

(3) The owner may not demand or accept any rent payment from the tenant in excess of the tenant rent as determined by the PHA. The owner must immediately return any excess payment to the tenant.

(4) The family is not responsible for payment of the portion of the rent to owner covered by the housing assistance payment under the HAP contract. The owner may not terminate the tenancy of an assisted family for non-payment of the PHA housing assistance payment.

(c) *Limit of PHA responsibility.* (1) The PHA is responsible only for making housing assistance payments to the owner on behalf of a family in accordance with the HAP contract. The PHA is not responsible for paying the tenant rent, or for paying any other claim by the owner.

(2) The PHA may not use housing assistance payments or other program funds (including any administrative fee reserve) to pay any part of the tenant rent or to pay any other claim by the owner. The PHA may not make any payment to the owner for any damage to the unit, or for any other amount owed by a family under the family's lease or otherwise.

(d) *Utility reimbursement.* (1) If the amount of the utility allowance exceeds the total tenant payment, the PHA shall pay the amount of such excess as a reimbursement for tenant-paid utilities ("utility reimbursement") and the tenant rent to the owner shall be zero.

(2) The PHA either may pay the utility reimbursement to the family or may pay the utility bill directly to the utility supplier on behalf of the family.

(3) If the PHA chooses to pay the utility supplier directly, the PHA must notify the family of the amount paid to the utility supplier.

#### **§ 983.354 Other fees and charges.**

(a) *Meals and supportive services.* (1) Except as provided in paragraph (a)(2) of this section, the owner may not require the tenant or family members to pay charges for meals or supportive services. Non-payment of such charges is not grounds for termination of tenancy.

(2) In assisted living developments receiving project-based assistance, owners may charge tenants, family members, or both for meals or supportive services. These charges may not be included in the rent to owner, nor may the value of meals and supportive services be included in the calculation of reasonable rent. Non-payment of such charges is grounds for termination of the lease by the owner in an assisted living development.

(b) *Other charges by owner.* The owner may not charge the tenant or family members extra amounts for items customarily included in rent in the locality or provided at no additional cost to unsubsidized tenants in the premises.

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

### **Subpart A—General**

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

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EDITORIAL NOTE: Nomenclature changes to part 984 appear at 65 FR 16731, Mar. 29, 2000.

## 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 multi-family 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-in-

come 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-cal-

culated 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-twelfthth ( $\frac{1}{12}$ ) (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 out-

side 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 termi-

nated 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.

## **PART 985—SECTION 8 MANAGEMENT ASSESSMENT PROGRAM (SEMAP)**

### **Subpart A—General**

Sec.

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985.108 SEMAP records.

985.109 Default under the Annual Contributions Contract (ACC).

### **Subpart C—Physical Assessment Component [Reserved]**

AUTHORITY: 42 U.S.C. 1437a, 1437c, 1437f, and 3535(d).

SOURCE: 63 FR 48555, Sept. 10, 1998, unless otherwise noted.

EDITORIAL NOTE: Nomenclature changes to part 985 appear at 64 FR 67983, Dec. 3, 1999.

## **Subpart A—General**

### **§ 985.1 Purpose and applicability.**

(a) *Purpose.* The Section 8 Management Assessment Program (SEMAP) is designed to assess whether the Section 8 tenant-based assistance programs operate to help eligible families afford decent rental units at the correct subsidy cost. SEMAP also establishes a system for HUD to measure PHA performance in key Section 8 program areas and to assign performance ratings. SEMAP provides procedures for HUD to identify PHA management capabilities and deficiencies in order to target monitoring and program assistance more effectively. PHAs can use the SEMAP performance analysis to assess and improve their own program operations.

(b) *Applicability.* This rule applies to PHA administration of the tenant-based Section 8 rental voucher and rental certificate programs (24 CFR part 982), the project-based component (PBC) of the certificate program (24 CFR part 983) to the extent that PBC family and unit data are reported and measured under the stated HUD verification method, and enrollment levels and contributions to escrow accounts for Section 8 participants under the family self-sufficiency program (FSS) (24 CFR part 984).

[63 FR 48555, Sept. 10, 1998, as amended at 64 FR 40497, July 26, 1999]

### **§ 985.2 Definitions.**

(a) The terms *Department*, *Fair Market Rent*, *HUD*, *Secretary*, and *Section 8*, as used in this part, are defined in 24 CFR 5.100.

(b) The definitions in 24 CFR 982.4 apply to this part. As used in this part:

*Confirmatory review* means an on site review performed by HUD to verify the management performance of an PHA.

*Corrective action plan* means a HUD-required written plan that addresses PHA program management deficiencies or findings identified by HUD through remote monitoring or on-site review, and that will bring the PHA to an acceptable level of performance.

*MTCS* means Multifamily Tenant Characteristics System. MTCS is the Department's national database on participants and rental units in the