

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT**24 CFR Parts 962 and 984**

[Docket No. FR-3989-F-01]

RIN 2577-AB61

Office of the Assistant Secretary for Public and Indian Housing; Family Self-Sufficiency Program; Streamlining Final Rule

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Final rule.

SUMMARY: This final rule amends HUD's regulations for the Family Self-Sufficiency (FSS) Program. In an effort to comply with the President's regulatory reform initiatives, this rule will streamline the Family Self-Sufficiency Program regulations by consolidating the public housing and the Section 8 FSS regulations and by eliminating redundant or otherwise unnecessary provisions. This final rule will make the Family Self-Sufficiency regulations clearer and more concise.

EFFECTIVE DATE: April 4, 1996.

FOR FURTHER INFORMATION CONTACT:

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SUPPLEMENTARY INFORMATION:**Paperwork Reduction Act Statement**

This rule does not alter existing information collection requirements. The information collection requirements contained in §§ 962.201, 962.302, 962.305, and 962.401 of this rule were previously submitted to the Office of Management and Budget for review under the Paperwork Reduction Act of 1995 (42 U.S.C. 3501-3520) and had been approved under the control number 2577-0178. The Department's request for reinstatement of this control number is pending at OMB. (See notice published in the Federal Register on November 30, 1995, at 60 FR 61563.) An agency may not conduct or sponsor, and person is not required to respond to a collection of information unless the collection displays a valid control number. The OMB control number, when reinstated, will be added by separate notice in the Federal Register.

Background

On March 4, 1995, President Clinton issued a memorandum to all Federal departments and agencies regarding regulatory reinvention. In response to this memorandum, the Department of Housing and Urban Development conducted a page-by-page review of its regulations to determine which can be eliminated, consolidated, or otherwise improved. HUD has determined that the regulations for the public housing and Section 8 FSS Programs can be improved and streamlined by consolidating these regulations. The two current Code of Federal Regulations parts affected (part 962 for the public housing FSS Program and part 984 for the Section 8 FSS program) contain many identical provisions. Consolidating the parts should especially benefit HAs that operate both a public housing and a Section 8 FSS program.

Some provisions in the regulations are not regulatory requirements. For example, several sections in the regulations contain nonbinding guidance or explanations. While this information is very helpful to recipients, HUD will more appropriately provide this information through handbook guidance or other materials rather than maintain it in the CFR.

Section 984.201, Action Plan, contains revisions to conform to changes to administrative plan requirements in 24 CFR part 982 for the Section 8 Tenant-Based Assistance Program. (See 24 CFR 982.54, as added by 60 FR 34698, July 3, 1995, and the related preamble discussion of the FSS action plan at 60 FR 34661.) In conformity with those changes this rule removes the requirement in the current Section 8 FSS program regulation to include certain FSS policies in the administrative plan rather than in the action plan.

This rule does not affect the Indian housing FSS Program, which is codified at 24 CFR part 950 with other Indian housing programs. This rule applies to Indian Housing Authorities that opt or have opted to participate in the Section 8 FSS Program.

Justification for Final Rulemaking

HUD generally publishes a rule for public comment before issuing a rule for effect, in accordance with its own regulations on rulemaking in 24 CFR part 10. However, part 10 provides for exceptions to the general rule if the agency finds good cause to omit advance notice and public participation. The good cause requirement is satisfied when prior public procedure is

"impracticable, unnecessary, or contrary to the public interest" (24 CFR 10.1). HUD finds that good cause exists to publish this rule for effect without first soliciting public comment. This rule merely consolidates existing CFR parts and removes unnecessary regulatory provisions and does not establish or affect substantive policy. Therefore, prior public comment is unnecessary.

Other Matters**Regulatory Flexibility Act**

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed and approved this final rule, and in so doing certifies that this rule will not have a significant economic impact on a substantial number of small entities. This rule merely streamlines regulations by removing redundant or unnecessary provisions. The rule will have no adverse or disproportionate economic impact on small businesses.

Environmental Impact

This rulemaking does not have an environmental impact. This rulemaking simply amends an existing regulation by consolidating and streamlining provisions and does not alter the environmental effect of the regulations being amended. A Finding of No Significant Impact with respect to the environment was made in accordance with HUD regulations in 24 CFR part 50 that implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332) at the time of development of regulations initially implementing the FSS Program (HUD Docket No. FR-2961). That finding remains applicable to this rule, and is available for public inspection between 7:30 a.m. and 5:30 p.m. weekdays in the Office of the Rules Docket Clerk, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC.

Executive Order 12612, Federalism

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, *Federalism*, has determined that this rule will not have substantial direct effects on States or their political subdivisions, or the relationship between the Federal government and the States, or on the distribution of power and responsibilities among the various levels of government. No programmatic or policy changes will result from this rule that would affect the relationship between the Federal Government and State and local governments.

Executive Order 12606, The Family

The General Counsel, as the Designated Official under Executive Order 12606, *The Family*, has determined that this rule will not have the potential for significant impact on family formation, maintenance, or general well-being, and thus is not subject to review under the Order. No significant change in existing HUD policies or programs will result from promulgation of this rule.

Catalog

The Catalog of Federal Domestic Assistance numbers for the programs affected by this proposed rule is 14.850, 14.855, and 14.887.

*List of Subjects**24 CFR Part 962*

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

24 CFR Part 984

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

Accordingly, under the authority of 42 U.S.C. 3535(d), parts 962 and 984 of 24 Code of Federal Regulations are amended as follows:

PART 962—[REMOVED]

1. Part 962 is removed.
2. Part 984 is revised to read as follows:

PART 984—SECTION 8 AND PUBLIC HOUSING FAMILY SELF-SUFFICIENCY PROGRAM**Subpart A—General**

Sec.

- 984.101 Purpose, scope, and applicability.
- 984.102 Program objectives.
- 984.103 Definitions.
- 984.104 Basic requirements of the FSS program.
- 984.105 Minimum program size.

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 Operation

- 984.301 Program implementation.
- 984.302 Administrative fees.
- 984.303 Contract of participation.
- 984.304 Total tenant payment, family rent, and increases in family income.
- 984.305 FSS account.
- 984.306 Section 8 residency and portability requirements.

Subpart D—Reporting

984.401 Reporting.

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

Subpart A—General**§ 984.101 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 public and Indian housing assistance and housing assistance under the Section 8 rental certificate and rental voucher programs with public and private resources, to enable families eligible to receive assistance under these programs to achieve economic independence and self-sufficiency.

(2) The purpose of this part is to implement the policies and procedures applicable to operation of a local FSS program, as established under section 23 of the 1937 Act (42 U.S.C. 1437u), under HUD's rental voucher, rental certificate, and public housing programs.

(b) *Scope.* (1) Each PHA that received funding for public housing units under the FY 1991 and FY 1992 FSS incentive award competitions must operate a public housing FSS program.

(2) Each HA that received funding for Section 8 rental certificates or rental vouchers under the combined FY 1991/1992 FSS incentive award competition must operate a Section 8 FSS program.

(3) Unless the HA receives an exception from the program as provided in § 984.105, each HA that, in FY 1993 or any subsequent FY, received or receives funding for additional rental certificates or rental vouchers must operate a Section 8 FSS program or for additional public housing units must operate a public housing FSS program.

(c) *Applicability.*—(1) *Public housing.* This part applies to public housing assisted under the 1937 Act.

(2) *Indian Housing Authorities.* This part does not apply to Indian housing. The regulations governing Indian housing FSS programs are set forth in 24 CFR part 950, subpart R. The operation of a Section 8 FSS program is optional for Indian Housing Authorities (IHAs) that operate a certificate or voucher program. IHAs that elect to operate a Section 8 FSS program are subject to the requirements of this part, except that § 984.105(c) of this subpart A governing minimum program size does not apply to IHAs. Additionally, IHAs that received section 8 units under the FSS incentive award competitions and are operating a section 8 FSS program are

not subject to the minimum program size requirements.

(3) *Section 8.* This part also applies to the Section 8 rental certificate program and the Section 8 rental voucher program authorized by Section 8 of the 1937 Act and implemented at 24 CFR parts 882, 887, and 982.

§ 984.102 Program objectives.

The objective of the FSS program is to reduce the dependency of low-income families on welfare assistance and on Section 8, public or Indian housing assistance, or any Federal, State, or local rent or homeownership subsidies. Under the FSS program, low-income 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 of this subpart A. The Department will measure the success of a local FSS program not only by the number of families who achieve self-sufficiency, but also by the number of FSS families who, as a result of participation in the program, have family members who obtain their first job, or who obtain higher paying jobs; no longer need benefits received under one or more welfare programs; obtain a high school diploma or higher education degree; or accomplish similar goals that will assist the family in obtaining economic independence.

§ 984.103 Definitions.

(a) The terms *1937 Act*, *Fair Market Rent*, *HUD*, *Indian Housing Authority (IHA)*, *Public Housing Agency (PHA)*, *Secretary*, and *Section 8*, as used in this part, are defined in 24 CFR 5.100.

(b) As used in this part:

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

(1) Shall be maintained by the HA in the case of the family's certification, or by HUD in the case of the HA's certification;

(2) Shall be made available for inspection by HUD, the HA, and the public, as appropriate; and

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

Chief executive officer (CEO). The CEO of a unit of general local government means the elected official or

the legally designated official, who has the primary responsibility for the conduct of that entity's governmental affairs. The CEO for an Indian tribe is the tribal governing official.

Contract of participation means a contract in a form approved by HUD, entered into between a participating family and an HA operating an FSS program that sets forth the terms and conditions governing participation in the FSS program. The contract of participation includes all individual training and services plans entered into between the HA and all members of the family who will participate in the FSS program, and which plans are attached to the contract of participation as exhibits. For additional detail, see § 984.303 of this subpart A.

Earned income means income or earnings included in annual income from wages, tips, salaries, other employee compensation, and self-employment. (See 24 CFR 813.106(b)(1), (2) and (8) and 913.106(b)(1), (2) and (8).) 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 an HA on behalf of a participating family.

Effective date of contract of participation means the first day of the month following the month in which the FSS family and the HA entered into the contract of participation.

Eligible families means:

(1) For the public housing FSS program, current residents of public housing. Eligible families also include current residents of public housing who are participants in local public housing self-sufficiency programs; and

(2) For Section 8 FSS program, current Section 8 rental certificate or rental voucher program participants, including participants in the Project Self-Sufficiency or Operation Bootstrap or other local self-sufficiency programs.

Enrollment means the date that the FSS family entered into the contract of participation with the HA.

Family Self-Sufficiency program or FSS program means the program established by an HA within its jurisdiction to promote self-sufficiency among participating families, including the provision of supportive services to these families, as authorized by section 23 of the 1937 Act.

FSS account means the FSS escrow account authorized by section 23 of the 1937 Act, and as provided by § 984.305 of this subpart A.

FSS credit means the amount credited by the HA to the participating family's FSS account.

FSS family or participating family means a family that resides in public housing or receives assistance under the rental certificate or rental voucher programs, and that elects to participate in the FSS program, and whose designated head of the family has signed the contract of participation.

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 § 984.103.

FSS slots refer to the total number of public housing units or the total number of rental certificates or rental vouchers that comprise the minimum size of an HA's respective public housing FSS program or Section 8 FSS program.

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

HA means a Housing Authority—either a Public Housing Agency (PHA) or an Indian Housing Authority (IHA).

Head of FSS family means the adult member of the FSS family who is the head of the household for purposes of determining income eligibility and rent.

Housing subsidies means assistance to meet the costs and expenses of temporary shelter, rental housing or homeownership, including rent, mortgage or utility payments.

Individual training and services plan means a written plan that is prepared for the head of the FSS family, and each adult member of the FSS family who elects to participate in the FSS program, by the HA in consultation with the family member, and which sets forth:

(1) The supportive services to be provided to the family member;

(2) The activities to be completed by that family member; and

(3) The agreed upon completion dates for the services and activities. Each individual training and services plan must be signed by the HA and the participating family member, and is attached to, and incorporated as part of the contract of participation. An individual training and services plan must be prepared for the head of the FSS family.

JOBS Program means the Job Opportunities and Basic Skills Training Program authorized under part F of title IV of the Social Security Act (42 U.S.C. 402(a)(19)).

JTPA means the Job Training Partnership Act (29 U.S.C. 1579(a)).

Low-income family. See definitions in 24 CFR 813.102 and 913.102.

Participating family. See definition for "FSS family" in this section.

Program Coordinating Committee or PCC is the committee described in § 984.202 of this part.

Public housing means housing assisted under the 1937 Act, excluding housing assisted under Section 8 of the 1937 Act.

Self-sufficiency means that an FSS family is no longer receiving Section 8, public or Indian housing assistance, or any Federal, State, or local rent or homeownership subsidies or welfare assistance. Achievement of self-sufficiency, although an FSS program objective, is not a condition for receipt of the FSS account funds. (See § 984.305 of this part.)

Supportive services means those appropriate services that an HA will make available, or cause to be made available to an FSS family under a contract of participation, and may include:

(1) *Child care*—child care of a type that provides sufficient hours of operation and serves an appropriate range of ages;

(2) *Transportation*—transportation necessary to enable a participating family to receive available services, or to commute to their places of employment;

(3) *Education*—remedial education; education for completion of secondary or post secondary schooling;

(4) *Employment*—job training, preparation, and counseling; job development and placement; and follow-up assistance after job placement and completion of the contract of participation;

(5) *Personal welfare*—substance/alcohol abuse treatment and counseling;

(6) *Household skills and management*—training in homemaking and parenting skills; household management; and money management;

(7) *Counseling*—counseling in the areas of:

(i) The responsibilities of homeownership;

(ii) Opportunities available for affordable rental and homeownership in the private housing market, including information on an individual's rights under the Fair Housing Act; and

(iii) Money management; and

(8) *Other services*—any other services and resources, including case management, reasonable accommodations for individuals with disabilities, that the HA may determine to be appropriate in assisting FSS families to achieve economic independence and self-sufficiency.

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

Very low-income family. See definitions in 24 CFR 813.102 and 913.102.

Welfare assistance means income assistance from Federal or State welfare programs, and includes assistance provided under the Aid to Families with Dependent Children (AFDC) Program, Supplemental Security Income (SSI) that is subject to an income eligibility test; Medicaid, food stamps, general assistance, or other assistance provided under a Federal or State program directed to meeting general living expenses, such as food, health care, child care, but does not include assistance solely directed to meeting housing expenses, and does not include transitional welfare assistance provided to JOBS participants.

§ 984.104 Basic requirements of the FSS program.

An FSS program established under this part shall be operated in conformity with:

(a) The regulations of this part, and for a Section 8 FSS program, the rental certificate and rental voucher regulations, codified in 24 CFR parts 882, 887, and 982 respectively, and for a public housing FSS program, the applicable public housing regulations, including the regulations in 24 CFR parts 913, 960, and 966;

(b) An Action Plan, as described in § 984.201, and provide comprehensive supportive services as defined in § 984.103; and

(c) An FSS program established under this part shall be operated in compliance with the nondiscrimination and equal opportunity requirements set forth in 24 CFR part 5, with the exception of Executive Orders 11246, 11625, 12432, and 12138.

§ 984.105 Minimum program size.

(a) *General.* Unless otherwise excepted from operation of an FSS program as provided in paragraph (c) of this section, or from operation of an FSS program of the minimum size as provided in paragraph (d) of this section, an HA shall operate an FSS program of the minimum size as determined in this section.

(1) *Determining minimum program size.* The minimum size of a FSS program:

(i) For a public housing FSS program, is equal to:

(A) The total number of public housing units reserved in FY 1993, and each subsequent FY; plus (if applicable)

(B) The number of public housing units reserved in FY 1991 and FY 1992 under the FSS incentive award competitions;

(ii) For a Section 8 FSS program, is equal to:

(A) The total number of rental certificates and rental vouchers reserved

in FY 1993, and each subsequent FY; plus (if applicable)

(B) The number of rental certificates and rental vouchers reserved under the combined FY 1991/1992 FSS incentive award competition.

(2) *Applicable units and certificates and vouchers.* In determining minimum program size, for a public housing FSS program, all new public housing rental units reserved will be counted and, for a Section 8 FSS program, all rental certificates and rental vouchers reserved will be counted, except those used to replace rental certificates or rental vouchers (renewals).

(b) *Maintaining minimum program size.* As the contracts of participation for FSS families are completed or terminated, replacement FSS families must be selected to maintain the minimum program size. A replacement family must be selected in accordance with the FSS family selection procedures set forth in § 984.203.

(c) *Exception to program operation.*

(1) Upon approval by HUD, an HA will not be required to establish and carry out a public housing or a Section 8 FSS program if the HA provides to HUD a certification, as defined in § 984.103, that the establishment and operation of such an FSS program is not feasible because of local circumstances, which may include, but are not limited to:

(i) Lack of accessible supportive services funding, including lack of the availability of programs under JTPA or JOBS;

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

(d) *Reduction in program size.* Upon approval by HUD, an HA may be permitted to operate a public housing or a Section 8 FSS program that is smaller than the minimum program size if the HA 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 accessible supportive services, including decrease in the availability of programs under JTPA or JOBS;

(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;

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

(e) *Review of certification records.*

HUD reserves the right to examine, during its management review of the HA, or at any time, the documentation and data that an HA relied on in certifying to the unfeasibility of its establishing and operating an FSS program, or of operating an FSS program of less than minimum program size.

Subpart B—Program Development and Approval Procedures

§ 984.201 Action Plan.

(a) *Requirement for Action Plan—(1) General.* To participate in the FSS program, an HA must have a HUD-approved Action Plan that complies with the requirements of this section.

(2) [Reserved]

(b) *Development of Action Plan.* The Action Plan shall be developed by the HA in consultation with the chief executive officer of the applicable unit of general local government, and the Program Coordinating Committee.

(c) *Initial submission and revisions—(1) Initial submission.* Unless the dates set forth in this paragraph (c) are extended by HUD for good cause, an HA that is establishing its first FSS program must submit an Action Plan to HUD for approval within 90 days of notification by HUD of approval of:

(i) The HA's application for incentive award units; or

(ii) If the HA did not apply for FSS incentive award units, other funding that establishes the obligation to operate an FSS program.

(2) *Revision.* Following initial approval of the Action Plan by HUD, no further approval of the Action Plan is required unless the HA proposes to make policy changes to the Action Plan, or changes are required by HUD. Any changes to the Action Plan must be submitted to, and approved by, HUD.

(d) *Contents of Plan.* The Action Plan shall describe the policies and procedures of the HA for operation of a local 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 program.* If applicable, the number of families, by program type, who are participating in Operation Bootstrap, Project Self-Sufficiency, or any other local self-sufficiency program who are expected to agree to execute an FSS contract of participation.

(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 HA's selection procedures ensure that families will be selected without regard to race, color, religion, sex, handicap, familial status, or national origin.

(5) *Incentives to encourage participation—a description of the incentives that the HA intends to offer eligible families to encourage their participation in the FSS program (incentives plan).* The incentives plan shall provide for the establishment of the FSS account in accordance with the requirements set forth in § 984.305, and other incentives, if any, designed by the HA. The incentives plan shall be part of the Action Plan.

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

(ii) The HA's actions to be taken to assure that both minority and non-minority groups are informed about the FSS program, and how the HA will make this information known.

(7) *FSS activities and supportive services.* A description of the activities and supportive services to be provided by both public and private resources to 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 deliver 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 the HA's policies concerning: terminating participation in the FSS program, withholding of supportive services, or terminating or withholding Section 8 assistance, on the basis of a family's

failure to comply with the requirements of the contract of participation; 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 the JOBS Program; the programs provided under the JTPA; and any other relevant employment, child care, transportation, training, and education programs (e.g., Job Training for the Homeless Demonstration program) in the applicable 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 HA's proposed FSS program.

(e) *Eligibility of a combined program.* An HA that wishes to operate a joint FSS program with other HAs may combine its resources with one or more HAs to deliver supportive services under a joint Action Plan that will provide for the establishment and operation of a combined FSS program that meets the requirements of this part.

(f) *Single action plan.* HAs implementing both a Section 8 FSS program and a public or Indian housing FSS program may submit one Action Plan.

§ 984.202 Program Coordinating Committee (PCC).

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

(b) *Membership—(1) Required membership.* The PCC must: (i) For a public housing FSS program, consist of representatives of the PHA, and the residents of public housing. The public

housing resident representatives shall be solicited from one or more of the following groups:

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

(B) If the PHA will be transferring FSS participants to vacant units 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;

(C) Any other public housing resident group, which the PHA believes is interested in the FSS program, and would contribute to the development and implementation of the FSS program; and

(ii) For a Section 8 FSS program, consist of representatives of the HA, and of residents assisted under the section 8 rental certificate or rental voucher program or under HUD's public or Indian housing programs.

(2) *Recommended membership.* Membership on the PCC also may include representatives of the unit of general local government served by the HA, local agencies (if any) responsible for carrying out JOBS training programs, or programs under the JTPA, and other organizations, such as other State, local or tribal welfare and employment agencies, public and private education or training institutions, child care providers, nonprofit service providers, private business, and any other public and private service providers with resources to assist the FSS program.

(c) *Alternative committee.* The HA may, in consultation with the chief executive officer of the unit of general local government served by the HA, 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 also includes 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.* An HA has the option of giving a selection preference for up to 50 percent of its public housing FSS slots and of its Section 8 FSS slots respectively to eligible families, as defined in § 984.103, 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 HA 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. An HA 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 50 percent of the total number of FSS slots for each of its FSS programs, 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) *FSS selection without preference.* For those FSS slots for which the HA chooses not to exercise the selection preference provided in paragraph (a) of this section, 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 HA must be described in the HA's Action Plan.

(c) *Motivation as a selection factor—*
(1) *General.* An HA may screen families for interest, and motivation to participate in the FSS program, provided that the factors utilized by the HA 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 contract of participation. However, any tasks assigned shall be those which may be readily accomplishable by the family, based on the family members' educational level, and disabilities, if any. Reasonable accommodations must be made for individuals with mobility, manual, sensory, speech impairments, mental or developmental disabilities.

(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 discriminatory practices or treatment toward individuals with disabilities or minority or non-minority groups.

§ 984.204 On-site facilities.

Each HA may, subject to the approval of HUD, make available and utilize common areas or unoccupied dwelling units in public housing projects (or for IHAs, in Indian housing projects) to provide supportive services under an FSS program, including a Section 8 FSS program.

Subpart C—Program Operation

§ 984.301 Program implementation.

(a) *Program implementation deadline—*(1) *Program start-up.* Except as provided in paragraph (a)(3) of this section, operation of a local FSS program must begin within 12 months of the earlier of notification to the HA of HUD's approval of the incentive award units or of other funding that establishes the obligation to operate an FSS program. Operation means that activities such as outreach, participant selection, and enrollment have begun. Full delivery of the supportive services to be provided to the total number of families required to be served under the program need not occur within 12 months, but must occur by the deadline set forth in paragraph (a)(2) of this section.

(2) *Full enrollment and delivery of service.* Except as provided in paragraph (a)(3) of this section, the HA must have completed enrollment of the total number of families required to be served under the FSS program (based on the minimum program size), and must have begun delivery of the supportive services within two years from the date of notification of approval of the application for new public housing units for a public housing FSS program or for new rental certificates or rental vouchers for a Section 8 FSS program.

(3) *Extension of program deadlines for good cause.* HUD may extend the deadline set forth in either paragraph (a)(1) or paragraph (a)(2) of this section if the HA requests an extension, and HUD determines that, despite best efforts on the part of the HA, the development of new public housing units will not occur within the deadlines set forth in this paragraph (a), the commitment by public or private resources to deliver supportive services has been withdrawn, the delivery of such services has been delayed, or other local circumstances warrant an extension of the deadlines set forth in this paragraph (a).

(b) *Program administration.* An HA may employ appropriate staff, including a service coordinator or program coordinator to administer its FSS program, and may contract with an appropriate organization to establish

and administer the FSS program, including the FSS account, as provided by § 984.305.

§ 984.302 Administrative fees.

(a) *Public housing FSS program.* The performance funding system (PFS), provided under section 9(a) of the 1937 Act, shall provide for the inclusion of reasonable and eligible administrative costs incurred by PHAs in carrying out the minimum program size of the public housing FSS programs. These costs are subject to appropriations by the Congress. However, a PHA may use other resources for this purpose.

(b) *Section 8 FSS program.* The administrative fees paid to HAs for HUD-approved costs associated with operation of an FSS program are established by the Congress and subject to appropriations.

§ 984.303 Contract of participation.

(a) *General.* Each family that is selected to participate in an FSS program must enter into a contract of participation with the HA that operates the FSS program in which the family will participate. The contract of participation shall be signed by the head of the FSS family.

(b) *Form and content of contract—*(1) *General.* The contract of participation, which incorporates the individual training and services plan(s), shall be in the form prescribed by HUD, and shall set forth the principal terms and conditions governing participation in the FSS program, including the rights and responsibilities of the FSS family and of the HA, the services to be provided to, and the activities to be completed by, the head of the FSS family and each adult member of the family who elects to participate in the program.

(2) *Interim goals.* The individual training and services plan, incorporated in the contract of participation, shall establish specific interim and final goals by which the HA, and the family, may measure the family's progress toward fulfilling its obligations under the contract of participation, and becoming self-sufficient. For each participating FSS family that is a recipient of welfare assistance, the HA must establish as an interim goal that the family become independent from welfare assistance and remain independent from welfare assistance at least one year before the expiration of the term of the contract of participation, including any extension thereof.

(3) *Compliance with lease terms.* The contract of participation shall provide that one of the obligations of the FSS family is to comply with the terms and

conditions of the respective public housing lease or Section 8-assisted lease.

(4) *Employment obligation*—(i) *Head of family's obligation.* The head of the FSS family shall be required under the contract of participation to seek and maintain suitable employment during the term of the contract and any extension thereof. Although other members of the FSS family may seek and maintain employment during the term of the contract, only the head of the FSS family is required to seek and maintain suitable employment.

(ii) *Seek employment.* The obligation to seek employment means that the head of the FSS family has applied for employment, attended job interviews, and has otherwise followed through on employment opportunities.

(iii) *Determination of suitable employment.* A determination of suitable employment shall be made by the HA based on the skills, education, and job training of the individual that has been designated the head of the FSS family, and based on the available job opportunities within the jurisdiction served by the HA.

(5) *Consequences of noncompliance with the contract.* The contract of participation shall specify that if the FSS family fails to comply, without good cause, with the terms and conditions of the contract of participation, which includes compliance with the public housing lease or the Section 8-assisted lease, the HA may:

- (i) Withhold the supportive services;
- (ii) Terminate the family's participation in the FSS program; or
- (iii) For the Section 8 FSS program, terminate or withhold the family's Section 8 assistance, except in the case where the only basis for noncompliance with the contract of participation is noncompliance with the lease, or failure to become independent from welfare assistance. However, failure to become independent from welfare assistance because of failure of the head of household to meet the employment obligation described in paragraph (a)(4) of this section, or failure of the FSS family to meet any other obligation under the contract of participation, except the interim goal concerning welfare assistance, is grounds for the HA to terminate or withhold Section 8 assistance.

(c) *Contract term.* The contract of participation shall provide that each FSS family will be required to fulfill those obligations to which the participating family has committed itself under the contract of participation

no later than 5 years after the effective date of the contract.

(d) *Contract extension.* The HA shall, in writing, extend the term of the contract of participation for a period not to exceed two years for any FSS family that requests, in writing, an extension of the contract, provided that the HA 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. As used in this paragraph (d), "good cause" means circumstances beyond the control of the FSS family, as determined by the HA, such as a serious illness or involuntary loss of employment. Extension of the contract of participation will entitle the FSS family to continue to have amounts credited to the family's FSS account in accordance with § 984.304.

(e) *Unavailability of supportive services*—(1) *Good faith effort to replace unavailable services.* If a social service agency fails to deliver the supportive services pledged under an FSS family member's individual training and services plan, the HA shall make a good faith effort to obtain these services from another agency.

(2) *Assessment of necessity of services.* If the HA is unable to obtain the services from another agency, the HA 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 HA 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 HA shall revise the individual training and services plan to delete these services, and modify the contract of participation 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 (which may be the case if the affected family member is the head of the FSS family), the HA shall declare the contract of participation null and void. Nullification of the contract of participation on the basis of unavailability of supportive services shall not be grounds for termination of Section 8 assistance.

(f) *Modification.* The HA and the FSS family may mutually agree to modify the contract of participation. The contract of participation may be

modified in writing with respect to the individual training and services plans, the contract term in accordance with paragraph (d) of this section, and designation of the head of the family.

(g) *Completion of the contract.* The contract of participation is considered to be completed, and a family's participation in the FSS program is considered to be concluded when one of the following occurs:

(1) The FSS family has fulfilled all of its obligations under the contract of participation on or before the expiration of the contract term, including any extension thereof; or

(2) 30 percent of the monthly adjusted income of the FSS family equals or exceeds the published existing housing fair market rent for the size of the unit for which the FSS family qualifies based on the HA's occupancy standards. The contract of participation will be considered completed and the family's participation in the FSS program concluded on this basis even though the contract term, including any extension thereof, has not expired, and the family members who have individual training and services plans have not completed all the activities set forth in their plans.

(h) *Termination of the contract.* The contract of participation is automatically terminated if the family's Section 8 assistance is terminated in accordance with HUD requirements. The contract of participation 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 contract of participation without good cause, including in the Section 8 FSS program the failure to comply with the contract requirements because the family has moved outside the jurisdiction of the HA;
- (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 Section 8 housing and supportive service assistance.* The HA may terminate or withhold Section 8 housing assistance, the supportive services, and the FSS family's participation in the FSS program, if the HA determines, in accordance with the hearing procedures provided in 24 CFR 982.555 that the FSS family has failed to comply without good cause with the requirements of the contract of participation as provided in paragraph (b)(5) of this section.

(j) *Transitional supportive service assistance.* An HA may continue to offer to a former FSS family who has completed its contract of participation and whose head of family is employed, appropriate FSS supportive services in becoming self-sufficient (if the family still resides in public housing, or Section 8-assisted housing), or in remaining self-sufficient (if the family no longer resides in public, Section 8-assisted housing, or other assisted housing).

§ 984.304 Total tenant payment, family rent, and increases in family income.

(a)(1) *Public housing FSS program: Calculation of total tenant payment.* Total tenant payment for a family participating in the public housing FSS program is determined in accordance with the regulations set forth in 24 CFR part 913.

(2) *Section 8 FSS program: Calculation of family rent.* For the rental certificate program, total tenant payment for a family participating in the Section 8 FSS program and the amount of the housing assistance payment is determined in accordance with the regulations set forth in 24 CFR parts 813 and 882. For the rental voucher program, the housing assistance payment for a family participating in the FSS program is determined in accordance with the regulations set forth in 24 CFR part 887.

(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 a resource 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, unless the income of the FSS family equals or exceeds 80 percent of the median income of the area (as determined by HUD, with adjustments for smaller and larger families).

§ 984.305 FSS account.

(a) *Establishment of FSS account—(1) General.* The HA shall deposit the FSS account funds of all families participating in the HA's FSS program into a single depository account. The HA must deposit the FSS account funds in one or more of the HUD-approved investments.

(2) *Accounting for FSS account funds—(i) Accounting records.* The total of the combined FSS account funds will be supported in the HA accounting records by a subsidiary ledger showing the balance applicable to each FSS family. During the term of the contract of participation, the HA shall credit

periodically, but not less than annually, to each family's FSS account, the amount of the FSS credit determined in accordance with paragraph (b) of this section.

(ii) *Proration of investment income.* The investment income for funds in the FSS account will be prorated and credited to each family's FSS account based on the balance in each family's FSS account at the end of the period for which the investment income is credited.

(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 reported by the owner to the HA in the Section 8 FSS program) before prorating the interest income. If the FSS family has fraudulently under-reported income, the amount credited to the FSS account will be based on the income amounts originally reported by the FSS family.

(3) *Reporting on FSS account.* Each HA will be required to make a report, at least once annually, to each FSS family on the status of the family's FSS account. At a minimum, the report 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 account, during the reporting period;

(iii) Any deductions made from the account for amounts due the HA before interest is distributed;

(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) Computation of amount.* For purposes of determining the FSS credit, "family rent" is: for the public housing program, the total tenant payment as defined in 24 CFR part 913; for the rental certificate program, the total tenant payment as defined in 24 CFR part 813; and for the rental voucher program, 30 percent of adjusted monthly income. The FSS credit shall be computed as follows:

(i) For FSS families who are very low-income families, the FSS credit shall be the amount which is the lesser of:

(A) Thirty percent of current monthly adjusted income less the family rent, which is obtained by disregarding any increases in earned income (as defined in § 984.103) from the effective date of the contract of participation; or

(B) The current family rent less the family rent at the time of the effective date of the contract of participation.

(ii) For FSS families who are low-income families but not very low-income families, the FSS credit shall be the amount determined according to paragraph (b)(1)(i) of this section, but which shall not exceed the amount computed for 50 percent of median income.

(2) *Ineligibility for FSS credit.* FSS families who are not low-income families shall not be entitled to any FSS credit.

(3) *Cessation of FSS credit.* The HA shall not make any additional credits to the FSS family's FSS account when the FSS family has completed the contract of participation, as defined in § 984.303(g), or when the contract of participation is terminated or otherwise nullified.

(c) *Disbursement of FSS account funds—(1) General.* The amount in an FSS account, in excess of any amount owed to the HA by the FSS family, as provided in paragraph (a)(3)(iii) of this section, shall be paid to the head of the FSS family when the contract of participation has been completed as provided in § 984.303(g), and if, at the time of contract completion, the head of the FSS family submits to the HA 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 HA determines that the FSS family has fulfilled its obligations under the contract of participation before the expiration of the contract term, and the head of the 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 account, in excess of any amount owed to the HA by the FSS family, as provided in paragraph (a)(3)(iii) of this section, shall be paid to the head of the FSS family.

(ii) If the HA determines that the FSS family has fulfilled certain interim goals established in the contract of participation and needs a portion of the FSS account funds for purposes consistent with the contract of participation, such as completion of higher education (i.e., college, graduate school), or job training, or to meet start-up expenses involved in creation of a small business, the HA may, at the HA's sole option, disburse a portion of the funds from the family's FSS account to assist the family meet those expenses.

(3) *Verification of family certification.* Before disbursement of the FSS account funds to the family, the HA 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 contacting welfare agencies.

(d) *Succession to FSS account.* If the head of the 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 HA, shall have the right to designate another family member to receive the funds in accordance with paragraph (c) (1) or (2) of this section.

(e) *Use of FSS account funds for homeownership.* A public housing FSS family may use its FSS account funds for the purchase of a home, including the purchase of a home under one of HUD's homeownership programs, or other Federal, State, or local homeownership programs unless such use is prohibited by the statute or regulations governing the particular homeownership program.

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

(i) The contract of participation is terminated, as provided in § 984.303(e) or § 984.303(h); or

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

(2) *Treatment of forfeited FSS account funds—*(i) *Public housing FSS program.* FSS account funds forfeited by the FSS family will be credited to the PHA's operating reserves and counted as other income in the calculation of the PFS operating subsidy eligibility for the next budget year.

(ii) *Section 8 FSS program.* FSS account funds forfeited by the FSS family will be treated as program receipts for payment of program expenses under the HA budget for the applicable Section 8 program, and shall be used in accordance with HUD requirements governing the use of program receipts.

§ 984.306 Section 8 residency and portability requirements.

(a) *Relocating FSS family.* For purposes of this section, the term "relocating FSS family" refers to an FSS

family that moves from the jurisdiction of an HA at least 12 months after signing its contract of participation.

(b) *Initial occupancy.* A family participating in the Section 8 FSS program must lease an assisted unit, for a minimum period of 12 months after the effective date of the contract of participation, in the jurisdiction of the HA which selected the family for the FSS program. Thereafter, the FSS family may move outside the jurisdiction of the initial HA consistent with the regulations of 24 CFR part 982.

(c) *Portability: relocation but continued participation in the FSS program of the initial HA—*(1) *General.*

A relocating FSS family may continue in the FSS program of the initial HA if the family demonstrates to the satisfaction of the initial HA that, notwithstanding the move, the relocating FSS family will be able to fulfill its responsibilities under the initial or modified contract of participation at its new place of residence. (For example, the FSS family may be able to commute to the supportive services specified in the contract of participation, or the family may move to obtain employment as specified in the contract.)

(2) *Single contract of participation.* If the relocating family remains in the FSS program of the initial HA, there will only be one contract of participation, which shall be the contract executed by the initial HA.

(d) *Portability: relocation and participation in the FSS program of the receiving HA—*(1) *General.* A relocating FSS family may participate in the FSS program of the receiving HA, if the receiving HA allows the family to participate in its program. An HA is not obligated to enroll a relocating FSS family in its FSS program.

(2) *Two contracts of participation.* If the receiving HA allows the relocating FSS family to participate in its FSS program, the receiving HA will enter into a new contract of participation with the FSS family for the term on the remaining contract with the initial HA. The initial HA will terminate its contract of participation with the family.

(e) *Single FSS account.* Regardless of whether the relocating FSS family remains in the FSS program of the initial HA or is enrolled in the FSS program of the receiving HA, there will

be a single FSS account which will be maintained by the initial HA. When an FSS family will be absorbed by the receiving HA, the initial HA will transfer the family's FSS account to the receiving HA.

(f) *FSS program termination; loss of FSS account; and termination of Section 8 assistance.* (1) If an FSS family that relocates to another jurisdiction, as provided under this section, is unable to fulfill its obligations under the contract of participation, or any modifications thereto, the HA, which is party to the contract of participation, may:

(i) Terminate the FSS family from the FSS program and the family's FSS account will be forfeited; and

(ii) Terminate the FSS family's Section 8 assistance on the ground that the family failed to meet its obligations under the contract of participation.

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

Subpart D—Reporting

§ 984.401 Reporting.

Each HA that carries out an FSS program under this part 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;

(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 HA 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.

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Kevin E. Marchman,
Acting Assistant Secretary for Public and Indian Housing.

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