in consultation with the PHA or the owner." The PHA may make itself available to consult with families on this decision. HUD recognizes that financial disagreements between household members may cause significant distress, and that sometimes such conflicts rise to the level of financial abuse. However, HUD believes that as a general policy, it is in the best interests of assisted households to choose the head of FSS family that is most suitable for their individual household circumstances. While a head of FSS family who is not also the Head of Household for rental assistance purposes will not have control over some decisions, such as to who joins the household, they may still be the best choice to serve as head of FSS family; that choice should be made by the household, informed by their greater knowledge of their own circumstances. FSS Program Coordinators may provide information on resources for people experiencing abuse where appropriate. The PHA or owner may make a policy in the FSS Action Plan regarding documentation of that decision.

The escrow will be disbursed to the head of FSS family. The number of times a family can participate in the FSS

program and other policies on re-enrollment have been and will remain policies to be determined at the local level. Please see the Promising Practices Guidebook for more discussion.<sup>4</sup> If the head of FSS family leaves the household, as with any CoP, a determination will be made regarding whether that person is eligible to graduate before they leave. If they do not graduate, as is the case now, another family member may step in as head of FSS family and continue with the CoP. While generally the Head of Household for rental assistance purposes, which may be different than the head of FSS family, would be responsible for debts incurred by the family in connection with the rental assistance program, such debts are subtracted from the escrow balance prior to disbursement of escrow at graduation.

Time Period That a Family Must Be Independent From Welfare (Questions 5, 6, and X<sup>5</sup>)

Many commenters supported removing the 12-month requirement or changing the requirement to being independent from welfare assistance at the time of their Contract of Participation expiring or graduation instead. These commenters stated: This would lead to better outcomes, allow flexibility for clients finishing school or training; this would assist families dealing with the "benefits cliff" in a more gradual and welcoming manner; this would reduce the need for FSS escrow accounts to be forfeited by participants who would be otherwise eligible to receive any remaining escrow; this would ease the administrative burden for FSS staff; often the end date for being independent from welfare assistance is out of the participants' hands as they usually have transitional benefits after becoming employed; and the current 12-month period has prevented otherwise qualified participants from graduating and leads to artificially forfeiting accumulated escrow for families who are employed but had a period of time on public assistance. Commenters stated that the 12-month requirement was punitive, would needlessly frustrate families' attempt to graduate, and did not incentivize families to graduate. Many commenters supported, for the

<sup>4</sup> U.S. Department of Housing and Urban Development, *Administering an Effective Family Self-Sufficiency Program: A Guidebook Based on Evidence and Promising Practices*, <https://www.hudexchange.info/resource/5241/administering-an-effective-fss-program-guidebook/>.

<sup>5</sup> Note: This question was labeled as "Question X" in the proposed rule.

same reasons, allowing PHAs to set the requirement at their discretion.

Some commenters did not recommend giving PHAs discretion and requested that HUD keep this uniform to the program, while others supported PHAs having discretion while maintaining a certain maximum.

Some commenters opposed the proposed change and agreed with the 12-month requirement, seeing no issue or undue burden a PHA would experience with the timeframe. The commenters suggested that, given the confirmation requirement, effective organizations should have a data sharing agreement with the appropriate entities to determine the FSS participants' welfare assistance status regardless of the requisite time period. The commenters believed that without a timeline, there could be a lack of motivation for families to gradually become independent from welfare. The commenters stated that a participant must be free from cash assistance over a period to adjust financially to being self-sufficient and the proposed change defeats the purpose of the program. Commenters noted that the CoP can be extended to allow a participant time to become free of assistance, so this is not typically a barrier to successful program completion. The commenters added that if a participant is not free of cash assistance after seven years of participating in the program, they likely are not in a place or time in their life to become self-sufficient. A commenter suggested adding extra resources to help the families reach that 12-month goal, including PHA discretion, and warned that it would also be detrimental to external stakeholders in the long run with the possibility of having to reallocate more funds to the welfare system to continue the programs.

Some commenters supported changing the rule so that welfare independence is only required for the participating member of the family in the FSS program, not the entire household because the participation in TANF or other welfare programs should not reflect the progress and eligibility for graduation of the participating member.

Some commenters said that this should have no impact on TANF requirements. Commenters stated that TANF is not a good indicator of welfare self-sufficiency. One commenter stated that accessing TANF within a specified time should not preclude completion of the program and the emphasis on utilization of TANF is a deficit-based requirement that does little to promote self-sufficiency because families encounter a range of changing life

circumstances where they may need to access TANF assistance to sustain their livelihood. Another commenter noted that after moving into the work components of the TANF program, families can continue receiving benefits for up to 24 months and there are instances where the continuation of welfare helps families offset increased costs due to a decrease in other income-based supports.

One commenter stated that some participants decide to not enroll in the program for fear of losing or being denied other benefits. The commenter suggested that the rule clearly state that the savings held in escrow is only contingently available to families and would not be counted as an asset or resource for other state or Federal benefits. A commenter stated that reducing or eliminating the time would allow for families to successfully complete the Contract and collect escrow even if a family member has needed access to TANF in the past 12 months. One commenter stated there is nothing to preclude a family from returning to TANF after graduation from FSS. A few commenters noted that the TANF (Family Investment Program (FIP)) income eligibility guidelines are so low that most working families would not be eligible for TANF benefits.

Some commenters suggested alternative time requirements, because requiring participants to be free from TANF for a full 12 months poses undue hardship for many families and leaves little room for flexibility. Commenters suggested a 3- or 6-month requirement off TANF as a reasonable timeframe that would allow participants to demonstrate stable employment and financial self-sufficiency prior to graduating from the FSS program. They added that requiring participants to maintain stable employment for 3 months rather than abstain from TANF benefits for 3 months would be a better indicator of participants' ability to demonstrate long term self-sufficiency and positive steps toward goal achievement. They urged HUD to consider revising the FSS work requirement in addition to, or in lieu of, the TANF requirement.

One commenter stated that a required time limit off TANF before program end could be beneficial if clients used their time in the program to work on the areas which are hindering them from holding down a successful position that would eliminate the need for TANF. Some commenters said the requirement to be independent from TANF should follow the same requirements as being independent from other welfare, and most participants are aware that TANF is temporary. While another commenter

said that requiring participants to be TANF free should be required, and that not receiving welfare assistance is a sign of self-sufficiency and would enhance their independence from government assistance. Another commenter stated that by keeping the 12-month rule, FSS Program Coordinators can work in conjunction with TANF staff to provide transitional services to the participant.

Commenters supported the proposed change and stated that removing the 12-month requirement would decrease incentive for FSS participants from exiting the program permanently. A number of commenters stated that the application of the welfare requirement in FSS will not impact participants' decision to permanently stay off welfare. Another commenter said that removing the 12-month requirement increases FSS family access to escrow account balances that can be used for asset building activities. Two commenters answered "no," saying that many of their participants are not receiving "cash" welfare assistance anyway.

A commenter stated FSS participants will still be required to be independent from welfare assistance at the time their CoP ends, so the incentive to be independent from welfare assistance remains without a static timeframe. A few commenters said that most participants transition off welfare assistance as they increase their income, so this is a good complement to the FSS Goals. One of these commenters said the PHA's ability to work with an individual to define "suitable" employment will take care of the rare exceptions.

One commenter suggested that HUD reconsider using terms such as "incentive" when describing the decisions a household may make regarding their receipt of welfare assistance or other forms of public assistance because this language reinforces negative and untrue stereotypes about people who receive welfare and/or housing assistance.

*HUD Response:* HUD thanks commenters for responses to Questions 5, 6, and X. This final rule maintains the language as it was in the proposed rule, eliminating the requirement to be independent from welfare assistance for 12 months prior to graduation. The requirement will be for the household to be independent from welfare assistance on the day of graduation. The requirement to be independent from welfare assistance in § 984.303(b)(2) will be revised to reflect that it will be a required final goal, as opposed to an interim goal. In addition to the explanation provided in the preamble to

the proposed rule, HUD is attempting to prevent a scenario when, for instance, a participant is unable to graduate because they have met all of their goals with the exception of being independent from welfare assistance for 12 months but is ineligible for an extension on their CoP. With regard to other benefits, the only other entitlement program to which FSS directly relates is TANF and it is a contingency of the HUD program that participants be free from TANF. Until the escrow funds are disbursed, they are the property of the PHA and cannot impact any eligibility of the FSS family for any benefit or entitlement. HUD cannot speak to the impact of the escrow, once disbursed, on other Federal, state, or local programs. The Internal Revenue Service has determined that escrow disbursements do not qualify as income and are not taxable and do not require a Form 1099. See: [https://www.hud.gov/sites/documents/FSSESCROWTAX\\_IRSOPINION.PDF](https://www.hud.gov/sites/documents/FSSESCROWTAX_IRSOPINION.PDF).

#### *Section 984.303(b)(1)*

Two commenters interpreted the change to § 984.303(b)(1) to mean that PHAs and owners would have the discretion to use a CoP in the form of their choosing, and supported this change, as it would enable programs to streamline the CoP, revise it to use more plain and straightforward language, and make it available in other languages besides English. The commenters recommended that HUD require all PHAs and owners to make available and to accept electronic execution of the CoP in whatever form in use. Another commenter said there needs to be some standard parameters on the wording of each Agency's CoP and perhaps each Agency's proposed CoP should be reviewed by their FSS Field Office.

*HUD Response:* The CoP form itself (including ITSP) will be revised as part of the Paperwork Reduction Act package that is published with the final rule. PHAs or owners may translate the CoP into any applicable language and may revise the structure of the CoP as long as the information and content included in the CoP is the same as on the HUD form. Along with producing documents in translated formats, PHAs and owners must also provide any other necessary language assistance services to ensure meaningful access for persons with limited English proficiency in compliance with Title VI of the Civil Rights Act. PHAs and owners that provide access to CoP forms in printed format or an electronic format and accept electronic submissions and signatures must ensure that such forms and procedures are language accessible

and accessible with respect to the communications needs of persons with disabilities. PHAs and owners must ensure effective communication with individuals with disabilities in accordance with Section 504 of the Rehabilitation Act of 1973 (Section 504) and the Americans with Disabilities Act (ADA), which includes providing the CoP form (including ITSP) in accessible formats. Furthermore, PHAs and owners must provide reasonable accommodations and modifications for individuals with disabilities consistent with applicable Federal nondiscrimination laws.

#### *Section 984.303(b)(2): FSS Family Goals*

Commenters agreed with prohibiting the PHA or owner from modifying or adding additional required activities that must be completed by every participant. According to the commenters, one of the fundamental strengths of the FSS program is its flexibility: Each participant can set and make progress toward the particular goals that matter to them and make sense in their particular situation. Commenters said that if a PHA or owner can require other mandatory goals beyond the parameters of the terms and conditions prescribed by HUD, it would serve only to curtail participation and participant success in the program. Another commenter noted that a minimum income limit from wages for FSS graduation would enhance the program. A commenter stated that any household member completing the ITSP goals would accomplish the FSS program's purpose. Another commenter recommended that only completion of ITSP goals by the head of FSS family should be evaluated for purposes of determining completion of graduation requirements including meeting the employment obligation. A commenter stated that this clarification is not new, and that it has been in the NOFA for several years. A commenter suggested that the ITSP should be updated to allow the PHA flexibility to change the format.

*HUD Response:* Thank you for your comments on this topic. As stated, this is a continuation of the current policy that does not allow for program-wide graduation requirements/enhancements (beyond the two required by regulation: *i.e.*, to complete the FSS program, the head of the FSS family must seek and maintain employment and the family must be independent of welfare assistance). All ITSP goals for all family members with ITSPs become part of the CoP and must be completed in order for the family to graduate. This final rule revises § 984.303(g) to clarify the

requirement that all family members' ITSPs that are part of the CoP must be completed on or before the expiration of the contract term.

Regarding the ITSP format, as stated above regarding the CoP (of which the ITSP is a part), PHAs or owners may translate the ITSP into any applicable language and may revise the structure of the ITSP as long as the information and contents included in the ITSP is the same as on the HUD form. This includes translating into an electronic format and accepting electronic signatures. PHAs and owners must ensure effective communication with individuals with disabilities in accordance with the Section 504 and the ADA, which includes providing the CoP form (including ITSP) in accessible formats.

#### *Section 984.303(b)(4): Employment Obligation*

A commenter said the family member who signed the CoP should be employed at the time of Contract termination, and the PHA should also have flexibility to mandate some requirement that would support Self-Sufficiency, such as opening a savings account and saving a reasonable amount that is suitable for the family, such as saving \$20 a month.

*HUD Response:* Any goals other than the two mandatory goals of being employed and independent from welfare assistance, such as establishing a bank account and contributing to it may be negotiated on a person-by-person basis and may not be mandated for all participants. HUD will not mandate additional requirements, as they may be unnecessary or infeasible for some families.

#### *Section 984.303(b)(4)(iii): Suitable Employment*

Two commenters said the "suitable employment" definition gives PHAs and owners too much authority in determining what is suitable and can be applied arbitrarily and without substantiation, leading to unequal rules across and possibly within FSS programs. The commenters recommended that the proposed language be refined such that the FSS participant defines "suitable employment." The commenters believed goal setting and goal defining should be a mutual effort to include the coordinator's knowledge and expertise in the field, as well as the client's right to self-determination. Another commenter stated an expert in the field should provide the definition after a thorough assessment. A commenter asked if it was possible to include "achieving a local living wage" in

“Determination of Suitable Employment” as there are several sources readily available to determine what a living wage is for communities across the U.S. One commenter suggested that HUD should consider implementing a minimum income for wages similar to the homeownership program.

*HUD Response:* The final rule revises paragraph (b)(4)(iii) of the proposed rule to note that the determination of suitable employment will be made “with the agreement of the affected participant,” so that the affected participant has input into this matter along with the PHA or owner, and that the determination will be based on the receipt of other benefits of the participant, in addition to the skills, education, and job training of that participant. When making the determination of “suitable employment” it is critical to be aware of how increased income may affect other benefits such as Social Security Disability, Medicare, Medicaid, etc. which may be in the best interest of the participant to keep rather than increasing income beyond eligibility limits.

#### Good Cause for a Contract Extension (Question 7)

Several commenters supported expanding the “good cause” definition to include additional circumstances, like a natural disaster, serious illness, or involuntary loss of employment, especially during the COVID-19 pandemic. One commenter recommended that the definition include any other circumstance that the PHA determines is preventing the family from achieving their goal within the five-year timeframe, on a case-by-case basis. Another commenter suggested that the definition include a natural disaster. One commenter questioned how the Health Insurance Portability and Accountability Act (HIPAA) impacted this rule, when “serious illness” would consider an additional circumstance for “good cause.” A commenter questioned how a PHA would verify “involuntary loss of employment” when employers are not required to disclose why an employee was terminated. One commenter noted that the definition concerning “involuntary loss of employment” may need to be revised, as it may not consider circumstances where individuals voluntarily leave employment based on not being able to afford increases in childcare if the FSS participant is not receiving childcare assistance. Another commenter encouraged HUD to clarify and define

new circumstances to now be considered “good cause” to extend a family’s contract. Another commenter recommended clarifying the definition to include additional circumstances, including active pursuit of a goal that furthers self-sufficiency.

One commenter opposed establishing a definition for “good cause” for a Contract extension, suggesting that individual circumstances should be considered and left to the PHA’s discretion. One commenter suggested that reasons for “good cause” should be at the FSS Program Coordinator’s discretion because they are familiar with the clients’ needs and goals. One commenter suggested adding some language that advises that the two-year extension period is a guideline not an absolute, as every reason for an extension does not require an automatic two-year extension. Another commenter suggested that the FSS participant must have already met at least one goal to qualify for such an extension.

A commenter recommended that HUD codify that declared disasters or emergencies recognized by local, State, or Federal government should qualify as good cause categorically, instead of relying on case-by-case waivers such as the one provided for this section under PIH Notice 2020-13, PH and HCV-6: Family Self-Sufficiency (FSS) Contract of Participation: Contract Extension, dated July 2, 2020.<sup>6</sup>

One commenter believed the proposed definition is sufficient, and does not require any further clarification, as the examples provided communicate intent, while allowing the PHA or owner flexibility to assess on a case-by-case basis.

*HUD Response:* The final Contract of Participation (CoP) regulations at § 984.303(d) state that “good cause” to extend the CoP is determined on a case-by-case basis by the PHA or owner. HUD declines to define and limit “good cause,” but the final rule expands the examples of “good cause” to include more than circumstances beyond the participant’s control, including active pursuit of a current or additional goal that will result in furtherance of self-sufficiency during the period of the extension.

The final rule has also been revised to include that the PHA or owner can grant the extension as long as the PHA or owner is consistent in its determination as to which circumstances warrant an extension. The participant must request

an extension, so any information shared by the family in pursuit of that goal will be voluntarily shared. Additionally, unless the PHA or owner employs medical staff, HIPAA does not apply in this situation.

#### Removal of the Automatic Completion Provision (AKA “30% Rule”) (Question 8)

Several commenters supported removing the automatic completion provision. Commenters noted that removing the automatic completion provision would lead to more consistency between programs and fairness for all participants, and that removing this provision would also be more administratively efficient because PHAs would not have to track automatic completion. One commenter noted that additional time is helpful for the FSS Program Coordinator to work with the FSS family in completing any remaining subgoals and provide additional support for maintaining the employment as well as building confidence with financial literacy so the family can positively manage the additional income. Another commenter stated it doesn’t exclude the other way to graduate and provides a clear “look at the math” definition of graduation for cases where a family’s graduation is in dispute. Some commenters stated it would allow for true independence from rental assistance when 30% of income fully covers contract rent and the family successfully leaves both the FSS and Section 8 programs.

Commenters asked for clarification on how the proposal would operate when the HAP contract is terminated after the six-month grace period after a family’s last housing assistance payment is made if their goals are not met. Commenters expressed concern that the six months was not enough time for families to complete their goals. Commenters recommended that a family graduate automatically at the end of this grace period because the family has reached independence.

A commenter suggested that regulations should be established to prevent the family from reporting losses of income immediately after escrow disbursement to maintain the housing assistance or decrease tenant portion of rent.

Commenters suggested that HUD include a provision that allows for automatic graduation when an FSS participant moves to market rate housing and releases their housing subsidy under positive circumstances.

Two commenters asked HUD to clarify whether families were allowed to

<sup>6</sup> U.S. Department of Housing and Urban Development, *PIH Notice 2020-13 (HA), REV-1*, <https://www.hud.gov/sites/dfiles/OCHCO/documents/2020/13pihn.pdf>.

retain the escrow immediately after graduation.

Another commenter asked if the 30% rule is removed, will ongoing Contracts of Participation be grandfathered since the CoP does include the 30% rule as a way to graduate FSS? One commenter asked HUD to elaborate further and asked if the 30% would be replaced by a different percentage.

*HUD Response:* Based on the commenters' support for removal of the automatic FSS graduation provision (the 30% rule), HUD will move forward with such removal as proposed. Under HCV and PBV regulations, zero-HAP voucher families (*i.e.*, families for which no HAP payments are made), are automatically terminated from the housing assistance program 180 calendar days after the last HAP payment. Under current FSS requirements, which continue to apply under this rule, once housing assistance is terminated, FSS participation also terminates. However, Zero-HAP families may continue to escrow during this 180-day period if they have not surpassed the Low-Income threshold (80% of Area Median Income (AMI)). Also, the 180-day period gives the family and the FSS Program Coordinator time to review the ITSP and make changes, if necessary, to put the family on a path to graduation prior to the expiration of the 180-days.

#### Escrow Funds in the Case of Nullification (Question 9)

A number of commenters supported adding the language regarding the handling of escrow funds in the case of nullification. One commenter supported the change and noted that these situations are currently handled through a waiver process which can be time-consuming and administratively burdensome for all parties involved. One commenter questioned whether the nullification would be considered a CoP Completion or Termination for purposes of keying #8 Recertification into PIC, as these are the only two choices that are given when completing a #8 Exit for FSS Participants. Commenters suggested that the proposed rule clarify who the beneficiaries of the escrow account would be when the CoP has been nullified. One commenter noted that FSS Participants in good standing who find themselves disabled and unable to work should be able to receive the funds if there is no household member who could take over the FSS CoP and complete it to receive the family's escrow funds.

A commenter suggested this can be managed in two different ways: the CoP can be terminated and the funds can be passed on to a member in the household who was appointed by the head of FSS

family, or the CoP can continue if there is an adult member in the household who can continue and fulfill the CoP, and during the enrollment period the head of FSS family should assign the person whom these funds can go to in case something such as death happens.

Commenters suggested that escrow management should be managed on a case-by-case basis, dependent upon the circumstances for nullification. Another commenter suggested that if the reason for nullification is that the family was considered "not in good standing" due to eviction or non-compliance with the agreement, then the escrow funds should be liquidated and belong to the PHA for funding housing repairs, unpaid rent, support for tenants in good standing, or improvements where needed. Another commenter suggested that if a CoP is nullified the PHA must document and report to HUD its reasonable efforts to discover the availability of these services.

Some commenters said that the language of the escrow distribution should allow an FSS program participant to reject the distribution in such cases where their SSA benefits would be in jeopardy by obtaining such a resource. Another commenter suggested that HUD should add language stating that following such a disbursement, the family member and/or any other household member may not re-enroll in an FSS program at a later date. Two commenters suggested allowing the ITSP or CoP to be amended rather than nullified, such as by allowing an adult member who is able and agrees to take over the CoP.

Other commenters opposed the change. Commenters noted that releasing escrow funds upon nullification of the FSS CoP does not align with the FSS program's goal, and the escrow funds should remain an incentive to achieve self-sufficiency or to use towards achieving self-sufficiency. Other commenters stated that this will create an additional administrative burden to track and pay out monies for participants that have not completed the program regardless of why the CoP was nullified and will require the FSS Program Coordinator to seek out heirs in the case of a deceased single-person family.

One commenter asked how nullifying would affect performance measures. A commenter said that even with this change, HUD should ensure families have the right to be consulted about and appeal adverse determinations by a PHA or owner that unavailable supportive services are integral to the family's success.

*HUD Response:* The regulation will be changed in § 984.303 to reflect that the FSS family will be consulted in the determination that services are not available, before the CoP is terminated and FSS escrow is disbursed. HUD notes that this final rule removes the term "nullification" and related references to the CoP being "null and void" from the regulations and instead refers to "terminations with FSS escrow disbursement." For a contract to be "null" or "void" means it has no legal validity, force, or effect. Contracts are voided in rare circumstances, such as when the contract was entered into under duress or its terms are unconscionable. This does not align with the use of "nullification" in the existing FSS regulations or in the proposed rule. HUD has determined there are situations when a family should receive escrow funds, even when they haven't completed the CoP. The CoP will still be "terminated," but the family will get escrow funds in those situations. This preamble retains the term "nullification" when discussing public comments, but the term will no longer appear in HUD's FSS regulations.

This final rule does not contain language from the proposed rule that would have provided for escrow disbursement to an estate if the head of FSS family dies before a CoP is completed. Section 23 of the 1937 Act, as amended by the Economic Growth Act, states that amounts in the escrow account may be withdrawn by the participating family after the family ceases to receive income assistance under Federal or State welfare programs, upon successful performance of the obligations of the family under the contract of participation entered into by the family under subsection (d), as determined according to the specific goals and terms included in the contract, and under other circumstances in which the Secretary determines an exception for good cause is warranted. The statute states that escrows may be "withdrawn by the *participating family*." An estate cannot be considered a "participating family." Therefore, FSS escrow cannot be disbursed to an estate. There may be situations where there is good cause to disburse escrow to a remaining FSS family member when the head of FSS family dies. While the general rule is that the escrow is only withdrawn if the FSS family completes the CoP, the Economic Growth Act allows HUD to provide exceptions to this general rule when "good cause is warranted." However, HUD cannot make a blanket finding of "good cause" in all cases when an FSS participant

dies before completing the CoP. There may be instances where good cause is warranted (e.g., when an FSS participant is close to completing the CoP and they die), but not always (e.g., when an FSS participant is a recent enrollee in the program and has not completed much of the CoP). Therefore, this final rule cannot provide for escrow disbursement any time the head of FSS family dies before a CoP is completed. Where good cause for an escrow disbursement to a family member may be warranted when the head of FSS Family dies, HUD will consider waiver requests, as has been the case prior to this rulemaking.

HUD notes that the regulations continue to provide that if the head of FSS family is unable to complete the CoP, and the family wishes, another household member may take over the CoP. The disposition of forfeited escrow funds is addressed later in this document in the discussion about Question 14.

#### *Section 984.303(g), (h), (j), and (k)*

Some commenters recommended that HUD require PHAs and owners to offer the heads of FSS families the opportunity to pause participation in the program to deal with family crises and challenges without jeopardizing their escrow. These commenters stated that under the rules of some FSS programs, families may be terminated or denied coordination services for not complying with a required engagement schedule. The commenters said they had heard feedback from FSS participants that it would be helpful to have the option to “pause” their participation in the FSS program, citing reasons, such as health or family crisis, that are similar to why a participant might request an extension of their participation. Under current rules, these types of challenges contribute to increased terminations. These commenters said that suspending expectations for participating in services and accumulation of escrow and extending the CoP end date by the same period of time that the participant pauses their participation, would help to strengthen program participation and graduation rates, and support participants to maximize their escrow accumulation. Another commenter stated this may be a good idea but that allowing pausing would bring up a lot of questions that would need to be addressed and clarified. A commenter recommended HUD modify § 984.303(h)(2) to be consistent with the final portability changes in § 984.306.

*HUD Response:* The length of the CoP is statutory. Therefore, HUD has no

discretion to extend it. An initial five years (or longer, depending on the timing of the next recertification after effective date), plus a two-year extension should be long enough to cover most family circumstances, even emergencies, and “pauses” in pursuing education and/or employment goals. PHAs and owners also are at liberty to add goals around basic needs and crisis response, if that is what is needed and agreed to by the family. It is the purview of each PHA or owner to set goals regarding “engagement” with each participant. It is up to the PHA or owner to revise those goals as agreed to by the family, to respond to family needs.

As explained later in the discussion of § 984.306, this final rule revises § 984.303(h) and (k), in addition to § 984.306, to provide that if PHAs make a determination that an FSS family in good standing moves outside the jurisdiction of the PHA and continuation of the CoP after the move or completion of the CoP prior to the move is not possible, the CoP may be terminated with FSS escrow disbursement.

Additionally, this final rule revises § 984.303(j) to clarify that only non-HUD funds or non-HUD-restricted funds can be used by PHAs and owners to offer supportive services to former FSS families that have left public housing, Section 8 housing, or other assisted housing. This clarification is dictated by statute. In addition to appropriated FSS funds, PHAs and owners may use, subject to funding restrictions, public housing operating funds, public housing non-rental income, public housing section 18 proceeds, section 8 administrative fees, and PBRA residual receipts to pay for FSS coordinators. However, none of these funding sources can be used to assist families who are not public housing or section 8 participants. Therefore, to the extent a PHA or owner wishes to coordinate services for former FSS families that have left assisted housing, the PHA or owner must do so using only funding sources that are not HUD funds or HUD-restricted funds. If a PHA or owner chooses to provide service coordination to unassisted families, the PHA or owner will need to calculate the FSS coordinator’s time spent on such coordination and prorate funding accordingly. Notwithstanding, PHAs or owners may permit former FSS families that have left assisted housing to attend FSS activities or functions (e.g., job fairs) that predominantly serve public housing residents or section 8 participants without proration of funding.

#### *Section 984.304: Amount of Rent Paid by FSS Family and Increases in Family Income*

##### Changes to the Adjusted Income Threshold

Commenters supported the proposed change to the adjusted income threshold because it would allow FSS families to continue to increase their escrow accounts. A commenter stated that participants should be given maximal opportunities to acquire as much escrow as possible during their term in the program.

*HUD Response:* HUD thanks commenters for their feedback, and notes that these changes are statutory.

#### *Section 984.305: FSS Escrow Account Individual Escrow Accounts for Families*

A commenter asked whether the intent of the proposed rule was that each participating family will have their own escrow account, because under § 984.305, “each family’s escrow account” seems to be contrary to § 983.303 (a)(1): “[t]he PHA shall deposit account funds of all families participating in PHA’s FSS program in a single depository account.”

*HUD Response:* Escrow for all families will still be deposited in a single depository account, but accounted for separately, as demonstrated by the reference to “each family’s escrow account.” This is not a change from the current regulation or practice.

##### Interim Disbursements

A commenter recommended HUD require all FSS programs to allow interim disbursements, under § 984.305(c)(2)(ii), and to permit PHAs and owners some discretion to determine the frequency and conditions by which an interim disbursement would be permitted, and that participants be entitled to a formal grievance process if their request for an interim disbursement is denied.

A commenter stated that the current economic hardship resulting from the COVID-19 pandemic demonstrated that interim disbursements from an FSS escrow account can be a powerful tool for families. The commenter suggested that in paragraph (c)(2)(ii), HUD should require all FSS programs to allow interim disbursements consistent with the rule rather than leaving this important component of the program to local discretion and make clear that families have hearing rights if a PHA or owner rejects a request for an interim disbursement. Additionally, the

commenter suggested that HUD should take the opportunity to learn from the likely increased use of interim disbursements during the pandemic to add other examples of grounds for families to receive an interim disbursement.

*HUD Response:* Participants are entitled to a grievance or hearing per the PHA's or owner's grievance policy as specified in the FSS Action Plan. It is a best practice to allow for interim disbursements, but HUD will not make them mandatory at this time. For further discussion of Interim Disbursements and considerations around making this policy, please see the HUD FSS Promising Practices Guidebook.<sup>7</sup>

#### Frequency of Depositing Escrow Amounts to a Family's FSS Escrow Account (Question 10)

Many commenters supported the proposed monthly escrow deposits into a family's FSS escrow account, where some are already doing it. Commenters said monthly calculating and crediting of escrow makes it easier to double check the escrow credit worksheet against the escrow deposit, prevent administrative backlog and delays in customer service for providing balance information to clients, and helps to maximize interest and the compounding effect of interest for the benefit of the FSS participant.

One commenter generally opposed monthly escrow deposits, opting for annual deposits. Another commenter said the escrow calculation does not need to be done at every re-examination, and it should be left to the coordinator's discretion as to the frequency of escrow deposits. Another commenter suggested that PHAs should have flexibility in the frequency of depositing escrow to allow for quarterly deposits. A commenter stated that smaller programs may operate sufficiently with greater flexibility in these timelines.

Commenters stated that annual statements should continue to be provided to FSS participants, and balance inquiries can be provided at any time.

A commenter stated that the statement for multi-family properties should be monthly or upon receipt of HUD rent subsidies, because that maximizes cash flow for the owner, in the event HUD rental subsidy payments are delayed.

A commenter suggested the frequency of deposits should be determined based on the client's income at the start of their program.

A commenter stated a family should be able to have limited access to their account, including limits on the amount and times the account is accessed.

*HUD Response:* Commenters largely supported the proposal for monthly escrow deposits and explained that this will prevent administrative backlogs and delays in customer service, as well as maximize interest for the FSS participants' benefit. HUD has determined, in consideration of the comments received, to move forward with the change as proposed. As a point of clarification, the PHA is not required to calculate the escrow amount monthly; rather, the escrow amount is re-determined at each re-examination of family income. As explained in the proposed rule's preamble, the requirement to provide an FSS escrow account report to the family, at least annually, has not changed; however, a family may inquire about their FSS escrow balance at any time.

#### Whether the Family's FSS Escrow Account Should Be Credited for Late Payments (Question 11)

Some commenters agreed with the proposed change that escrow accounts be credited on a monthly basis, and that if there are cases where a tenant owes a landlord or housing authority unpaid rent at the end of a term, these should be subtracted from the escrow at the time of a final escrow payout. One commenter agreed that escrow should be credited for late payments, stating that by crediting the account the program acknowledges the family's efforts to adhere to tenant obligations and is incentivizing follow through with rental payments. A commenter opposed the proposed change, stating a goal of self-sufficiency and stating that crediting late rent payments disincentivizes prompt rent payments and may negatively impact the owner and property operations. The commenter said any rent payments greater than 7 days late should not be credited to incentivize prompt rent payment.

Many commenters opposed the proposed change, stating it would be an administrative burden; that landlords generally do not inform the PHA of late payments; that the person paying rent might not be the person participating in the program; and that it does not align with the obligations of the HCV or FSS program. Commenters also said that policies should be consistent across programs, and that there are other negative consequences for late rent payments. A commenter stated that PHAs would potentially have to deposit escrow credits into FSS escrow accounts

at different times every month if some households pay rent on time while others are late. The commenter said money owed by an FSS family to a PHA is already required to be deducted from the family's escrow account at the end of the FSS CoP. Commenters stated that a landlord's best course of action is to enforce their lease with the tenant if the tenant is not in compliance with any part of the lease agreement. A commenter said changing the escrow calculation to mirror re-certs or annual exams for Section 8 may cause additional work for the Housing Specialist, but still may have no bearing on whether a client is paying their rent on time, and that FSS Program Coordinators requesting the client to provide a rent payment history monthly would assist with knowing if rent is paid on time.

Commenters suggested adding language to allow FSS clients to be credited with an escrow deposit, as long as an FSS client pays their rent, even if they are late and they pay late fees.

A commenter suggested that before escrow credit disbursement, the FSS participant family should certify that there is no outstanding balance regarding paying the owner any portion of the rent to owner that is not covered by the PHA housing assistance payment. A commenter said that escrow should not be credited if a tenant does not pay rent for a month from their own funds (for example, if paid by a rental assistance agency), but agreed that upon completion of the FSS CoP any funds owed to the PHA should be deducted from the final escrow disbursement. A commenter suggested that the rule further define the parameters for when late payments would and would not impact escrow credits, as there would likely be late payments outside the participant's control and/or could be considered to have good cause. A commenter said that if an FSS family is not paying their rent on time, a more appropriate approach is referring them to financial counseling, and the PHA's certified Homeownership Counselor or a partner from the PCC committee could provide this supportive service. A commenter suggested that the proposed change should be at the PHA's discretion. The commenter further suggested that the FSS escrow should not be applied to debts owed by the participant, because escrow is received from HAP funds; if escrow is used to compensate for debts owed this reduces the housing assistance payment funding available to unassisted families who have applied for housing. Commenters suggested two payment plans for FSS families that are late on their rent: (a)

<sup>7</sup> See *supra* footnote 3.

The PHA or owner could work together with the family on a payment plan where the family pays the rent in small increments throughout the month; and (b) a payment plan is aligned with the days the paycheck is received.

A commenter stated that, if this provision were implemented, HUD would need to consider cases where partial rent is paid and whether that would result in a partial escrow credit or in cases where rent was paid on time but not credited to the individual's account in a timely manner. The commenter said this provision would be particularly problematic in PBRA FSS programs because escrow credits are billed to HUD one month prior to rent being due; therefore, the housing provider is already in receipt of the escrow funds before rent is even due, which could result in additional retroactive adjustments and opens the door to even further potential errors in maintaining accurate escrow balances, which is already challenging enough for FSS programs to do.

*HUD Response:* HUD appreciates the comments received on this issue and has determined, in consideration of such comments, not to implement a policy to stop escrow credits when the family is late in paying rent. HUD agrees with commenters that such a policy would be administratively burdensome, particularly for voucher families where the PHA is generally not the landlord and may not readily know that the family is late in paying rent, and because it would result in the PHA having to pause and resume escrow deposits for such families during the Contract term. Additionally, the rule already requires the family's FSS escrow balance to be reduced at the time of graduation by amounts owned by the FSS family for rent, or other amounts, that were due under the housing assistance program.

In response to the commenter who said ceasing escrow credits when a family is late in paying rent is a good policy because crediting late rent payments disincentivizes prompt rent payments, HUD appreciates this perspective. However, besides the reasons described above for not instituting this policy, HUD agrees with commenters that a more effective approach for the FSS program would be to refer such families to the supports needed to ensure that rent payments are made on time and have landlords use other mechanisms already available to them to enforce the lease.

#### Conducting a New Income Recertification (Question 12)

A commenter sought clarification regarding the income recertification because the FY19 NOFA removed this requirement, and it is still removed on the FY20 NOFA but is still on the current FSS CoP form. The commenter was concerned that there be consistency across the board for all program participants. Another commenter agreed with removing the 120-day requirement, as it would be less of an administrative burden.

A commenter supported decisions made at the local level in favor of local objectives and conditions. In general, the commenter noted this would not appear to be a significant issue since increases in income must be reported by households (unless the agency has a policy that states otherwise), and agencies must conduct a re-examination of income if the household has a decrease in income (unless the agency has a policy that states otherwise).

A commenter opposed the proposed change, stating it would be an administrative burden and potentially create a barrier for a family to accrue escrow, and noted that since HUD has decided to waive the 120-day requirement to ease barriers to enrollment in the program, it would be counter-productive to allow discretion.

Some commenters suggested that multifamily owners should have the same discretion as PHAs regarding this issue. Another commenter said that this change should be available across the board to all families participating in the HCV program. A commenter suggested eliminating the 120-day recertification requirement, using its MTW waiver flexibility, and believed this change strengthened the program, both administratively by eliminating the requirement of a recertification, and programmatically for the participants, by streamlining the process and creating a straight line from interest to enrollment.

Commenters suggested that the final rule remove PHA or owner discretion in deciding whether to conduct a new income examination prior to the execution of a CoP because such discretion, if exercised, would limit a household's potential to optimize the accrual of escrow and effectively reinstate the 120-day rule which was eliminated in the FY19 FSS Program Renewal NOFA. These commenters stated the pandemic crisis has further demonstrated the importance of HUD maintaining its commitment to "ease barriers to participation" by stating plainly in the regulation, without the

housing provider's discretion, that the income and rents amounts to be used in the CoP shall be taken from the amounts on the last certification, re-examination, or interim determination in effect at the time the family enrolls in the FSS Program. The commenters said they saw significant delays for families who wanted to enroll but could not because they needed to complete an additional re-examination before enrollment. A commenter said that this requirement also creates an additional administrative burden on housing providers. Additionally, commenters said this rule makes it so that people need to re-certify even if they do not have a change in income, and sometimes housing authorities do not allow for a recertification if there was no income change.

A commenter supported HUD's proposal to lift the requirement that a PHA or owner must perform a recertification for a resident to enroll in the FSS program if it has been greater than 120 days since the resident's most recent recertification and permit the administrators of FSS programs to determine whether to use the resident's most recent annual recertification or whether to perform an additional recertification as more effective and efficient.

According to a commenter, the final rule should ensure tenants have the right to request an interim income recertification or full re-examination at the time of enrollment if their income has decreased since the last recertification.

A commenter suggested that the proposed rule should include language requiring PHAs or owners to conduct a re-examination if the family requests it based on a loss of income since the last re-examination and should make it clear that a new or recent interim rent adjustment may be relied on to determine baseline earned income.

*HUD Response:* Upon reviewing the Joint Explanatory Statement for FY21 Appropriations, HUD interprets the language to indicate that a policy requiring a recertification immediately prior to FSS enrollment is not consistent with Congressional intent. Thus, the regulation will be revised to require the PHA or owner, when setting a participant's baseline rent, to use the amounts on the most recent rent certification (with no discretion to do otherwise.) All standard rent certification regulations must be followed, including honoring a resident's request for a recertification due to loss of income, if that is a standard option.

### Escrow Calculation (Question 13)

Several commenters supported the proposed streamlined escrow calculation, stating that removing the difference in the calculation of escrow between very low-income and low-income families should provide a degree of simplification that can be enhanced by other proposed changes in the calculation.

Commenters supported the proposed escrow calculation worksheet because they said it would be more user friendly. A commenter said the proposed change is easier, but in doing a case study against the current worksheet, the calculated outcomes are not coming up the same.

Some commenters opposed the proposed change, stating that it further complicates escrow calculations.

A commenter stated the Multifamily FSS Escrow Credit Worksheet still has escrow deducted if the family is over the very-low-income limit, and that this deduction was to be eliminated with the proposed rule. The commenter opposed the proposed change, stating that eliminating this for only HCV/PH and not PBRA is not an equitable representation of the families on the programs that are designed to mirror one another. Additionally, the commenter stated that this deduction is taken away from the maximum escrow amount versus the "preliminary escrow credit," which amounts to a double penalty for increasing earned income.

A commenter suggested adding the line item from the 50058s to the spreadsheet to ease input and auditing. A commenter stated that the proposed rule provides a slightly streamlined escrow calculation, but requires users to calculate a monthly escrow cap and to obtain data to determine if the family's adjusted monthly income exceeds 80% of AMI. In addition, the commenter said that the proposed rule effectively continues to limit escrow to lower income families and provides a monthly cap, further limiting escrow potential. The commenter suggested a more streamlined escrow calculation process, where all escrow calculations are done the same way for all participants, eliminating the low-income check. The commenter stated that this would make it easier to explain to tenants and staff alike and has the benefit of offering all FSS participants the same access to escrow.

Some commenters opposed the escrow cap where the family's adjusted monthly income exceeds 80% of AMI.

A commenter suggested that the final rule contemplate the growth of wages earned specifically by the head of FSS

family. Another commenter suggested the calculation should be based on the difference between the baseline and current 30% of monthly earned income, as that is the true reflection of the participants' growth in a work incentive program. A commenter suggested that the escrow calculation software should have a drop down for payment standards for the jurisdiction for which the participant resides, as many FSS Program Coordinators do not conduct recertifications. A commenter suggested a slight modification to the formula for the escrow credit worksheet, since on some calculations, under "Calculation of Escrow" do not round up to the nearest dollar, including the final escrow credit.

Commenters stated the FSS escrow worksheet appears to work well for some of the more challenging escrow calculation situations, but that it would need to include reference to the line item for Form 50059 and identify which lines wouldn't apply to multifamily. The commenters said it is not clear whether there is a separate escrow credit worksheet for multifamily using the proposed guidelines. The commenters suggested that the line number of Form 50058 or Form 50059 accordingly be referenced for all items entered in the escrow sheet, to reduce confusion and allow the calculation to be better automated by software. The commenters said that currently, the instructions for (8) and (11), 80% AMI and Applicable Payment Standard (for HCV families), suggest that the number be collected from an external link. The commenters further stated that if this number does not appear on Form 50058, the commenters recommended identifying another standard place from the recertification process where this number can be found to not require an external search.

*HUD Response:* After consideration of comments received concerning the proposed escrow calculation, HUD determined not to make changes to the proposed requirements. Without specific details concerning how some commenters found that the proposed calculation further complicated escrow calculations, HUD is unable to determine which areas of the calculation could be revised or improved. As a reminder, parts of the proposed changes were based on statutory changes (such as a very low-income family's escrow no longer capped) and the formula now incorporates other programmatic considerations not previously contemplated in the regulation (such as capping escrow for zero-HAP HCV families at the lower of the gross rent or

payment standard and capping escrow for zero-HAP PBV, Mod Rehab, or Mod Rehab SRO families at the difference between the baseline monthly rent and current gross rent).

Regarding opposition to the escrow cap where the family's adjusted monthly income exceeds 80% of AMI, HUD has no discretion to modify this statutory requirement, which has been in place since the FSS program's enactment. Regarding the suggestion that the calculation should be based on the difference between the baseline and current 30% of monthly earned income, the statute requires an increase in the amount of rent paid by the family (not just an increase in earned income); therefore, HUD has no authority to change this part of the calculation. As to commenters' technical suggestions concerning the escrow calculation worksheet (*i.e.*, adding the line item from Form 50058s to the spreadsheet to ease input and auditing; rounding up to the nearest dollar; and incorporating the payment standard and 80% of AMI into the escrow calculation worksheet). HUD will consider the feasibility of these suggestions as it finalizes the escrow worksheet.

### Definition of "Good Standing" and List of Eligible Activities for Forfeited Escrow Funds (Question 14)

#### Good Standing

A commenter supported establishing the definition of "good standing" in the regulations and not leaving it to an individual PHA or owner's discretion because the definition of good standing can vary significantly on a subjective basis, even within the same program, and is confusing and frustrating for participants. This commenter said that under these new regulations, the head of FSS family who signs the CoP may not be the Head of Household for rental assistance purposes and therefore may not be able to control compliance with a repayment agreement since it is the Head of Household for rental assistance purposes who enters into a repayment agreement. A commenter stated the language should be left as is and the PHA should be allowed to continue to define good standing.

Commenters opposed the proposed definition of "good standing" for unfairly penalizing families who are in current eviction proceedings. These commenters said it could exclude families facing eviction without cause. These commenters stated that some landlords initiate eviction proceedings as a means of terminating leases of voucher holders without cause. These commenters said HUD does not define

the phrase “eviction proceedings,” which is inherently unclear. These commenters stated that a family’s compliance with FSS and HUD program requirements would not be affected simply by the landlord’s initiation of an eviction action. Commenters also stated it would be unduly burdensome to PHAs and owners to have to determine whether pending eviction proceedings are likely to affect a family’s standing in the FSS program.

Some commenters suggested that the final rule should clearly define “good standing” as families who: Are in compliance with their FSS CoP; have either satisfied or are current on any debts owed the PHA; and are in compliance with the PHA’s regulations regarding participation in the HCV program, including rent and restitution payments. A commenter suggested adding language to the definition, to read: “FSS family in good standing means, for purposes of this part, an FSS family that is not in current eviction proceedings or have open lease violations that may lead to eviction if left uncured and is otherwise in compliance with any repayment agreement and the FSS CoP.” Commenters suggested “good standing” should also include participants who have documented progress towards their goals or self-sufficiency, such as communication with the FSS, coordinator, paystubs for work, class schedule if working on post-secondary education, etc. Only participants who are in “good standing” should benefit from forfeited escrow for eligible activities. A commenter suggested that the definition of “good standing” should simply be any family who has not been found to be in non-compliance with FSS requirements. A commenter suggested that “good standing” should mean any FSS that is not in the termination process.

*HUD Response:* As recommended by commenters, this final rule defines “good standing” as an FSS family that is in compliance with their FSS CoP; has either satisfied or are current on any debts owed the PHA or owner; and is in compliance with the regulations regarding participation in the relevant rental assistance program, including rent payments.

#### Eligible Activities

Commenters supported the proposal to allow forfeited escrow funds to be used for FSS participants in good standing. Commenters also supported the proposed rule’s definition of “eligible activities.” Commenters said the proposed definition would enable Coordinators and participants to access

resources to address significant barriers families face in achieving their goals.

Commenters suggested that the proposed rule should add items to the eligible activities list for which forfeited escrow may be used. Commenters made the following suggestions: Childcare and citizenship costs; a catch-all that would allow PHAs to determine “other eligible activities,” potentially in consultation with the Secretary; staff training; educational expenses for FSS participants in good standing; items or expenses needed for self-sufficiency advancement; hosting job fairs; employment driven activities; mock interviews; counseling agencies; bus passes; obtaining or renewing state identification cards and driver’s licenses; unpaid rent expenses; needed repairs or updates; food or clothing vouchers; families within the program that demonstrate the most need; gardening or recreational programs for their tenants; gas to go to a job interview; cost of interview clothing; homeownership bonus; scholarship funds; emergency funds; source for interim disbursement funds for participants who don’t have escrow accrued; stipends for participants who are part of the PCC or Client Advisory Board (CAB); conferences expenses for FSS Program Coordinators; emergency medical co-pays; emergency transportation; a grant fund resource to assist participants with meeting their goals; and meaningful graduation ceremonies.

A commenter suggested using the list of allowable uses of interim escrow disbursements as a model for allowable use of forfeited funds to help program participants. Commenters stated that this is especially important now, within the context of the COVID–19 pandemic and subsequent barriers to access digital technology, which is essential to take classes and work from home or at an off-site location.

A commenter recommended that HUD explore adding incentives like gift cards or bonus escrow earnings for participants in good standing who complete big achievements (example: Graduating with a degree, paying off large debts, etc.). Another commenter suggested that for a participant to access incentives or activities funded by forfeited escrow funds, they would be required to have an existing goal or create a new goal related to the use of funding.

Commenters suggested that the proposed rule also include a list of ineligible activities and provide discretion to PHAs regarding eligible activities. Specifically, some commenters suggested that the proposed

rule state that funds cannot be used for general administrative costs of PHAs or owners.

A commenter suggested that forfeited escrow should go to good standing participants who need the money for a good cause and the FSS Programs, such as: laptops or books for participants pursuing an education; car repairs for participants who need a vehicle for employment purposes; registration fees for education purposes or short-term certifications.

A commenter suggested that housing providers have a clear definition of how these funds will be used up front, perhaps in the Action Plan, to avoid subjective or discriminatory disbursement of these funds. A commenter warned that allowable activities must be equally available for all FSS participants in a given program and should not be allowed to be used as a resource for individual participants, but instead should be equally available to people consistent with the purposes of the FSS program.

A commenter also suggested that the final rule should include as safe harbor allowances: educational programs and workshops for participants, and down payment assistance for families who graduate and choose to exit subsidized housing.

A commenter stated escrow funds are HAP funds and any funds that are forfeited should be returned to HAP funds to benefit all HCV participants and applicants.

A commenter stated that the bookkeeping process for these funds must be carefully developed because PHAs do not have accounts in place to separate escrow funds assigned to participants from forfeited FSS escrow funds and asked how PHAs would account for FSS forfeitures on the balance sheet.

A commenter stated that when FSS escrows are forfeited, in the case of a Cooperative Agreement, the funds should go to the FSS administering entity (PHA or owner) and that administering entity is responsible to utilize the funds as defined as allowable uses.

*HUD Response:* This final rule adds “and other costs related to achieving obligations outlined in the Contract of Participation” to eligible activities, and “general administrative costs of the FSS program” to ineligible activities. HUD revised this final rule (1) to eliminate any incentive PHAs may have had not to graduate participating families so as to recapture the forfeited escrow funds and (2) to ensure forfeited funds are used to advance participants’ goals and not for the overall implementation of

the FSS program. Additionally, consistent with Section 23(e)(3) of the 1937 Act, as amended by the Economic Growth Act, HUD revises the final rule to clarify that forfeited escrow accounts must be used for the benefit of FSS participants, and not for the FSS program more broadly.

#### *Section 984.306: HCV Portability Requirements*

##### Proposed Changes to HCV Portability Requirements (Question 15)

Several commenters supported the proposed changes to the porting requirements. A commenter opposed HUD making changes regarding portability because these provisions are not addressed in the act, and the title of the proposed rule does not mention revisions to existing regulations. A commenter recommended HUD be consistent with current program regulations and require denying portability moves use existing provisions outlined under PIH Notice 2016–09, Section (6), *Denying Family Requests to Move*, and Section (7) *Denying Family Requests to Move—Insufficient Funding*.<sup>8</sup>

*HUD Response:* While the Economic Growth Act does not specifically address portability in the FSS context, HUD exercised its authority to issue regulations to amend and clarify the existing FSS portability regulatory provisions. This regulatory section addresses portability provisions as they are applicable to the FSS program specifically and are not meant to replace portability requirements that are applicable to all HCV families (whether or not they are also participating in the FSS program). HCV portability requirements, as established in regulation at 24 CFR part 982, subpart H, and clarified in PIH Notice 2016–09, continue to apply.

HUD also took the opportunity to clarify the intersection between the family right to move from the PBV unit with continued tenant-based rental assistance (in accordance with 24 CFR 983.261) and the FSS portability requirements. While portability requirements do not apply to the PBV program, if the PBV family exercises its right to move with continued tenant-based rental assistance and is offered a tenant-based voucher, portability provisions apply. This final rule clarifies that a PBV family who has been enrolled in the FSS program for 12 months, and who exercises its right to move from the PBV unit with continued

tenant-based rental assistance, may move outside of the jurisdiction of the initial PHA in accordance with portability requirements. Additionally, the PHA's discretion to allow portability moves within the 12 months following the effective date of the CoP also applies to such PBV families.

##### Porting of FSS Family Where Both PHAs Have FSS Programs

Commenters diverged regarding whether the receiving PHA should be required to absorb the family into its FSS program. Several commenters specifically supported encouraging or requiring the receiving PHA to absorb the porting FSS family into the receiving FSS Program, which would ease administrative burdens. Commenters suggested that receiving PHAs should be required to absorb the family if the initial PHA vouched for the family. Commenters specifically noted the burden of management of an escrow account, and the inability of most software programs to account for a family that is not in the system for rent calculation purposes, as a reason that the receiving PHA should be required to administer the escrow. Commenters stated it is especially burdensome when PHAs, especially small PHAs, must continue providing participating families with FSS assistance when the family may be two or more hours away. A commenter said that the receiving PHA would receive the credit when a family graduates even though the initial PHA did all the work. A commenter objected that it is not clear what the process is for sending and receiving escrow funds for families that port and are absorbed.

Other commenters opposed requiring the receiving PHA to enroll families that port and preferred it be left to the discretion of the receiving PHA. Commenters stated that the involved PHAs, who must work together in the portability procedure, should come to an agreement at their discretion. Commenters also asked what would happen if the receiving PHA is at full FSS capacity, especially for agencies with only a part-time position. A commenter suggested that receiving PHAs (RHAs) should be required to enroll the FSS family into their FSS program only if the initial PHA (IHA) "vouches" for the family.

Some commenters opposed the continuation of FSS at all when a family ports. A commenter urged HUD to allow nullification where the PHA does not or cannot absorb the voucher. This commenter noted that absorptions are not determined based on FSS determinations but on the receiving

PHA's financial condition and the family size of the voucher. Another commenter stated that the goal should be to graduate families before porting if possible.

*HUD Response:* Some commenters stated that it should be left to the discretion of the receiving PHA (RHA) whether to enroll the ported FSS family into its FSS program. Other commenters were supportive of requiring RHAs to enroll FSS families into their FSS program HUD considered these comments and determined that lack of capacity to serve the ported FSS family (because the RHA is already serving the number of FSS families identified in its FSS Action Plan) would be a reasonable justification for a RHA to deny enrollment of the ported FSS family into its FSS program. Therefore, while the RHA would generally be required to enroll the ported FSS family into its FSS program, the RHA has discretion to make determinations concerning the family's enrollment if it lacks the capacity to manage the FSS contract. In such cases, the initial PHA (IHA) must inform the family of the potential impacts and options available to the family, as described in the regulatory text.

As to the suggestion that RHAs should be required to enroll the FSS family into their FSS program only if the IHA "vouches" for the family, the rule already provides that the RHA is required to enroll the FSS family into its FSS program only if the FSS family is in good standing. The final rule defines good standing as an FSS family that is in compliance with their FSS CoP; has either satisfied or are current on any debts owed the PHA; and is in compliance with the regulations regarding participation in the relevant rental assistance program, including rent payments.

In response to comments about the burden of managing an escrow account, HUD notes that in cases where the RHA is absorbing the FSS family into its HCV program, the RHA would be the one managing the escrow account and all escrow balances are transferred by the IHA to the RHA. The commenters' concern would only apply where the RHA is billing the IHA for the ported family. HUD considered these comments and determined that transferring the responsibility of managing the escrow account to the RHA may add another level of complexity to the process. The IHA's annual contributions contract (ACC) funds the escrow account in a portability billing scenario, and all HAP (including FSS escrow amounts) is provided by HUD to the IHA. Also, the

<sup>8</sup> U.S. Department of Housing and Urban Development, *Notice PIH 2016–09 (HA)*, <https://www.hud.gov/sites/documents/16-09PIHN.PDF>.

IHA is responsible for reporting such escrow expenses to HUD in the Voucher Management System (VMS). Based on this, having the RHA manage the escrow account would not only require a transfer of information between agencies, but also a transfer of funds, including changes to transfer amounts each time that the escrow changes, and other complexities. In addition to this, placing the responsibility of escrow account management on the IHA in a portability billing scenario is a long-standing policy and the systems concern raised by commenters should be manageable through the modification of system specifications to match program requirements.

Another commenter suggested that the FSS contract should be nullified if the RHA does not absorb the FSS family into its voucher program. HUD disagrees with terminating the contract and disbursing FSS escrow in all instances where the RHA does not absorb the FSS family into its voucher program. Instead, the IHA must work with the family to determine whether continuation of the CoP after the move, or completion of the CoP prior to the move, is possible. As discussed below, in instances where such continuation or completion is not possible, this final rule allows CoPs to be terminated and accumulated escrow to be disbursed if an FSS family in good standing is moving for good cause, as determined by the IHA. A commenter stated that the goal should be to graduate families before porting if possible. HUD agrees that this should be the goal, however, the final rule establishes the requirements when graduation prior to the port is not possible.

#### FSS Family Moves To Receiving PHA That Does Not Administer an FSS Program

A commenter supported the proposal to not allow a family to continue in the IHA's FSS program when they port to an RHA that does not have an FSS program. Commenters agreed that RHAs not administering the FSS program should not have to commit to providing FSS services.

Other commenters wanted to allow IHAs to choose to let a family continue with the IHA's FSS program if the IHA chose to, or if the IHA and RHA agreed. A commenter suggested that this would be no different than staying with the IHA where the RHA does have an FSS program, as HUD proposed. A commenter stated that the IHA should continue to administer an FSS program only so that the families may keep their escrow with the IHA and work to complete their goals so they can

graduate with escrow. Another commenter stated that the IHA should be required to continue with the family if the family chooses. Other commenters stated that the family should be allowed to graduate if feasible. A commenter suggested that HUD should allow the IHA and the family to work together to find a solution to remain in the program or graduate early so that the family is not punished for moving. A commenter suggested that HUD should allow graduation or termination if there are 12 or fewer months remaining on the CoP. Another commenter suggested that if an RHA does not offer the FSS program, the RHA should refer the family to a PHA that administers an FSS program or administer the program itself.

*HUD Response:* As explained in the proposed rule's preamble, in order for a porting family to continue in FSS, it is not only important to know whether the RHA has an FSS program. It is also critical that the PHA that administers the rental assistance must have an FSS program. If the RHA absorbs the voucher, the RHA must have an FSS program in order for the participant to continue. If the RHA administers the voucher (bills the IHA) then the IHA must have an FSS program in order for the FSS participant to continue. It would be burdensome to require any PHA that does not administer an FSS program to manage such tasks even for a small number of FSS families, especially in light of the administrative complexity of a portability move, and the shared FSS responsibilities between PHAs.

Additionally, the proposed rule already addresses the options available to the family, including modifying the FSS contract, which is already allowed under the regulation, so that the family may graduate from the FSS program prior to the move. The final rule also allows CoPs to be terminated and accumulated escrow to be disbursed if an FSS family in good standing is moving for good cause, as determined by the IHA, and where continuing the CoP after the move, or completing the CoP prior to the move, is not possible. Good cause for the move may include, but is not limited to, a housing opportunity in a lower-poverty/higher opportunity neighborhood, an employment opportunity for which the family has already obtained a job offer, the ability to be closer to family or other support network, or a move needed to protect health and safety of the family or family member. The IHA must discuss the available options with the family, including whether modification of the contract to allow for graduation prior to the move is a possibility for the

family. PHAs must be consistent in their determinations of whether a family has good cause for a termination with FSS escrow disbursement and cannot allow escrow disbursement for some families but deny them for others if the families have the same or a comparable reason for moving. PHA determinations are subject to the nondiscrimination and equal opportunity requirements of the Fair Housing Act, Title VI of the Civil Rights Act, Section 504 of the Rehabilitation Act of 1973, and the Americans with Disabilities Act, which prohibit discriminatory practices and practices that have a discriminatory effect. One way a PHA can ensure consistency in determining whether there is good cause to terminate a contract with FSS escrow disbursement is to establish a written policy as to what the PHA considers to be good cause, or what factors the PHA will consider in making that determination and codifying it in the FSS Action Plan.

#### Non-FSS Family Moves To Receiving PHA That Does Administer an FSS Program

A commenter supported the opportunity for families to join an RHA's FSS program when they port from an IHA that does not have an FSS program. Another commenter recommended that RHAs may continue to refuse to enroll an FSS family if their program is full or does not have capacity, or to use preferences as described in their respective FSS Action Plan.

Commenters stated that HUD should not mandate that if the RHA chooses to bill the IHA, the family cannot enroll in the RHA's FSS program, and suggested that the complex issues related to porting should be worked out by the agencies involved, not HUD, if the agencies are willing and able to share responsibilities. A commenter suggested that mandating otherwise would contradict the "choice" component of the program.

*HUD Response:* The proposed rule addressed a new scenario (a non-FSS family who moved to an RHA that administers FSS). Under the proposed rule, the family could not enroll in the RHA's FSS program where the RHA was billing the IHA.

After consideration of comments received, HUD agrees that RHAs should have discretion to make determinations concerning FSS enrollment of such families. However, the billed IHA must agree to such enrollment, because the IHA would still be responsible for certain FSS tasks. If the IHA does not administer an FSS program, similar to § 984.306(c) of the rule, enrollment of

the non-FSS family in the RHA's FSS program would not be possible. This is because the IHA would be responsible for certain FSS tasks after the move (even if the family enrolls in the RHA's FSS program), and it would be burdensome to require the IHA that does not administer an FSS program to manage such tasks for a small number of FSS families, especially in light of the administrative complexity of a portability move, and the shared FSS responsibilities between PHAs.

#### FSS Family Moves to a New PHA and Wants To Re-Enroll

A commenter asked HUD to opine on enrollment in an RHA's FSS program, asking particularly whether a household moving in the fourth year of their FSS program should be eligible to receive their escrow payment and then re-enroll in a new five-year FSS program.

*HUD Response:* If the family has completed the requirements of the FSS program prior to porting, then the IHA must graduate the family. The RHA should have policies in its FSS Action Plan regarding whether families that have graduated from the FSS program may re-enroll. For more information concerning policies on re-enrollment, please see the HUD FSS Promising Practices Guidebook.<sup>9</sup>

#### Section 984.401: Reporting

##### Data on Curing Lease Violations

A commenter suggested that FSS Program Coordinator actions to assist participants in curing lease violations should be reported, as this information help to evaluate the efficiency of FSS programs.

*HUD Response:* HUD does not currently have an appropriate mechanism for reporting this information, and it is not included in the performance measures. In addition, while FSS Program Coordinators may sometimes help households resolve lease violation issues in the course of their work, this is not their primary function. Reporting and performance measurement of FSS programs will continue to focus on core FSS activities.

##### CoP Termination Reporting

A commenter suggested that in any case where a CoP termination occurs, an FSS administrator should note the termination date and the process used to substantiate the reason for termination, and report to HUD, along with the number of terminations as part of the routine reporting requirements.

*HUD Response:* A separate report of this nature would be administratively

burdensome. However, the reason for exit from the program (including termination) for PIH programs is reflected on the Form HUD-50058 and further investigation may be pursued by the HUD field office on a case-by-case basis or upon monitoring review.

#### Section 887.101: Purpose, Scope, and Applicability

Commenters supported the proposal to extend FSS eligibility to residents of PBRA-assisted properties and extend eligibility for FSS Program Coordinator funding to independently operated PBRA FSS programs. A commenter specifically supported mirroring the regulations for multi-family programs to those in the Housing Choice Voucher Program.

Two commenters supported making the program voluntary for residents of PBRA properties. The commenters also recommended that HUD clarify that an FSS program may automatically enroll households and permit opting out of the program at any time.

*HUD Response:* HUD appreciates commenters' feedback and notes that extending FSS eligibility to residents of PBRA properties and eligibility for FSS Program Coordinator funding to PBRA FSS programs is permitted by section 23 of the 1937 Act, as amended by the Economic Growth Act. The proposed regulations are streamlined to apply all PIH FSS regulations to PBRA owners with the few exceptions outlined in 24 CFR part 887, which was included in the proposed rule. As stated in this preamble, all FSS programs are voluntary for participants. Administering an FSS program is voluntary for PBRA owners as well.

HUD will not make the change regarding automatic enrollment and opt out as part of this final rulemaking, but HUD appreciates the suggestion and may consider it in the future.

#### Section 887.105: Basic Requirements for the FSS Program

##### Difficult To Consult in Some Areas

One commenter stated that, under paragraph (a)(4), requiring owners to consult with a PCC may be difficult in rural or under-resourced communities or communities situated far from a public housing agency.

*HUD Response:* HUD recognizes that fewer service partners are available in some communities, and that smaller housing provider entities may find it more difficult to establish partnerships with service providers. However, HUD views the establishment of partnerships as an essential component of FSS, even in communities where few partners are

available. Communities with few potential service partners may find effective coordination even more crucial than those with more resources, to ensure that the FSS program is making the most of every available resource. The PCC also provides an important venue for resident input on the ongoing implementation of the FSS program. HUD has kept the requirements very flexible as to how the PCC operates to avoid unnecessary burdens, allowing PCCs to be tailored to local needs and circumstances. The PCC may meet frequently or may meet only once or twice a year, depending on what the PCC feels is necessary for effective coordination. The PCC may include many partners or only a few key partners. Meetings may be held in person or remotely. HUD encourages PBRA FSS programs to join an existing PCC if possible.

##### Should Operate Independent of a PHA

Commenters stated that owners should be able to operate their FSS program(s) independent of any PHA and recommended that HUD remove this requirement and instead strongly encourage owners to develop an advisory group of FSS families to inform the services offered and provided as part of the FSS program.

*HUD Response:* Multifamily owners are not required to work with a PHA. Multifamily owners implementing an FSS program are encouraged, but not required, to work with an existing PCC. However, where a local PCC is available, they are required to work with the PCC or create their own PCC, if they prefer. Once FSS grant funds are made available to multifamily property owners, owners will be able to submit an independent NOFO application for funds to start their own FSS program. In this final rule, owners starting a voluntary FSS program, even those without FSS grant funds, are subject to the final rule. Whether or not an FSS program receives HUD FSS appropriated funding, housing providers are strongly encouraged to engage with residents and FSS participants regularly and to get their input on the property's Action Plan and ongoing implementation of the FSS program. This can be done through joining or creating a PCC, or by other means such as a resident advisory group.

##### Owners Should Be Allowed To Form an Action Plan

Commenters stated that § 887.105(a)(3) of the proposed rule requires that a PBRA FSS program have an Action Plan approved by HUD, as

<sup>9</sup> See *supra* note 3.

described in § 984.201; but § 984.201(b) of the proposed rule appears to provide authority for developing an Action Plan only to PHAs. These commenters requested that HUD clarify that owners, too, are authorized to develop Action Plans for their PBRA FSS programs.

*HUD Response:* All PHAs and owners are required to have an approved FSS Action Plan before implementing the program. HUD has added a clarification to the language regarding the development of Action Plans to make it clear that PBRA owners who wish to implement an FSS program are required to develop their own FSS Action Plans.

#### Exclusion or Inclusion of Requirements for Multifamily Assisted Housing (Question 16)

Several commenters expressed support and agreement with the exclusions and inclusions for multifamily assisted housing FSS programs. A commenter said that their current Program Coordinating Committee (PCC) includes HCV, PBV, and PH residents.

A commenter objected to HUD's reasoning to treat multifamily owners differently than PHAs in the family selection process. The commenter said that HUD states that the unequal treatment is due to the small size of the multifamily FSS programs but did not provide any figures to support or allow commenters to understand that justification.

A commenter suggested that HUD consider the same justifications which apply to exclude multifamily owners from FSS requirements, especially related to the size of the multifamily property, to small or similarly sized PHAs. The commenter stated that small PHAs are overregulated yet pose a small risk to HUD. This commenter asked HUD to request such relief to small PHAs from Congress. The commenter stated that small towns and rural areas do not have the same resources as large towns and areas. This commenter asked HUD to exclude small PHAs from the PCC requirement and the family selection process.

Some commenters stated that multifamily owners should be allowed, or should be required, to be members of the PCC, and should be allowed or required to attend regular meetings and contribute to oversight of the program.

One commenter asked if a PBRA owner can collaborate with the PHA to have one combined Action Plan.

*HUD Response:* HUD appreciates the feedback provided by commenters on the exclusions and inclusions for multifamily assisted housing FSS programs. HUD notes the concerns

raised by commenters about the burden imposed by the regulations on small PHAs, but believes that the requirements are necessary to ensure that FSS families are well served by the program, and further notes that many of the requirements are statutory. In response to public comment, HUD has made a change in the final rule so that multifamily owners are no longer exempt from the family selection procedures in § 984.203. This section gives the owner the option of using certain selection preferences and motivational screening factors; housing providers are not required to use selection preferences or motivational screening factors, but HUD believes that as multifamily FSS programs grow in the future, they may wish to have these tools at their disposal for FSS waitlist management. This may also make it easier for an owner to operate an FSS program through a Cooperative Agreement with a PHA that uses selection preferences or motivational screening factors, by allowing them to align their family selection procedures. A PHA and PBRA owner may have a combined FSS Action Plan as long as it covers the requirements for both programs. If a housing provider chooses to establish a selection preference or use motivational screening factors, such activities are subject to Federal nondiscrimination and equal opportunity requirements.

HUD excluded multifamily owners from the requirement to create a PCC in the proposed rule because, while statutorily required for PHAs, it was not required for owners in the FSS statute. HUD believes that coordination with the type of partners that would typically make up a PCC is essential to developing an Action Plan and successfully implementing an FSS program. In particular, a PCC provides an important opportunity for input from key service partners and from FSS participants. Where an existing PCC is available, multifamily housing owners who operate FSS programs are required by this rule to consult with or join a nearby PCC or create their own PCC, either by themselves, or in conjunction with other owners. In cases where the multifamily housing owner is unable to consult with or join an existing PCC, HUD encourages owners to establish their own PCC. If the owner does not join an existing PCC or create their own, owners are strongly encouraged to choose another avenue for receiving input from their partners and FSS participants.

#### *Section 887.107: Cooperative Agreements*

##### Requirements for Owners Entering Into a Cooperative Agreement (Question 17)

A commenter stated the Cooperative Agreement should define reporting expectations by both the PHA and the property manager. This commenter suggested the Cooperative Agreement should also include a written data sharing agreement between the owner and PHA, or between owners. The commenter continued that appropriate release language should be added to the CoP to ensure the FSS participant is providing approval, and acknowledging said approval, for this new type of information sharing, as some states may have laws that, without written consent, may make such sharing illegal. The commenters stated that the Cooperative Agreement should have language ensuring any changes made to administering entities' Action Plan after the Cooperative Agreement is completed, includes input from the owner, and that any Action Plans should include owner's involvement under any Cooperative Agreements and certifications by the PHA to HUD as part of the HUD Action Plan approval process to ensure an owner does not get burdened by a Cooperative Agreement in which it was not involved.

A commenter said that HUD should consider the consequences to PHAs or owners who fail to comply with a Cooperative Agreement or who face unresolved disputes.

*HUD Response:* HUD's intention is to allow flexibility in the requirements for Cooperative Agreements, and will not require reporting expectations, data sharing agreements, or release language to be included in the Cooperative Agreement per the regulations, but will consider including these topics in guidance. In response to public comment, HUD has added a requirement that the Cooperative Agreement must include process for entities to communicate about changes in the Action Plan. If a PBRA property is being served through a Cooperative Agreement, then at least one participant with assistance through PBRA must be a member of the PCC. HUD notes the concern expressed in one comment regarding the potential consequences to PHAs or owners who fail to comply with a Cooperative Agreement or who face unresolved disputes. HUD is not a party to the Cooperative Agreements so consequences and resolutions should be addressed by the parties involved.

### Technical or Technological Challenges

A commenter recommended that HUD remove #3 under Corrective Action for Failure to Meet Family Responsibilities from the FSS Contract of Participation, which allows the PHA to terminate HCV assistance where a family fails to meet responsibilities under the FSS contract.

A commenter said the proposed rule would create an administrative burden and potentially require a separate system or require software adaptations to implement these changes for the reasons below.

A number of commenters stated that the proposed change allowing the FSS head of household to be different from the HAP contract Head of Household would impact software applications that are currently designed to solely report on the Head of Household, and therefore these applications will have to be redesigned or adjusted to accommodate the required change in the Form 50058 addendum.

The FSS addendum currently requires a start and end date when completing an enrollment Form 50058; a fatal error occurs when an end date is not added; this may require placing a temporary or place holder date in the addendum or creating FSS addendum adjustments; the CoP end date will need to remain blank until such time that the next recertification is completed; and this type of back and forth would not only be an administrative burden but also complicate the enrollment process and general understanding of the program for those potentially participating.

A commenter stated that all FSS programs are required to submit FSS information through PIC at least one time per year, and MTW agencies need to submit this information as an interim recertification. The commenter further stated that FSS families that may qualify for bi-annual reviews due to a disability still have an interim recertification completed yearly strictly to send FSS information through PIC. The commenter said that under the proposed rule the FSS CoP would start for those families due to a PIC reporting requirement.

A commenter said their current escrow accrual process is based on a strike point model and triggered when the enrollment Form 50058 is added, and that a work around to this process will need to be created to align with the new proposed rule.

*HUD Response:* HUD appreciates commenters' note regarding software changes. HUD understands that changes in program rules may necessitate changes in software to conform. HUD will review all Form 50058 flags and

fatal errors and adjust based on the new regulations. Please note that an interim recertification is NOT required in order to submit an FSS Progress Report into PIC.

### *Opposition to the Economic Growth Act Provision Regarding the Change in Length of the Contract of Participation*

A commenter opposed the provisions in the Economic Growth Act itself, and by extension, the proposed rule, that require a CoP to include a clause that each FSS family to fulfill their obligations no later than five years after the first recertification of income after the CoP's execution date. The commenter opposed the proposed change, stating that it would create unintended and arbitrary inequities in the length of time that program participants can accumulate escrow and participate in certain programs. The commenter also stated that the proposed change would result in inequities in how long households can accrue escrow.

Some commenters suggested that participants would have differing lengths of participation, whereby some participants would be given more time to accrue escrow than others, which raise fairness and equality concerns. A commenter was concerned that this change introduces varying timelines for FSS participants based on their annual recertification date, and said their programs operate on a two-year recertification cycle, meaning that some households could potentially have close to two years before their first recertification cycle, allowing for up to seven years, nine years if maximum extension were granted, to fulfill their obligations under the CoP. The commenter also said that this would allow some households more time than others based on recertification dates and allow for fewer opportunities for new FSS participants to enroll in the program as caseload sizes are limited. The commenter encouraged HUD to consider how it can implement this statute in a way that minimizes these variances.

Commenters said it may be confusing to change to five years after the first recertification of income after the execution date of the contract. A commenter stated the current regulation is easier to understand, execute, and follow.

A commenter stated the new recommendation may present errors in CoPs because if the CoP effective date is changed to the following renewal date after the CoP is signed it might create confusion. A commenter said there would be three different dates which

turn out to be more information to look at, (the previous renewal date for enrollment purposes, the date they sign the CoP and then the effective CoP date which will be dated for following renewal).

A commenter stated there was no advantage in delaying the accrual of escrow until the next annual reexamination for contracts locked in after the annual re-examination. The commenter believed that the Contract should remain a 5-year contract. The expansion of extending the Contract for "good reason" gives the ability to the family to continue pursuing their goals if necessary, beyond the 5 years.

*HUD Response:* The change in the length of the Contract of Participation is statutory and therefore HUD does not have any discretion to change it. HUD reminds all FSS practitioners that, beyond any requirements of funding, PHAs may set the number of concurrent enrollments themselves. Longer CoPs do not necessarily limit new enrollments. Programs are encouraged to review the FSS Promising Practices Guidebook and consider triaging their approach to case management/coaching as opposed to a one-size fits all.

### V. Findings and Certifications

#### *Regulatory Review—Executive Orders 12866 and 13563*

Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health, and safety effects; distributive impacts; and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility.

Under Executive Order 12866 (Regulatory Planning and Review), a determination must be made whether a regulatory action is significant and; therefore, subject to review by the Office of Management and Budget (OMB), in accordance with the requirements of the order. This rule was determined to be a "significant regulatory action" as defined in section 3(f) of the Executive order, but not an economically significant regulatory action, as provided under section 3(f)(1) of Executive Order 12866. Consistent with Executive Order 13563, this rule implements the streamlining requirements of section 306 and provides additional flexibility for PHAs and multifamily owners. HUD has

prepared a Regulatory Impact Analysis (RIA) that addresses the costs and benefits of the final rule. HUD's RIA is part of the docket file for this rule.

The docket file is available for public inspection on *regulations.gov* and in the Regulations Division, Office of General Counsel, Room 10276, 451 7th Street SW, Washington, DC 20410-0500. Due to security measures at the HUD Headquarters building, please schedule an appointment to review the docket file by calling the Regulations Division at 202-402-3055 (this is not a toll-free number).

#### *Paperwork Reduction Act*

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520), an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection displays a valid control number. The information collection requirements contained in this final rule have been submitted to the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520) and assigned OMB control number 2577-0178. HUD is updating existing information collection requirements along with this final rule. Additional requirements will become effective when the revised collection is approved by OMB.

#### *Unfunded Mandates Reform Act*

Title II of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4; approved March 22, 1995) (UMRA) establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments, and on the private sector. This rule does not impose any Federal mandates on any State, local, or tribal government, or on the private sector, within the meaning of the UMRA.

#### *Environmental Review*

This final rule does not direct, provide for assistance or loan and mortgage insurance for, or otherwise govern or regulate, real property acquisition, disposition, leasing (other than tenant-based rental assistance), rehabilitation, alteration, demolition, or new construction, or establish, revise or provide for standards for construction or construction materials, manufactured housing, or occupancy. Accordingly, under 24 CFR 50.19(c)(1), this final rule is categorically excluded from environmental review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321, *et seq.*).

#### *Regulatory Flexibility Act*

The Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. As has been discussed in this preamble, this rule will make changes to HUD's regulations to implement the section 306 statutory changes and streamline other requirements. HUD believes this rule will overall reduce burden, including for small PHAs and multifamily owners. The burden reduction anticipated is more fully discussed in the accompanying Regulatory Impact Assessment (RIA). For these reasons, HUD determined that this rule would not have a significant economic impact on a substantial number of small entities.

#### *Executive Order 13132, Federalism*

Executive Order 13132 (entitled "Federalism") prohibits an agency from publishing any rule that has federalism implications if the rule either: (1) Imposes substantial direct compliance costs on State and local governments and is not required by statute, or (2) preempts State law, unless the agency meets the consultation and funding requirements of section 6 of the Executive order. This final rule does not have federalism implications and does not impose substantial direct compliance costs on State and local governments nor preempt State law within the meaning of the Executive order.

#### **List of Subjects**

##### *24 CFR Part 887*

Grant programs—housing and community development, Public housing, Rent subsidies, Reporting and recordkeeping requirements

##### *24 CFR Part 984*

Grant programs—housing and community development, Grant programs—Indians, Indians, Public housing, Rent subsidies, Reporting and recordkeeping requirements.

Accordingly, for the reasons stated in the preamble, HUD amends 24 CFR chapters VIII and IX as follows:

- 1. Add part 887 to read as follows:

#### **PART 887—SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAMS—FAMILY SELF-SUFFICIENCY PROGRAM**

Sec.

- 887.101 Purpose, scope, and applicability.
- 887.103 Definitions.
- 887.105 Basic requirements of FSS programs.
- 887.107 Cooperative Agreements.
- 887.109 Housing assistance and total tenant payments and increases in family income.
- 887.111 FSS award funds formula.
- 887.113 FSS funds.

**Authority:** 42 U.S.C. 1437u, and 3535(d).

#### **§ 887.101 Purpose, scope, and applicability.**

(a) *Purpose.* (1) The purpose of the Family Self-Sufficiency (FSS) program is to promote the development of local strategies to coordinate the use of Department of Housing and Urban Development (HUD) assistance with public and private resources, to enable families eligible to receive HUD assistance to achieve economic independence and self-sufficiency.

(2) The purpose of this part is to implement the policies and procedures applicable to operation of an FSS program under HUD's Section 8 Housing assistance payments programs, as established under section 23 of the 1937 Act (42 U.S.C. 1437u).

(b) *Scope.* Each owner may implement an FSS program independently or by way of a Cooperative Agreement with a Public Housing Agency (PHA) or another owner. Each owner that administers an FSS program must do so in accordance with the requirements of this part.

(c) *Applicability.* This part applies to owners of multifamily rental housing properties assisted by Section 8 Housing assistance payments programs. See part 984 of this title for program regulations applicable to PHAs.

(d) *Non-participation.* Tenant participation in an FSS program is voluntary. Assistance under Section 8 Housing assistance payments programs for a family that elects not to participate in an FSS program shall not be refused, delayed or terminated by reason of such election.

#### **§ 887.103 Definitions.**

The definitions in § 984.103 of this title apply to this part, except that *eligible families* means tenant families living in multifamily assisted housing.

#### **§ 887.105 Basic requirements of FSS programs.**

(a) An FSS program that is voluntarily established under this part by an owner

must comply with the following requirements:

(1) Shall be operated in conformity with the regulations of this part and other Section 8 regulations, codified in 24 CFR parts 5, 402, 880, 881, 883, and 884, respectively, and with FSS program objectives, as described in § 984.102 of this title;

(2) Shall coordinate supportive services as defined in § 984.103 of this title;

(3) Shall have an Action Plan approved by HUD, as described in § 984.201 of this title, before operating an FSS program;

(4) When a Program Coordinating Committee (PCC), as described in § 984.202 of this title, is available, owners shall work with that PCC or shall create their own PCC, either by themselves, or in conjunction with other owners;

(5) Shall comply with the family selection procedures in § 984.203 of this title;

(6) May make available and utilize onsite facilities, as described in § 984.204 of this title;

(7) Shall comply with the FSS funds provision, as described in § 984.302(c) of this title;

(8) Shall enter into Contracts of Participation with eligible families, as described in § 984.303 of this title;

(9) Shall establish and manage FSS escrow accounts as described in § 984.305 of this title;

(10) Shall report information to HUD as described in § 984.401 of this title; and

(11) Shall be operated in compliance with applicable nondiscrimination and equal opportunity requirements including, but not limited to, those set forth in 24 CFR part 5.

(b) An owner may employ appropriate staff, including an FSS Program Coordinator, to administer its FSS program, and may contract with an appropriate organization to establish and administer parts of the FSS program.

#### **§ 987.107 Cooperative Agreements.**

(a) An owner may enter into a Cooperative Agreement with:

(1) A local PHA that operates an FSS program, pursuant to § 984.106 of this title; or

(2) Another owner that operates an FSS program, pursuant to this section.

(b) Owners that enter into a Cooperative Agreement pursuant to this part, must:

(1) Open any FSS waiting lists to all eligible families residing in the properties covered by the Cooperative Agreement.

(2) Provide periodic escrow amounts to the FSS Program Coordinator for FSS families covered by the Cooperative Agreement under this part. The Cooperative Agreement must provide that each owner is responsible for managing the escrow accounts of their participating families, including calculating and tracking of escrow in accordance with § 984.305 of this title, and set forth the procedures for the sharing of escrow information between the PHA and the owner.

(3) The Cooperative Agreement must clearly specify the terms and conditions of such agreement, including the requirements of this section, and it must include a process for PHAs and owners to communicate with each other about changes in their Action Plan.

#### **§ 987.109 Housing assistance and total tenant payments and increases in family income.**

(a) *Housing assistance payment.* The housing assistance payment for an eligible family participating in the FSS program under this part is determined in accordance with the regulations set forth in § 5.661(e) of this title.

(b) *Total tenant payment.* The total tenant payment for an FSS family participating in the FSS program is determined in accordance with § 5.628 of this title.

(c) *Increases in FSS family income.* Any increase in the earned income of an FSS family during its participation in an FSS program may not be considered as income or an asset for purposes of eligibility of the FSS family for other benefits, or amount of benefits payable to the FSS family, under any other program administered by HUD.

#### **§ 987.111 FSS award funds formula.**

The Secretary may establish a formula by which funds for administration of the FSS program are awarded consistent with 42 U.S.C. 1437u(i).

#### **§ 987.113 FSS funds.**

Owners may access funding from any residual receipt accounts for the property to cover reasonable costs associated with operation of an FSS program, including hiring an FSS Program Coordinator or coordinators for their FSS program.

■ 2. Revise part 984 to read as follows:

### **PART 984—SECTION 8 AND PUBLIC HOUSING FAMILY SELF-SUFFICIENCY PROGRAM**

#### **Subpart A—General**

Sec.

984.101 Purpose, applicability, and scope.

984.102 Program objectives.

984.103 Definitions.

984.104 Basic requirements of the FSS program.

984.105 Minimum program size.

984.106 Cooperative Agreements.

984.107 FSS award funds formula.

#### **Subpart B—Program Development and Approval Procedures**

984.201 Action Plan.

984.202 Program Coordinating Committee (PCC).

984.203 FSS family selection procedures.

984.204 On-site facilities.

#### **Subpart C—Program Operations**

984.301 Program implementation.

984.302 FSS funds.

984.303 Contract of Participation (CoP).

984.304 Amount of rent paid by FSS family and increases in family income.

984.305 FSS escrow account.

984.306 HCV portability requirements for FSS participants.

#### **Subpart D—Reporting**

984.401 Reporting.

**Authority:** 42 U.S.C. 1437f, 1437u, and 3535(d).

#### **Subpart A—General**

##### **§ 984.101 Purpose, applicability, and scope.**

(a) *Purpose.* (1) The purpose of the Family Self-Sufficiency (FSS) program is to promote the development of local strategies to coordinate the use of Department of Housing and Urban Development (HUD or Department) assistance with public and private resources, to enable families eligible to receive HUD assistance to achieve economic independence and self-sufficiency.

(2) The purpose of this part is to implement the policies and procedures applicable to operation of an FSS program, as established under section 23 of the 1937 Act (42 U.S.C. 1437u).

(b) *Applicability.* This part applies to Public Housing Agencies (PHAs) administering a public housing program under section 9, a project-based and/or tenant-based assistance program under section 8(o) of the U.S. Housing Act of 1937 (1937 Act), a Housing Choice Voucher (HCV) homeownership program under section 8(y) of the U.S. Housing Act of 1937, or Section 8 Moderate Rehabilitation for low-income families and Moderate Rehabilitation Single Room Occupancy for homeless individuals under 24 CFR part 882. See part 887 of this title for program regulations applicable to owners of multifamily assisted housing.

(c) *Scope.* Each PHA that administers an FSS program must do so in accordance with the requirements of this part. See § 984.105 for more information concerning PHAs that are required to administer an FSS program.

(d) *Non-participation*. Participation in an FSS program is voluntary. A family's admission to the public housing or Section 8 programs cannot be conditioned on participation in FSS. A family's housing assistance cannot be terminated by reason of such election or due to an FSS family's failure to comply with FSS program requirements in this part.

#### § 984.102 Program objectives.

The objective of the FSS program is to reduce the dependency of low-income families on welfare assistance and housing subsidies. Under the FSS program, HUD assisted families are provided opportunities for education, job training, counseling, and other forms of social service assistance, while living in assisted housing, so that they may obtain the education, employment, and business and social skills necessary to achieve self-sufficiency, as defined in § 984.103. The Department will evaluate the performance of a PHA's or owner's FSS program using a scoring system that measures criteria, such as graduation from the program, increased earned income, and program participation, as provided by HUD through a **Federal Register** notice.

#### § 984.103 Definitions.

(a) The terms *1937 Act*, *Fair Market Rent*, *Head of household*, *HUD*, *Low income family*, *Public housing*, *Public Housing Agency (PHA)*, and *Secretary*, as used in this part, are defined in part 5 of this title.

(b) As used in this part:

*Baseline annual earned income* means, for purposes of determining the FSS credit under § 984.305(b), the FSS family's total annual earned income from wages and business income (if any) as of the effective date of the FSS contract. In calculating baseline annual earned income, all applicable exclusions of income must be applied, *except for* any disregarded earned income or other adjustments associated with self-sufficiency incentives that may be applicable to the determination of annual income.

*Baseline monthly rent* means, for purposes of determining the FSS credit under § 984.305(b):

(i) The FSS family's total tenant payment (TTP), as of the effective date of the FSS contract, for families paying an income-based rent as of the effective date of the FSS contract; or

(ii) The amount of the flat or ceiling rent (which includes the applicable utility allowance), and including any hardship discounts, as of the effective date of the FSS contract, for families

paying a flat or ceiling rent as of the effective date of the FSS contract.

*Certification* means a written assertion based on supporting evidence, provided by the FSS family or the PHA or owner, as may be required under this part, and which:

(i) Shall be maintained by the PHA or owner in the case of the family's certification, or by HUD in the case of the PHA's or owner's certification;

(ii) Shall be made available for inspection by HUD, the PHA or owner, and the public, as appropriate; and,

(iii) Shall be deemed to be accurate for purposes of this part, unless the Secretary or the PHA or owner, as applicable, determines otherwise after inspecting the evidence and providing due notice and opportunity for comment.

*Chief executive officer (CEO)* means the elected official or the legally designated official of a unit of general local government, who has the primary responsibility for the conduct of that entity's governmental affairs.

*Contract of Participation (CoP)* means a contract, in a form with contents prescribed by HUD, entered into between an FSS family and a PHA or owner operating an FSS program that sets forth the terms and conditions governing participation in the FSS program. The CoP includes all Individual Training and Services Plans (ITSPs) entered into between the PHA or owner and all members of the family who will participate in the FSS program, and which plans are attached to the CoP as exhibits. For additional detail, see § 984.303.

*Current annual earned income* means, for purposes of determining the FSS credit under § 984.305(b), the FSS family's total annual earned income from wages and business income (if any) as of the most recent re-examination of income which occurs after the effective date of the FSS contract. In calculating current annual earned income, all applicable exclusions of income will apply, including any disregarded earned income and other adjustments associated with self-sufficiency incentives or other alternative rent structures that may be applicable to the determination of annual income.

*Current monthly rent* means, for purposes of determining the FSS credit under § 984.305(b):

(i) The FSS family's TTP as of the most recent re-examination of income, which occurs after the effective date of the FSS contract, for families paying an income-based rent as of the most recent re-examination of income; or

(ii) The amount of the flat rent (which includes the applicable utility

allowance) or ceiling rent, including any hardship discounts, as of the most recent re-examination of income which occurs after the effective date of the FSS contract, for families paying a flat rent or ceiling rent as of the most recent re-examination of income.

*Earned income* means income or earnings from wages, tips, salaries, other employee compensation, and self-employment. Earned income does not include any pension or annuity, transfer payments, any cash or in-kind benefits, or funds deposited in or accrued interest on the FSS escrow account established by a PHA or owner on behalf of a FSS family.

*Effective date of Contract of Participation (CoP)* means the first day of the month following the date in which the FSS family and the PHA or owner entered into the CoP.

*Eligible families* means current residents of public housing (section 9) and current Section 8 program participants, as defined in this section, including those participating in other local self-sufficiency programs.

*Enrollment* means the date that the FSS family entered into the CoP with the PHA or owner.

*Family Self-Sufficiency (FSS) Program* means the program established by a PHA within its jurisdiction or by an owner to promote self-sufficiency among participating families, including the coordination of supportive services to these families, as authorized by section 23 of the 1937 Act.

*FSS escrow account (or, escrow)* means the FSS escrow account authorized by section 23 of the 1937 Act, and as provided by § 984.305.

*FSS escrow credit* means the amount credited by the PHA or owner to the FSS family's FSS escrow account.

*FSS family* means a family that resides in public housing (section 9) or receives Section 8 assistance, as defined in this section, and that elects to participate in the FSS program, and whose designated adult member (head of FSS family), as determined in accordance with § 984.303(a), has signed the CoP.

*FSS family in good standing* means, for purposes of this part, an FSS family that is in compliance with their FSS CoP; has either satisfied or are current on any debts owed the PHA or owner; and is in compliance with the regulations in part 5 and chapters VIII and IX of this title regarding participation in the relevant rental assistance program.

*FSS related service program* means any program, publicly or privately sponsored, that offers the kinds of supportive services described in the

definition of “supportive services” set forth in this section.

*FSS slots* refers to the total number of families (as determined in the Action Plan for mandatory programs in § 984.105) that the PHA will serve in its FSS program.

*FSS Program Coordinator* means the person(s) who runs the FSS program. This may include (but is not limited to) performing outreach, recruitment, and retention of FSS participants; goal-setting and case management/coaching of FSS participants; working with the community and service partners; and tracking program performance.

*FY* means Federal fiscal year (starting October 1 and ending September 30, and year designated by the calendar year in which it ends).

*Head of FSS family* means the designated adult family member of the FSS family who has signed the CoP. The head of FSS family may, but is not required to be, the head of the household for purposes of determining income eligibility and rent.

*Individual Training and Services Plan (ITSP)* means a written plan that is prepared by the PHA or owner in consultation with a participating FSS family member (the person with for and whom the ITSP is being developed), and which sets forth:

- (i)(A) The final and interim goals for the participating FSS family member;
- (B) The supportive services to be provided to the participating FSS family member;
- (C) The activities to be completed by that family member; and,
- (D) The agreed upon completion dates for the goals, and activities.

(ii) Each ITSP must be signed by the PHA or owner and the participating FSS family member and is attached to, and incorporated as part of the CoP. An ITSP must be prepared for each adult family member who elects to participate in the FSS program, including the head of FSS family who has signed the CoP.

*Multifamily assisted housing (also known as project-based rental assistance (PBRA))* means rental housing assisted by a Section 8 Housing Payments Program, pursuant to 24 CFR parts 880, 881, 883, 884, and 886.

*Owner* means the owner of multifamily assisted housing.

*Program Coordinating Committee (PCC)* means the committee described in § 984.202.

*Section 8* means assistance provided under section 8 of the 1937 Act (42 U.S.C. 1437f). Specifically, multifamily assisted housing, as defined in this section; tenant-based and project-based rental assistance under section 8(o) of the 1937 Act; the HCV homeownership

option under section 8(y) of the 1937 Act; Family Unification Program (FUP) assistance under section 8(x) of the 1937 Act; and the Section 8 Moderate Rehabilitation (Mod Rehab) for low-income families and Moderate Rehabilitation Single Room Occupancy (Mod Rehab SRO) for homeless individuals under 24 CFR part 882.

*Self-sufficiency* means that an FSS family is no longer receiving Section 8, public housing assistance, or any Federal, State, or local rent, homeownership subsidies, or welfare assistance. Achievement of self-sufficiency, although an FSS program objective, is not a condition for receipt of the FSS escrow account funds.

*Supportive services* means those appropriate services that a PHA or owner will coordinate on behalf of an FSS family under a CoP, which may include, but are not limited to:

- (i) *Child care*. Child care (on an as-needed or ongoing basis) of a type that provides sufficient hours of operation and serves an appropriate range of ages;
- (ii) *Transportation*. Transportation necessary to enable a participating FSS family member to receive available services, or to commute to their place(s) of employment;
- (iii) *Education*. Remedial education; education for completion of high school or attainment of a high school equivalency certificate; education in pursuit of a post-secondary degree or certificate;
- (iv) *Employment supports*. Job training, preparation, and counseling; job development and placement; and follow-up assistance after job placement and completion of the CoP;
- (v) *Personal welfare*. Substance/alcohol abuse treatment and counseling, and health, dental, mental health and health insurance services;
- (vi) *Household management*. Training in household management;
- (vii) *Homeownership and housing counseling*. Homeownership education and assistance and housing counseling;
- (viii) *Financial empowerment*. Training in financial literacy, such as financial coaching, training in financial management, asset building, and money management, including engaging in mainstream banking, reviewing and improving credit scores, etc.; and
- (ix) *Other services*. Any other services and resources, including case management, optional services, and specialized services for individuals with disabilities, that are determined to be appropriate in assisting FSS families to achieve economic independence and self-sufficiency. Reasonable accommodations and modifications must be made for individuals with

disabilities consistent with applicable Federal civil rights and nondiscrimination laws.

*Unit size or size of unit* refers to the number of bedrooms in a dwelling unit.

*Very low-income family* is defined as set out in § 813.102 of this title.

*Welfare assistance* means (for purposes of the FSS program only) income assistance from Federal (*i.e.*, Temporary Assistance for Needy Families (TANF) or subsequent program), State, or local welfare programs and includes only cash maintenance payments designed to meet a family’s ongoing basic needs. Welfare assistance does not include:

- (i) Nonrecurrent, short-term benefits that:
  - (A) Are designed to deal with a specific crisis or episode of need;
  - (B) Are not intended to meet recurrent or ongoing needs; and,
  - (C) Will not extend beyond four months;
- (ii) Work subsidies (*i.e.*, payments to employers or third parties to help cover the costs of employee wages, benefits, supervision, and training);
- (iii) Supportive services such as child care and transportation provided to families who are employed;
- (iv) Refundable earned income tax credits;
- (v) Contributions to, and distributions from, Individual Development Accounts under TANF;

(vi) Services such as counseling, case management, peer support, child care information and referral, financial empowerment, transitional services, job retention, job advancement, and other employment-related services that do not provide basic income support;

(vii) Amounts solely directed to meeting housing expenses;

(viii) Amounts for health care;

(ix) Supplemental Nutrition Assistance Program and emergency rental and utilities assistance;

(x) Supplemental Security Income, Social Security Disability Income, or Social Security; and

(xi) Child-only or non-needy TANF grants made to or on behalf of a dependent child solely on the basis of the child’s need and not on the need of the child’s current non-parental caretaker.

#### **§ 984.104 Basic requirements of the FSS program.**

(a) An FSS program established under this part shall be operated in conformity with the requirements of this part, including the Action Plan at § 984.201, and:

- (1) As applicable to voucher program participants:

(i) HCV regulations at 24 CFR part 982, for HCV program participants; and  
 (ii) Project-based voucher (PBV) regulations at 24 CFR part 983, for PBV program participants; and

(iii) HCV Homeownership regulations at 24 CFR 982.625 through 982.643, for HCV homeownership participants;

(2) As applicable to Mod Rehab and Mod Rehab SRO participants, 24 CFR part 882;

(3) As applicable to public housing program participants, the applicable public housing regulations, including the regulations in 24 CFR parts 5, subpart F, 960, and 966; and,

(4) The applicable nondiscrimination and equal opportunity requirements including, but not limited to, those set forth in 24 CFR part 5.

(b) [Reserved]

#### § 984.105 Minimum program size.

(a) *FSS program size*—(1) *Minimum program size requirement.* A PHA must operate an FSS program of the minimum program size determined in accordance with paragraph (b) of this section.

(2) *Exceptions to program operation requirement or to operate a smaller mandatory program.* Paragraph (c) of this section states when HUD may grant an exception to the program operation requirement, and paragraph (d) of this section states when an exception may be granted to operate a program that is smaller than the minimum program size.

(3) *Option to operate larger FSS program.* A PHA may choose to operate an FSS program larger than the minimum program size.

(b) *How to determine FSS minimum program size*—(1) *General requirement.* Each PHA that was required to administer an FSS program on May 24, 2018 (enactment date of the Economic Growth, Regulatory Relief, and Consumer Protection Act), shall continue to operate such program for, at a minimum, the total number of families the PHA was required by statute to serve as of May 24, 2018, subject only to the availability of sufficient amounts for housing assistance under appropriations acts and the provisions of paragraph (b)(2) of this section.

(2) *Reduction of minimum program size.* The minimum program size for a PHA's FSS program is reduced by one slot for each family from any rental assistance program (public housing or Section 8, including multifamily assisted housing) for which the PHA administers FSS under this section and that graduates from the FSS program by fulfilling its FSS CoP on or after October 21, 1998. If an FSS slot is vacated by a

family that has not completed its FSS CoP obligations, the slot must be filled by a replacement family which has been selected in accordance with the FSS family selection procedures set forth in § 984.203.

(c) *Exception to program operation.* (1) Upon approval by HUD, a PHA will not be required to carry out an FSS program if the PHA provides to HUD a certification, as defined in § 984.103, that the operation of such an FSS program is not feasible because of local circumstances, which may include, but are not limited to, the following:

(i) Lack of supportive services accessible to eligible families, including insufficient availability of resources for programs under title I of the Workforce Innovation and Opportunity Act (29 U.S.C. 3111 *et seq.*);

(ii) Lack of funding for reasonable administrative costs;

(iii) Lack of cooperation by other units of State or local government; or,

(iv) Lack of interest in participating in the FSS program on the part of eligible families.

(2) A program operation exception will not be granted if HUD determines that local circumstances do not preclude the PHA from effectively operating an FSS program that is smaller than the minimum program size.

(d) *Exception to operate a smaller mandatory program.* Upon approval by HUD in its full discretion, a PHA may be permitted to operate an FSS program that is smaller than the minimum program size if the PHA requests an exception and provides to HUD a certification, as defined in § 984.103, that the operation of an FSS program of the minimum program size is not feasible because of local circumstances, which may include, but are not limited to:

(1) Decrease in or lack of supportive services available to eligible families, including insufficient availability of resources for programs under title I of the Workforce Innovation and Opportunity Act (29 U.S.C. 3111 *et seq.*);

(2) Decrease in or lack of funding for reasonable administrative costs;

(3) Decrease in or lack of cooperation by other units of State or local government; or

(4) Decrease in or lack of interest in participating in the FSS program on the part of eligible families.

(e) *Expiration of exception.* A full or partial exception to the FSS minimum program size requirement (approved by HUD in accordance with paragraph (c) or (d) of this section) expires five (5) years from the date of HUD approval of the exception. If circumstances change

and a HUD-approved exception is no longer needed, the PHA is not required to effectuate the exception for the full term of the exception. If a PHA seeks to continue an exception after its expiration, the PHA must submit a new request and certification to HUD for consideration.

(f) *Review of certification records.* HUD reserves the right to examine, during its management review of the PHA, or at any time, the documentation and data that a PHA relied on in certifying to the unfeasibility of its establishing and operating an FSS program, or of operating one of less than minimum program size.

#### § 984.106 Cooperative Agreements.

(a) A PHA may enter into a Cooperative Agreement with one or more owners to voluntarily make an FSS program available to the owner's multifamily assisted housing tenants.

(b) A PHA and owner that enter into a Cooperative Agreement to make an FSS program available pursuant to paragraph (a) of this section, are subject to this part and the following requirements:

(1) The PHA must open its FSS waiting list to any eligible family residing in the multifamily assisted housing covered by the Cooperative Agreement.

(2) The owner must provide, at the request of the PHA, information on escrow amounts for participating multifamily assisted housing tenants. The Cooperative Agreement must provide that the owner is responsible for managing the escrow account for participating multifamily assisted housing tenants, including calculating and tracking of escrow in accordance with § 984.305. The Cooperative Agreement must set forth the procedures that will be in place for the exchange of escrow information between the PHA and the owner.

(3) The PHA may count multifamily assisted housing families served pursuant to a Cooperative Agreement under this subpart as part of the calculation of the FSS award under §§ 984.107 and 984.302.

(4) The PHA may use FSS appropriated funds to serve multifamily assisted housing tenants subject to a Cooperative Agreement under this section.

(5) The Cooperative Agreement must clearly specify the terms and conditions of such agreement, including the requirements of this section, and it must include a process for entities for PHAs and owners to communicate with each other about changes in their Action Plan.

**§ 984.107 FSS award funds formula.**

The Secretary may establish a formula by which funds for administration of the FSS program are awarded consistent with 42 U.S.C. 1437u(i), which provides the following:

(a) *Base award.* A PHA or owner serving 25 or more participants in the FSS program is eligible to receive an award equal to the costs, as determined by the Secretary, of 1 full-time family self-sufficiency coordinator position. The Secretary may, by notice (including a Notice of Funding Opportunity (NOFO)), determine the policy concerning the award for an eligible entity serving fewer than 25 such participants, including providing prorated awards or allowing such entities to combine their programs under this section for purposes of employing a coordinator.

(b) *Additional award.* A PHA or owner that meets performance standards set by the Secretary is eligible to receive an additional award sufficient to cover the costs of filling an additional FSS coordinator position if such entity has 75 or more participating families, and an additional coordinator for each additional 50 participating families, or such other ratio as may be established by the Secretary based on the award allocation evaluation under section 23(i)(2)(E) of the U.S. Housing Act of 1937.

(c) *State and regional entities.* For purposes of calculating the award under this section, HUD may treat each administratively distinct part of a State or regional entity as a separate entity.

(d) *Determination of number of coordinators.* In determining whether a PHA or owner meets a specific threshold for funding pursuant to this section, the Secretary shall consider the number of participants enrolled by the PHA or owner in its FSS program as well as other criteria determined by the Secretary.

(e) *Renewals and allocation.* FSS awards shall be allocated, as established by the Secretary, in the following order of priority:

(1) *First priority.* Renewal of the full cost of all FSS coordinators in the previous year at each PHA or owner with an existing FSS program that meets applicable performance standards set by the Secretary. If this first priority cannot be fully satisfied, the Secretary may prorate the funding for each PHA or owner, as long as:

(i) Each PHA or owner that has received funding for at least 1 part-time coordinator in the prior fiscal year is provided sufficient funding for at least 1 part-time coordinator as part of any such proration; and

(ii) Each PHA or owner that has received funding for at least 1 full-time coordinator in the prior fiscal year is provided sufficient funding for at least 1 full-time coordinator as part of any such proration.

(2) *Second priority.* New or incremental coordinator funding.

(f) *Recapture or offset.* Any FSS awards allocated under this section by the Secretary in a fiscal year that have not been spent by the end of the subsequent fiscal year or such other time period as determined by the Secretary may be recaptured by the Secretary and shall be available for providing additional awards pursuant to paragraph (b) of this section, or may be offset as determined by the Secretary.

(g) *Incentives for innovation and high performance.* The Secretary may reserve up to 5 percent of the appropriated FSS funds to provide support to or reward FSS programs based on the rate of successful completion, increased earned income, or other factors as may be established by the Secretary.

**Subpart B—Program Development and Approval Procedures****§ 984.201 Action Plan.**

(a) *Requirement for Action Plan.* A PHA or owner must have a HUD-approved Action Plan that complies with the requirements of this section before the PHA or owner operates an FSS program, whether the FSS program is a mandatory or voluntary program.

(b) *Development of Action Plan.* The Action Plan shall be developed by the PHA or owner in consultation with the chief executive officer of the applicable unit of general local government and the Program Coordinating Committee. Consultation for the Action Plan by the PHA or owner shall also include representatives of current and prospective FSS program participants, any local agencies responsible for programs under title I of the Workforce Innovation and Opportunity Act (29 U.S.C. 3111 *et seq.*), other appropriate organizations (such as other local welfare and employment or training institutions, child care providers, financial empowerment providers, nonprofit service providers, and private businesses), and any other public and private service providers affected by the operation of the PHA's or owner's program.

(c) *Plan submission—(1) Voluntary program.* The PHA or owner must submit its Action Plan and obtain HUD approval of the plan before the PHA or owner carries out a voluntary FSS program, including a program that exceeds the minimum size for a

mandatory program, regardless of whether the voluntary program receives HUD funding.

(2) *Revision.* Following HUD's initial approval of the Action Plan, no further approval of the Action Plan is required unless the PHA or owner proposes to make policy changes to the Action Plan or increase the size of a voluntary program; or HUD requires other changes. In such cases, the PHA or owner must submit such changes to the Action Plan to HUD for approval.

(d) *Contents of Plan.* The Action Plan shall describe the policies and procedures for the operation of a PHA's or owner's FSS program, and shall contain, at a minimum, the following information:

(1) *Family demographics.* A description of the number, size, characteristics, and other demographics (including racial and ethnic data), and the supportive service needs of the families expected to participate in the FSS program;

(2) *Estimate of participating families.* A description of the number of eligible FSS families who can reasonably be expected to receive supportive services under the FSS program, based on available and anticipated Federal, tribal, State, local, and private resources;

(3) *Eligible families from other self-sufficiency programs.* If applicable, the number of families, by program type, who are participating in other local self-sufficiency programs and are expected to agree to execute an FSS CoP;

(4) *FSS family selection procedures.* A statement indicating the procedures to be utilized to select families for participation in the FSS program, subject to the requirements governing the selection of FSS families, set forth in § 984.203. This statement must include a description of how the selection procedures ensure that families will be selected without regard to race, color, religion, sex (including actual or perceived gender identity and sexual orientation), disability, familial status, or national origin;

(5) *Incentives to encourage participation.* A description of the incentives that will be offered to eligible families to encourage their participation in the FSS program (incentives plan). The incentives plan shall provide for the establishment of the FSS escrow account in accordance with the requirements set forth in § 984.305, and other incentives, if any. The incentives plan shall be part of the Action Plan;

(6) *Outreach efforts.* A description of: (i) The efforts, including notification and outreach efforts, to recruit FSS participants from among eligible families; and,

(ii) The actions to be taken to assure that both minority and non-minority groups are informed about the FSS program, and how this information will be made available;

(7) *FSS activities and supportive services.* A description of the activities and supportive services to be coordinated on behalf of participating FSS families and identification of the public and private resources which are expected to provide the supportive services;

(8) *Method for identification of family support needs.* A description of how the FSS program will identify the needs and coordinate the services and activities according to the needs of the FSS families;

(9) *Program termination; withholding of services; and available grievance procedures.* A description of all policies concerning termination of participation in the FSS program, or withholding of coordination of supportive services, on the basis of a family's failure to comply with the requirements of the CoP; and the grievance and hearing procedures available for FSS families;

(10) *Assurances of non-interference with rights of non-participating families.* An assurance that a family's election not to participate in the FSS program will not affect the family's admission to public housing or to the Section 8 program or the family's right to occupancy in accordance with its lease;

(11) *Timetable for program implementation.* A timetable for implementation of the FSS program, as provided in § 984.301(a)(1), including the schedule for filling FSS slots with eligible FSS families, as provided in § 984.301;

(12) *Certification of coordination.* A certification that development of the services and activities under the FSS program has been coordinated with programs under title I of the Workforce Innovation and Opportunity Act (29 U.S.C. 3111 *et seq.*), and other relevant employment, child care, transportation, training, education, and financial empowerment programs in the area, and that implementation will continue to be coordinated, in order to avoid duplication of services and activities; and

(13) *Optional additional information.* Such other information that would help HUD determine the soundness of the proposed FSS program. This may include, and is not limited to:

(i) Policies related to the modification of goals in the ITSP;

(ii) The circumstances in which an extension of the Contract of Participation may be granted;

(iii) Policies on the interim disbursement of escrow, including limitations on the use of the funds (if any);

(iv) Policies regarding eligible uses of forfeited escrow funds by families in good standing;

(v) Policies regarding the re-enrollment of previous FSS participants, including graduates and those who exited the program without graduating;

(vi) Policies on requirements for documentation for goal completion;

(vii) Policies on documentation of the household's designation of the "head of FSS family;" and

(viii) Policies for providing an FSS selection preference for porting families (if the PHA elects to offer such a preference).

(e) *Eligibility of a combined program.* A PHA or owner that wishes to operate a joint FSS program with a PHA or owner may combine its resources with one or more PHAs or owners to deliver supportive services under a joint Action Plan that will provide for the coordination of a combined FSS program that meets the requirements of this part.

(f) *Single Action Plan.* A PHA or owner may submit one Action Plan that covers all applicable rental assistance programs (Section 8 vouchers, PBRA, Mod Rehab, and public housing) served by the FSS program.

#### **§ 984.202 Program Coordinating Committee (PCC).**

(a) *General.* Each participating PHA (or joint FSS program) must establish a PCC whose functions will be to assist the PHA in securing commitments of public and private resources for the operation of the FSS program within the PHA's jurisdiction, including assistance in developing the Action Plan and in operating the program.

(b) *Membership—(1) Required membership.* The PCC must include representatives of the PHA, including one or more FSS Program Coordinators, and one or more participants from each HUD rental assistance program served by the PHA's FSS program. The PHA may seek assistance from the following groups in identifying potential PCC members:

(i) An area-wide or city-wide resident council, if one exists;

(ii) If the PHA operates in a specific public housing development, the resident council or resident management corporation, if one exists, of the public housing development where the public housing FSS program is to be carried out; or

(iii) Any other resident group, which the PHA believes is interested in the

FSS program and would contribute to the development and coordination of the FSS program (such as the Resident Advisory Board or tenant association, as applicable).

(2) *Recommended membership.* Membership on the PCC may include representatives of the unit of general local government served by the PHA, local agencies (if any) responsible for carrying out programs under title I of the Workforce Innovation and Opportunity Act (29 U.S.C. 3111 *et seq.*), and other organizations, such as other State, local, or tribal welfare and employment agencies, public and private primary, secondary, and post-secondary education or training institutions, child care providers, financial empowerment organizations, nonprofit service providers, private businesses, and any other public and private service providers with resources to assist the FSS program.

(c) *Alternative committee.* The PHA may, in consultation with the chief executive officer of the unit of general local government served by the PHA and one or more residents of each HUD-assisted program served by the FSS program, utilize an existing entity as the PCC if the membership of the existing entity consists, or will consist of, the individuals identified in paragraph (b)(1) of this section, and it may also include individuals from the same or similar organizations identified in paragraph (b)(2) of this section.

#### **§ 984.203 FSS family selection procedures.**

(a) *Preference in the FSS selection process.* A PHA has the option of selecting eligible families for up to fifty (50) percent of its FSS slots in accordance with a written policy, provided in the PHA's FSS Action Plan, who have one or more family members currently enrolled in an FSS related service program or on the waiting list for such a program. The PHA may limit the selection preference given to participants in, and applicants for, FSS related service programs to one or more eligible FSS related service programs. A PHA that chooses to exercise the selection preference option must include the following information in its Action Plan:

(1) The percentage of FSS slots, not to exceed fifty (50) percent of the total number of FSS slots, for which it will give a selection preference;

(2) The FSS related service programs to which it will give a selection preference to the programs' participants and applicants; and

(3) The method of outreach to, and selection of, families with one or more

members participating in the identified programs.

(b) *Selection among families with preference.* The PHA may use either of the following to select among applicants on the FSS waiting list with the same preference status:

(1) Date and time of application to the FSS program; or,

(2) A drawing or other random choice technique.

(c) *FSS selection without preference.* For those FSS slots for which a selection preference is not applicable, the FSS slots must be filled with eligible families in accordance with an objective selection system, such as a lottery, the length of time living in subsidized housing, or the date the family expressed an interest in participating in the FSS program. The objective system to be used by the PHA must be described in the PHA's Action Plan.

(d) *Motivation as a selection factor—*(1) *General.* A PHA may screen families for interest, and motivation to participate in the FSS program, provided that the factors utilized by the PHA are those which solely measure the family's interest and motivation to participate in the FSS program.

(2) *Permissible motivational screening factors.* Permitted motivational factors include requiring attendance at FSS orientation sessions or preselection interviews and assigning certain tasks which indicate the family's willingness to undertake the obligations which may be imposed by the FSS CoP. Any tasks assigned shall be those which may be readily accomplishable by the family, based on the family members' educational level, capabilities, and disabilities, if any. Reasonable accommodations and modifications must be made for individuals with disabilities, including, *e.g.*, mobility, manual, sensory, speech, mental, intellectual, or developmental disabilities, consistent with applicable Federal civil rights and nondiscrimination laws.

(3) *Prohibited motivational screening factors.* Prohibited motivational screening factors include the family's educational level, educational or standardized motivational test results, previous job history or job performance, credit rating, marital status, number of children, or other factors, such as sensory or manual skills, and any factors which may result in the exclusion, application of different eligibility requirements, or other discriminatory treatment or effect on the basis of race, color, national origin, sex (including actual or perceived gender identity and sexual orientation), religion, familial status, or disability.

#### § 984.204 On-site facilities.

Each PHA or owner may, subject to the approval of HUD, make available and utilize common areas or unoccupied dwelling units in properties owned by the entity to provide or coordinate supportive services under any FSS program.

### Subpart C—Program Operations

#### § 984.301 Program implementation.

(a) *Voluntary program implementation.* Unless otherwise required under a funding notice, there is no deadline for implementation of a voluntary program. A voluntary program, however, may not be implemented before the requirements of § 984.201 have been satisfied.

(b) *Program administration.* A PHA may employ appropriate staff, including a service coordinator or FSS Program Coordinator to administer its FSS program, and may contract with an appropriate organization to establish and administer all or part of the FSS program, including the FSS escrow account, as provided by § 984.305.

#### § 984.302 FSS funds.

(a) *Public housing program.* Subject to 42 U.S.C. 1437g, 24 CFR part 990, and appropriations by Congress, PHAs may use funds provided under 42 U.S.C. 1437g to cover reasonable and eligible administrative costs incurred by PHAs in carrying out the FSS program.

(b) *Section 8 program.* Subject to 42 U.S.C. 1437f, 24 CFR part 982, and appropriations by Congress, PHAs may use the administrative fees paid to PHAs for costs associated with operation of an FSS program.

(c) *FSS funds.* FSS funds associated with operation of an FSS program are established by the Congress and subject to appropriations. FSS appropriated funds will be awarded to and used by PHAs or owners for costs associated with families who are enrolled in an FSS program under this part, including when an owner operates an FSS program through a Cooperative Agreement or on its own.

#### § 984.303 Contract of Participation (CoP).

(a) *General.* Each eligible family that is selected to participate in an FSS program must enter into a CoP with the PHA or owner that operates the FSS program in which the family will participate. There will be no more than one CoP at any time for each family. There may be an ITSP for as many members of the family as wish to participate. The CoP shall be signed by a representative of the PHA or the owner and the head of FSS family, as

designated by the family. This head of FSS family does not have to be the same as the official head of household for rental assistance purposes.

(b) *Form and content of contract—*(1) *General.* The CoP, which incorporates the ITSP(s), shall set forth the principal terms and conditions governing participation in the FSS program. These include the rights and responsibilities of the FSS family and of the PHA or owner, the services to be provided to, and the activities to be completed by, each adult member of the FSS family who elects to participate in the program.

(2) *FSS family goals.* The ITSP, incorporated in the CoP, shall establish specific interim and final goals by which the PHA or owner, and the family, measures the FSS family's progress towards fulfilling its obligations under the CoP and becoming self-sufficient. For any FSS family that is a recipient of welfare assistance at the outset of the CoP or that receives welfare assistance while in the FSS program, the PHA or owner must establish as a final goal for each FSS participant that every member of the family become independent from welfare assistance before the expiration of the term of the CoP, including any extension thereof. Also, see the employment obligation described in paragraph (b)(4) of this section. Aside from the goals specifically required in this section, PHAs or owners must work with each participant to establish realistic and individualized goals and may not include additional mandatory goals or mandatory modifications of the two mandatory goals.

(3) *Compliance with lease terms.* The CoP shall provide that one of the obligations of the FSS family is to comply with the terms and conditions of the respective public housing or Section 8 lease. However, all considerations allowed for other assisted residents for repayment agreements, etc., shall also be allowed for FSS participants.

(4) *Employment obligation—*(i) *Minimum requirement.* Although all members of the FSS family may seek and maintain suitable employment during the term of the contract, only the head of FSS family shall be required under the CoP to seek and maintain suitable employment during the term of the contract and any extension thereof.

(ii) *Seek employment.* The obligation to seek employment means searching for jobs, applying for employment, attending job interviews, and otherwise following through on employment opportunities.

(iii) *Determination of suitable employment.* A determination of

suitable employment shall be made by the PHA or owner, with the agreement of the affected participant, based on the skills, education, job training, and receipt of other benefits of the household member, and based on the available job opportunities within the jurisdiction served by the PHA or in the community where the PBRA property is located.

(5) *Consequences of noncompliance with the contract.* The CoP shall specify the consequences of noncompliance with the CoP as described in paragraph (i) of this section.

(c) *Contract of Participation term.* The CoP shall state that each FSS family will be required to fulfill CoP obligations no later than 5 years after the first re-examination of income after the execution date of the CoP.

(d) *Contract of Participation extension.* The PHA or owner shall, in writing, extend the term of the CoP for a period not to exceed two (2) years for any FSS family that requests, in writing, an extension of the contract, provided that the PHA or owner finds that good cause exists for granting the extension. The family's written request for an extension must include a description of the need for the extension. Extension of the CoP will entitle the FSS family to continue to have amounts credited to the family's FSS escrow account in accordance with § 984.304. As used in this paragraph (d), *good cause* means:

(1) Circumstances beyond the control of the FSS family that impede the family's ability to complete the CoP obligations, as determined by the PHA or owner, such as a serious illness or involuntary loss of employment;

(2) Active pursuit of a current or additional goal that will result in furtherance of self-sufficiency during the period of the extension (*e.g.*, completion of a college degree during which the participant is unemployed or under-employed, credit repair towards being homeownership ready, etc.) as determined by the PHA or owner; or

(3) Any other circumstance that the PHA or owner determines warrants an extension, as long as the PHA or owner is consistent in its determination as to which circumstances warrant an extension.

(e) *Unavailability of supportive services*—(1) *Good-faith effort to replace unavailable services.* If a social service agency fails to deliver the supportive services identified in an FSS family member's ITSP, the PHA or owner shall make a good faith effort to obtain these services from another agency.

(2) *Assessment of necessity of services.* If the PHA or owner is unable to obtain the services from another

agency, the PHA or owner shall reassess the family member's needs and determine whether other available services would achieve the same purpose. If other available services would not achieve the same purpose, the PHA or owner and the family shall determine whether the unavailable services are integral to the FSS family's advancement or progress toward self-sufficiency. If the unavailable services are:

(i) Determined not to be integral to the FSS family's advancement toward self-sufficiency, the PHA or owner shall revise the ITSP to delete these services, and modify the CoP to remove any obligation on the part of the FSS family to accept the unavailable services, in accordance with paragraph (f) of this section; or,

(ii) Determined to be integral to the FSS family's advancement toward self-sufficiency, the PHA or owner shall terminate the CoP and follow the requirements in paragraph (k) of this section regarding FSS escrow disbursement.

(f) *Modification.* The PHA or owner and the FSS family may mutually agree to modify the CoP with respect to the ITSP and/or the contract term in accordance with paragraph (d) of this section, and/or designation of the head of FSS family. Modifications must be in writing.

(g) *Completion of the contract.* The CoP is considered to be completed, and a family's participation in the FSS program is considered to be concluded when the FSS family has fulfilled all of its obligations under the CoP, including all family members' ITSPs, on or before the expiration of the contract term, including any extension thereof.

(h) *Termination of the contract.* The CoP shall be terminated if the family's housing assistance is terminated in accordance with HUD requirements. The CoP may be terminated before the expiration of the contract term, and any extension thereof, by:

(1) Mutual consent of the parties;

(2) The failure of the FSS family to meet its obligations under the CoP without good cause. This includes an FSS family who has moved out of multifamily assisted housing and families receiving tenant-based assistance under section 8(o) of the 1937 Act who fail to comply with the contract requirements because the family has moved outside the jurisdiction of the PHA, and the PHA has not determined that there is good cause terminate the CoP with FSS escrow disbursement in accordance with paragraph (k)(1)(iii) of this section;

(3) The family's withdrawal from the FSS program;

(4) Such other act as is deemed inconsistent with the purpose of the FSS program; or

(5) Operation of law.

(i) *Option to terminate FSS participation or withhold the coordination of supportive service assistance.* The PHA or owner may withhold the coordination of supportive services or terminate the FSS family's participation in the FSS program, if the PHA or owner determines, in accordance with the FSS Action Plan hearing procedures, that the FSS family has failed to comply without good cause with the requirements of the CoP in accordance with this section.

(j) *Transitional supportive service assistance.* A PHA or owner may continue to offer to a former FSS family that has completed its CoP, appropriate coordination of those FSS supportive services needed to become self-sufficient if the family still resides in public housing or Section 8 housing. If the family no longer resides in public housing, Section 8, or other assisted housing, then a PHA or owner may continue to coordinate supportive services for a former FSS family that completed its CoP using only funding sources that are not HUD funds or HUD-restricted funds.

(k) *Termination with FSS escrow disbursement.* (1) The CoP is will be terminated with FSS disbursement when:

(i) Services that the PHA or owner and the FSS family have agreed are integral to the FSS family's advancement towards self-sufficiency are unavailable, as described in paragraph (e) of this section;

(ii) The head of the FSS family becomes permanently disabled and unable to work during the period of the contract, unless the PHA or owner and the FSS family determine that it is possible to modify the contract to designate a new head of the FSS family; or

(iii) An FSS family in good standing moves outside the jurisdiction of the PHA (in accordance with portability requirements at § 982.353 of this chapter) for good cause, as determined by the PHA, and continuation of the CoP after the move, or completion of the CoP prior to the move, is not possible. PHAs must be consistent in their determinations of whether a family has good cause for a termination with FSS escrow disbursement under this paragraph (k).

(2) Upon termination of a CoP pursuant to paragraph (k)(1) of this

section, escrow funds must be handled consistent with § 984.305.

**§ 984.304 Amount of rent paid by FSS family and increases in family income.**

(a) *Amount of rent paid by FSS family.* The amount of rent paid by an FSS family is determined in accordance with the requirements of the applicable housing assistance program as specified in paragraphs (a)(1) and (2) of this section.

(1) *Public housing program: Calculation of total tenant payment.* Total tenant payment for an FSS family participating in the FSS program is determined in accordance with the regulations set forth in 24 CFR part 5, subpart F.

(2) *Section 8 programs: Calculation of rent.* (i) For the HCV program, rent is determined in accordance with 24 CFR part 982, subpart K; and

(ii) For the PBV program, rent is determined in accordance with 24 CFR part 983, subpart G.

(b) *Increases in FSS family income.* Any increase in the earned income of an FSS family during its participation in an FSS program may not be considered as income or an asset for purposes of eligibility of the FSS family under any other program administered by HUD.

**§ 984.305 FSS escrow account.**

(a) *Establishment of FSS escrow account—(1) General.* The PHA or owner shall deposit the FSS escrow account funds of all families participating in an FSS program into a single interest-bearing depository account. The PHA or owner must deposit the FSS escrow account funds in one or more of the HUD-approved investments. The depository account may be part of the PHA's or owner's overall accounts or a separate account, as long as it is in compliance with paragraph (a)(2) of this section. During the term of the CoP, the FSS escrow account credit amount shall be determined in accordance with paragraph (b) of this section at each re-examination of income occurring after the effective date of the CoP. Such escrow credit amount must be deposited each month by the PHA or owner to each family's FSS escrow account within the PHA's or owner's depository account.

(2) *Accounting for FSS escrow account funds—(i) Accounting records.* The total of the combined FSS escrow account funds will be supported in the accounting records by a subsidiary ledger showing the balance applicable to each FSS family.

(ii) *Proration of investment income.* The investment income for funds in the

FSS escrow account must be prorated and credited to each family's FSS escrow account based on the balance in each family's FSS escrow account at the end of the period for which the investment income is credited.

(iii) *Reduction of amounts due by FSS family.* If the FSS family has not paid the family contribution towards rent, or other amounts, if any, due under the public housing or Section 8-assisted lease, the balance in the family's FSS account shall be reduced by that amount (as determined by the owner or reported by the owner to the PHA in the Section 8(o) programs) at the time of final disbursement of FSS escrow funds in accordance with paragraph (c) of this section. If the FSS family has been found to have under-reported income after the baseline annual earned income was set, the amount credited to the FSS escrow account will be based on the income amounts originally reported by the FSS family. If the FSS family is found to have under-reported income in the re-examination used to set the baseline, the escrow for the entire period of the CoP will be re-calculated using the correct income to set the baseline and then calculate subsequent escrow amounts.

(3) *Reporting on FSS escrow account.* Each PHA or owner will be required to make a report, at least once annually, to each FSS family on the status of the family's FSS escrow account. At a minimum, the report will include:

(i) The balance at the beginning of the reporting period;

(ii) The amount of the family's rent payment that was credited to the FSS escrow account, during the reporting period;

(iii) Any deductions made from the account at the time of final disbursement of FSS escrow funds (see paragraphs (a)(2)(iii) and (c) of this section) for amounts due the PHA or owner;

(iv) The amount of interest earned on the account during the year; and

(v) The total in the account at the end of the reporting period.

(b) *FSS credit—(1) Determining the family's baseline information.* When determining the family's baseline annual earned income and the baseline monthly rent amounts for purposes of computing the FSS escrow credit, the PHA or owner must use the amounts on the family's last income re-examination.

(2) *Computation of amount.* The FSS credit amount shall be the lower of:

(i) Thirty (30) percent of one-twelfth ( $\frac{1}{12}$ ) (*i.e.*, two and a half (2.5) percent) of the amount by which the family's current annual earned income exceeds

the family's baseline annual earned income; or

(ii) The increase in the family's monthly rent. The increase in the family's monthly rent shall be the lower of:

(A) The amount by which the family's current monthly rent exceeds the family's baseline monthly rent;

(B) For HCV families, the difference between the baseline monthly rent and the current gross rent (*i.e.*, rent to owner plus any utility allowance) or the payment standard, whichever is lower; or

(C) For PBV, Mod Rehab, including Mod Rehab SRO, and PBRA families, the difference between the baseline monthly rent and the current gross rent (*i.e.*, rent to owner or contract rent, as applicable, plus any utility allowance).

(3) *Ineligibility for FSS credit.* FSS families who are not low-income families (*i.e.*, whose adjusted annual income exceeds eighty (80) percent of the area median income) shall not be entitled to any FSS credit.

(4) *Cessation of FSS credit.* The PHA or owner shall not make additional credits to the FSS family's FSS escrow account:

(i) When the FSS family has completed the CoP, as described in § 984.303(g);

(ii) When the CoP is terminated; or

(iii) During the time an HCV family is in the process of moving to a new unit, in accordance with HCV program requirements in part 982 of this title, and is not under a lease.

(c) *Disbursement of FSS escrow account funds—(1) General.* The amount in an FSS escrow account in excess of any amount owed to the PHA or owner by the FSS family, as provided in paragraph (a)(2)(iii) of this section, shall be paid to the head of FSS family when the CoP has been completed as provided in § 984.303(g), and if, at the time of contract completion, the head of FSS family submits to the PHA or owner a certification, as defined in § 984.103, that to the best of his or her knowledge and belief, no member of the FSS family is a recipient of welfare assistance.

(2) *Disbursement before expiration of contract term.* (i) If the PHA or owner determines that the FSS family has fulfilled its obligations under the CoP before the expiration of the contract term, and the head of FSS family submits a certification that, to the best of his or her knowledge, no member of the FSS family is a recipient of welfare assistance, the amount in the family's FSS escrow account, in excess of any amount owed to the PHA or owner by the FSS family, as provided in

paragraph (a)(2)(iii) of this section, shall be paid to the head of FSS family.

(ii) If the PHA or owner determines that the FSS family has fulfilled certain interim goals established in the CoP and needs a portion of the FSS escrow account funds for purposes consistent with or in support of the CoP, such as completion of higher education (*i.e.*, college, graduate school), job training, or to meet start-up expenses involved in creation of a small business, the PHA or owner may, at the PHA's or owner's sole discretion, disburse a portion of the funds from the family's FSS escrow account to assist the family in paying those expenses. Unless the interim disbursement was made based on fraudulent information from the family, the family is not required to repay such interim disbursements if the family does not complete the CoP.

(3) *Disbursement in cases of termination of the CoP with disbursement of escrow.* The PHA or owner must disburse to the family its FSS escrow account funds in excess of any amount owed to the PHA or owner by the FSS family, as provided in paragraph (a)(2)(iii) of this section, under circumstances in which HUD has determined good cause is warranted. HUD determines that there is good cause when a CoP is terminated in accordance with § 984.303(k). Therefore, if the CoP is terminated in accordance with § 984.303(k), the PHA or owner must disburse to the family its FSS escrow account funds in excess of any amount owed to the PHA or owner by the FSS family, as provided in paragraph (a)(2)(iii) of this section, as of the effective date of the termination of the contract.

(4) *Verification of family certification.* Before disbursement of the FSS escrow account funds to the family, the PHA or owner may verify that the FSS family is no longer a recipient of welfare assistance by requesting copies of any documents which may indicate whether the family is receiving any welfare assistance and by contacting welfare agencies.

(d) *Succession of FSS escrow account.* If the head of FSS family ceases to reside with other family members in the public housing or the Section 8-assisted unit, the remaining members of the FSS family, after consultation with the PHA or owner, shall have the right to take over the CoP or designate another family member to receive the funds in accordance with paragraph (c) of this section.

(e) *Use of FSS escrow account funds for homeownership.* An FSS family may use disbursed FSS escrow account funds, in accordance with § 984.305(c),

after final disbursement for the purchase of a home, including the purchase of a home under one of HUD's homeownership programs, or other Federal, State, or local homeownership programs, unless such use is prohibited by the statute or regulations governing the particular homeownership program.

(f) *Forfeiture of FSS escrow account funds—(1) Conditions for forfeiture.* Amounts in the FSS escrow account shall be forfeited upon the occurrence of the following:

(i) The CoP is terminated, as provided in § 984.303(h); or,

(ii) The CoP is completed by the family, as provided in § 984.303(g), but the FSS family is receiving welfare assistance at the time the CoP term expires, including any extension thereof.

(2) *Treatment of forfeited FSS escrow account funds.* FSS escrow account funds forfeited by the FSS family must be used by the PHA or owner for the benefit of the FSS participants.

(i) Specifically, such funds may be used for the following eligible activities:

(A) Support for FSS participants in good standing, including, but not limited to, transportation, child care, training, testing fees, employment preparation costs, and other costs related to achieving obligations outlined in the CoP;

(B) Training for FSS Program Coordinator(s); or

(C) Other eligible activities as determined by the Secretary.

(ii) Such funds may not be used for salary and fringe benefits of FSS Program Coordinators; general administrative costs of the FSS program, for housing assistance payments (HAP) expenses or public housing operating funds; or any other activity determined ineligible by the Secretary.

**§ 984.306 HCV portability requirements for FSS participants.**

(a) *Initial period of CoP—(1) First 12 months.* During the first 12 months after the effective date of the FSS CoP, an FSS family may not move outside the jurisdiction of the PHA that first enrolled the family in the FSS program. However, the PHA may approve an FSS family's request to move outside of its jurisdiction under portability (in accordance with § 982.353 of this chapter) during this period. This paragraph (a)(1) applies to a former PBV family who received tenant-based rental assistance in accordance with § 983.261 of this chapter and exercised their right to move.

(2) *After the first 12 months.* After the first 12 months of the FSS CoP, the FSS family with a tenant-based voucher may

move outside the initial PHA jurisdiction under portability regulations (in accordance with § 982.353 of this chapter). This paragraph (a)(2) applies to former PBV families who received tenant-based rental assistance in accordance with § 983.261 of this chapter and exercised their right to move.

(b) *An FSS family moves to the jurisdiction of a receiving PHA that administers an FSS program.* (1)

Whether the receiving PHA bills the initial PHA or absorbs the FSS family into its HCV program, the receiving PHA must enroll an FSS family in good standing in its FSS program; unless

(i) The receiving PHA is already serving the number of FSS families identified in its FSS Action Plan and determines that it does not have the resources to manage the FSS contract; or

(ii) The receiving PHA and the initial PHA agree to the FSS family's continued participation in the initial PHA's FSS program. Prior to the PHAs agreeing to the continued participation, the initial PHA must determine that the relocating FSS family has demonstrated that, notwithstanding the move, it will be able to fulfill its responsibilities under the initial or a modified CoP at its new place of residence. For example, the FSS family may be able to commute to the supportive services specified in the CoP, or the family may move to obtain employment as specified in the contract.

(2) Where continued FSS participation is not possible in accordance with paragraph (b)(1) of this section, the initial PHA must clearly discuss the options that may be available to the family, depending on the family's specific circumstances, which may include, but are not limited to, modification of the FSS contract, termination of the FSS contract and forfeiture of escrow, termination with FSS escrow disbursement in accordance with § 984.303(k)(1)(iii), or locating a receiving PHA that has the capacity to enroll the family into its FSS program.

(c) *An FSS family moves to the jurisdiction of a receiving PHA that does not administer an FSS program.* If the receiving PHA does not administer an FSS program, the FSS family may not continue participation in the FSS program. The initial PHA must clearly discuss the options that may be available to the family, depending on the family's specific circumstances, which may include, but are not limited to, modification of the FSS contract, termination with FSS escrow disbursement in accordance with § 984.303(k)(1)(iii), termination of the FSS contract and forfeiture of escrow, or

locating a receiving PHA that administers an FSS program.

(d) *Single FSS escrow account.* Regardless of whether the FSS family remains in the FSS program of the initial PHA or is enrolled in the FSS program of the receiving PHA, the family will have only one FSS escrow account. If the receiving PHA is billing the initial PHA, the account will be maintained by the initial PHA. If an FSS family will be absorbed by the receiving PHA, the initial PHA will transfer the family's FSS escrow account funds to the receiving PHA and the receiving PHA will maintain the funds in its FSS account.

(e) *FSS program termination; loss of FSS escrow account.* (1) If an FSS family relocates to another jurisdiction, as provided under this section, and is unable to fulfill its obligations under the CoP (or any modifications thereto), the PHA, which is a party to the CoP, must terminate the FSS family from the FSS program, and the family's FSS escrow account will be forfeited. Termination of FSS program participation and forfeiture of FSS escrow must be used only as a last resort, after the PHA determines, in consultation with the family, that the family would be unable to fulfill its obligations under the CoP after the move, that the current CoP cannot be modified to allow for graduation prior to porting, and that the current CoP cannot be terminated with FSS escrow disbursement in accordance with § 984.303(k)(1)(iii). When

termination is the only option, the PHA must clearly notify the family that the move will result in the loss of escrow funds.

(2) In the event of forfeiture of the family's FSS escrow account funds, the FSS escrow account funds will revert to the PHA maintaining the FSS escrow account for the family.

(f) *Contract of Participation (CoP).* (1) If the FSS family enrolls in the receiving PHA's FSS program pursuant to this section, the receiving PHA will enter into a new CoP with the FSS family for the term remaining on the contract with the initial PHA. The initial PHA will terminate its CoP with the family.

(2) If the FSS family remains in the FSS program of the initial PHA, pursuant to this section, the CoP executed by the initial PHA will remain as the contract in place.

(g) *New FSS enrollment into the receiving PHA's FSS program—(1) Billing.* If the receiving PHA bills the initial PHA, the receiving PHA may, consistent with the receiving PHA's FSS enrollment policies, enroll a family that was not an FSS participant at the initial PHA into its FSS program, provided that the initial PHA manages an FSS program and agrees to such enrollment. If the receiving PHA bills the initial PHA, but the initial PHA does not manage an FSS program, the family may not enroll in the receiving PHA's FSS program.

(2) *Absorption.* If the receiving PHA absorbs the family into its HCV

program, the receiving PHA may, consistent with the receiving PHA's FSS enrollment policies, enroll a family that was not an FSS participant at the initial PHA into its FSS program.

#### **Subpart D—Reporting**

##### **§ 984.401 Reporting.**

Each PHA or owner that carries out an FSS program shall submit to HUD, in the form prescribed by HUD, a report regarding its FSS program. The report shall include the following information:

(a) A description of the activities carried out under the program;

(b) A description of the effectiveness of the program in assisting families to achieve economic independence and self-sufficiency, including the number of families enrolled and graduated and the number of established escrow accounts and positive escrow balances;

(c) A description of the effectiveness of the program in coordinating resources of communities to assist families to achieve economic independence and self-sufficiency; and

(d) Any recommendations by the PHA or owner or the appropriate local Program Coordinating Committee for legislative or administrative action that would improve the FSS program and ensure the effectiveness of the program.

**Marcia L. Fudge,**

*Secretary.*

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