



**DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT**

**24 CFR Parts 887 and 984**

**[Docket No. FR-6114-P-01]**

**RIN 2577-AD09**

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

**AGENCY:** Office of the Assistant Secretary for Public and Indian Housing, HUD, and Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

**ACTION:** Proposed rule.

**SUMMARY:** The Economic Growth, Regulatory Relief, and Consumer Protection Act (“the Economic Growth Act”) was signed into law on May 24, 2018, amending HUD’s Family Self-Sufficiency (FSS) program. Section 306 of the Act made multiple amendments to the FSS program, including changes to the size calculation for the FSS program, expanding the definition of eligible family to include tenants of certain privately owned multifamily projects subsidized with Project-Based Rental Assistance (PBRA), updating the FSS Contract of Participation (CoP), reducing burdens on Public Housing Agencies (PHAs) and multifamily assisted housing owners, clarifying escrow account requirements, and updating the program coordinator and action plan requirements. This proposed rule also includes additional changes to reduce burden and streamline the program for PHAs, owners, and eligible families.

**DATES:** Comment due date: **INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER**.

**ADDRESSES:** Interested persons are invited to submit comments regarding this proposed rule. All communications must refer to the above docket number and title. There are two methods for submitting public comments.

**1. Submission of Comments by Mail.** Comments may be submitted by mail to the Regulations Division, Office of General Counsel, U.S. Department of Housing and Urban Development, 451 7th Street, SW, Room 10276, Washington, DC 20410–0500.

**2. Electronic Submission of Comments.** Interested persons may submit comments electronically through the Federal eRulemaking Portal at [www.regulations.gov](http://www.regulations.gov). HUD strongly encourages commenters to submit comments electronically. Electronic submission of comments allows the commenter maximum time to prepare and submit a comment, ensures timely receipt by HUD, and enables HUD to make comments immediately available to the public. Comments submitted electronically through the [www.regulations.gov](http://www.regulations.gov) website can be viewed by other commenters and interested members of the public. Commenters should follow the instructions provided on that site to submit comments electronically.

*Note:* To receive consideration as public comments, comments must be submitted through one of the two methods specified above. All submissions must refer to the docket number and title of the rule.

**No Facsimile Comments.** Facsimile (FAX) comments are not acceptable.

**Public Inspection of Public Comments.** All properly submitted comments and communications submitted to HUD will be available for public inspection and copying between 8 a.m. and 5 p.m., weekdays, at the above address. Due to security measures at the HUD Headquarters building, an advance appointment to review the public comments must be scheduled by calling the Regulations Division at 202–708–3055 (this is not a toll-free number). Individuals with speech or hearing impairments may access this number via TTY by calling the toll-free Federal Relay Service at 800–877–8339. Copies of all comments submitted are available for inspection and downloading at [www.regulations.gov](http://www.regulations.gov).

**FOR FURTHER INFORMATION CONTACT:** For Public Housing FSS contact Anice S. Chenault, Office of Public and Indian Housing, U.S. Department of Housing and Urban Development, 451 7th Street, SW, Room 4120, Washington, DC 20410; telephone number 502-618-6163 (this is not a toll-free number); and for Multifamily FSS contact Carissa L. Janis, Office of Multifamily Housing Programs, U.S. Department of Housing and Urban Development, 451 7th Street, SW, Room 6152, Washington, DC 20410; telephone number 202-402-2487 (this is not a toll-free number). The public is encouraged to email questions to [FSS@hud.gov](mailto:FSS@hud.gov). Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at 800-877-8339.

**SUPPLEMENTARY INFORMATION:**

**I. Background**

In 1990, section 554 of the Cranston Gonzalez National Affordable Housing Act (Pub. L. 101-625, approved November 28, 1990) amended the United States Housing Act of 1937 by adding a new Section 23 (42 U.S.C. 1437u) to create the FSS program. The FSS program requires that PHAs) and Indian Housing Authorities (IHAs)<sup>1</sup> use Public and Indian Housing assistance and Section 8 Housing assistance rental voucher programs, together with public and private resources, to provide supportive services, case management, and an escrow account to participating families, with the intent to help families achieve economic independence and self-

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

sufficiency. The goal of the program is to enable participating low-income families to increase their earned income and reduce their dependency on welfare assistance and rental subsidies. FSS program coordinators create plans with participating families to achieve goals and connect them with services that will assist the family in making progress toward economic security. As the family's earnings increase, the difference between the original rent and the rent that increases due to increased earned income is credited to an interest-bearing escrow account on behalf of the family. Families that meet program requirements and successfully complete the FSS program receive their accrued FSS escrow funds, plus interest. No formal restrictions exist on the use of the escrowed funds, but many families use the funds to help with the purchase of a home, debt reduction, post-secondary education, or to start a new business.

In September 1991, HUD initially implemented the FSS program by notice<sup>2</sup> and the following year made several additional changes to the FSS program to implement amendments made by the Housing and Community Development Act of 1992 (Pub. L. 102-550), approved October 28, 1992 (the 1992 Act). (See section 106 of the 1992 Act.) On May 27, 1993, HUD issued an interim final rule implementing the FSS program in its Indian Housing program at 24 CFR part 905, Public Housing program regulations at 24 CFR part 962, and Section 8 program regulations at 24 CFR part 984. 56 FR 49588. On March 5, 1996, HUD streamlined the FSS program by consolidating the Public Housing and the Section 8 FSS regulations and by eliminating redundant or otherwise unnecessary provisions into 24 CFR part 984. 61 FR 8814.

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<sup>2</sup> "Notice of FSS Program Guidelines" September 30, 1991 at 56 FR 49592.

On October 26, 1996, the Native American Housing Assistance and Self-Determination Act of 1996 (NAHASDA) (25 U.S.C. 4101 et seq.) amended the United States Housing Act of 1937 by removing the language applying the FSS program to IHAs. HUD subsequently removed the FSS regulations applicable to the Indian Housing program. 63 FR 12334. Lastly, on March 29, 2000, HUD implemented changes to the FSS program made by the Quality Housing and Work Responsibility Act of 1998 (title V of the FY 1999 HUD Appropriations Act, Public Law 105-276, 112 Stat. 2518, approved October 21, 1998), which amended the United States Housing Act of 1937 (42 U.S.C. 1437, *et seq.*) by changing the definition of welfare assistance, the minimum program size, action plan, and portability. 65 FR 16691.

More recently, the 2015 Consolidated Appropriations Act (Pub. L. No. 113-235), approved December 26, 2014, authorized a demonstration of the FSS program for multifamily assisted housing owners. In August 2016, HUD provided the requirements for multifamily assisted housing owners seeking to implement a voluntary FSS program by notice. See Family Self-Sufficiency Program in Multifamily, Housing Notice: H-2016-08, August 26, 2016. The notice incorporated many of the definitions and requirements that are found in 24 CFR part 984 and applied them to the voluntary FSS program for multifamily owners.

On May 24, 2018, the Economic Growth, Regulatory Relief, and Consumer Protection Act (the “Economic Growth Act”) was signed into law (Pub. L. 115-174), and section 306 of title III, Protection for Veterans, Consumers and Homeowners, amended the United States Housing Act of 1937 (42 U.S.C. 1437, *et seq.*), FSS program. The changes include updating the mandatory size of a PHA’s required FSS program and available exceptions; updating definition of eligible families; allowing family members other than the Head of Household to sign the Contract of Participation (CoP) and to meet the employment obligation; amending the process

for providing supportive services; expanding the time period for participating in the FSS program; amending the requirements pertaining to the management of the escrow account, including the requirements for forfeiture of the escrow funds; amending the Program Coordinating Committee (PCC) functions; and, establishing new reporting requirements. Also, the Economic Growth Act provided new provisions for private owners of multifamily assisted housing to set up their own FSS program or enter into a Cooperative Agreement with another private owner or PHA to offer an FSS program to the owner's assisted residents.

## **II. This Proposed Rule—Summary of Changes**

This proposed rule implements changes and streamlines the FSS program, removes any reference to the certificate program and updates definitions, as required by the Economic Growth Act. HUD makes changes to the existing FSS regulations at 24 CFR part 984 and adds a new 24 CFR part 887 to address the FSS program for owners of multifamily assisted housing. HUD also updates references to PHAs and owners and clarifies the provisions that would apply to both when operating an FSS program. Owners would be subject to the requirements only if they are operating a voluntary program pursuant to cross-references in 24 CFR part 887. The following describes the significant changes to the regulation:

### *The Public Housing FSS program*

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

The purpose and applicability in § 984.101 has minor technical changes. The scope of the regulations, paragraph (c), is amended by removing subsections (1), (2), (3)(i), and (3)(ii) and by adding a generic reference to § 984.105, which provides that PHAs must continue an FSS program if they were required to have one as of May 24, 2018. Therefore, the citation to specific fiscal year (FY) funding is removed and replaced by a general requirement that PHAs receiving

funding under section 8(o) and section 9 are required to comply with § 984.105. A non-participation paragraph is also added to this section, to clarify that a family's rental assistance shall not be delayed or terminated by reason of a family electing not to participate in an FSS program.

#### § 984.102 Program objectives.

HUD makes a minor amendment to this section, including a change clarifying that HUD will evaluate the performance of a local FSS program using a scoring system that measures graduation from the program, increased earned income, program participation, and similar factors, as provided by HUD through a Federal Register notice.

#### § 984.103 Definitions.

The proposed rule streamlines and adds clarity to the definition of eligible families. The term “eligible families” is defined under the proposed rule as current Public Housing residents and families receiving tenant-based or project-based assistance under section 8(o). This means that participants in the Housing Choice Voucher (HCV) homeownership program (under section 8(y) of the U.S. Housing Act of 1937) are not eligible to participate in the FSS program. However, participants in the Project Based Voucher (PBV) program (under section 8(o)(13) of the U.S. Housing Act of 1937) are eligible to participate. The proposed regulations include definitions for “owner” and “multifamily assisted housing” to clarify the newly expanded applicability of regulations for owners of multifamily assisted housing (also known as Project-Based Rental Assistance (PBRA)) under section 8 of the 1937 Act.

Similarly, the following terms have been added to provide clarity to the process of calculating an FSS family's escrow: “baseline annual earned income”; “baseline monthly rent”; “current annual earned income”; and “current monthly rent.” In the definition of baseline annual

earned income, the proposed rule instructs PHAs and owners to add back any disregard of earned income associated with self-sufficiency initiatives that may be applicable in the determination of family income. This will help ensure that escrow amounts are the result of increases in earned income while the family is in the FSS program (as opposed to credit for progress made before entering the FSS program). Additionally, the definitions of “baseline monthly rent” and “current monthly rent” take into account the use of flat rents and ceiling rents for Public Housing families. This ensures that families paying a flat rent or ceiling rent that is less than their income-based rent will escrow only up to the amount of rent that they are actually paying (flat/ceiling rent). A definition for the term “FSS family in good standing” has been added because this term is used in § 984.305(c)(1) and (f)(2) of the proposed rule.

Section 306 of the Economic Growth Act changes the requirement that a PHA directly deliver supportive services, to requiring that a PHA or owner must only coordinate the availability of supportive services but not directly deliver. Also, section 306 makes slight changes to the list of supportive services that may be coordinated through the FSS program. The proposed rule revises the definition of supportive services to conform to these statutory changes.

The following terms have been revised to conform to changes described later in this preamble: “FSS family,” “FSS slots,” “head of the FSS family,” and “Individual Training and Services Plan” (ITSP). In addition, the following terms have been removed because they refer to obsolete programs that are no longer referenced in the regulation: Job Opportunities and Basic Skills Training (JOBS) and Jobs Training and Partnership Act (JTPA) programs. The Economic Growth Act changed the term of the FSS contract so an FSS family will be required to fulfill their obligations under the CoP no later than 5 years after the first recertification of income after the execution date of the contract. HUD is revising the definition of the effective date of the CoP



from the first day of the month following the month in which the parties executed the contract to the date the parties execute (sign) the contract.

Question 1: HUD requests feedback on how the proposed rule defines the effective date of the CoP. Specifically, are there rent or other implications which would cause the proposed definition to be an issue?

§ 984.104 Basic requirements of the FSS program.

The proposed rule revises § 984.104 to add reference to the regulatory citations for the program.

§ 984.105 Minimum program size.

Some PHAs are statutorily required to operate an FSS program as a result of accepting increased funding for vouchers and Public Housing between the inception of the FSS program in 1990 and the Quality Housing and Work Responsibility Act in 1998. Current regulation addresses the minimum program size separately for the Public Housing FSS and the Section 8 FSS programs; however, FSS funding streams have been combined since the Consolidated Appropriations Act, 2014, Public Law No. 113-76, 128 Stat. 5, enacted January 17, 2014. This unification of the FSS program is further reflected in section 306 of the Economic Growth Act. The proposed rule revises the provisions concerning the determination of the minimum program size to conform to the unified FSS program. Specifically, the proposed rule clarifies that when determining the minimum program size (i.e., the minimum number of families that a PHA must serve in its FSS program), the relevant figure is the total number of Public Housing units plus the total number of Section 8 units. The provisions concerning how to calculate the reduction in the total number of Public Housing units and Section 8 units over time, as used to determine the minimum FSS program size, remain the same. Therefore, the proposed rule replaces the

complex formula for determining a PHA's program size with the language from the statute indicating that a PHA's program size must equal the total number of families required to be served as of May 24, 2018, as a starting point.

PHAs should continue to use the formula that HUD issued in its final rule on March 5, 1996, 61 FR 8815, consistent with the statutory requirement that as of October 1, 1992, the Secretary shall require PHAs that administer assistance under subsection (b) or (c) of 42 U.S.C. 1437f or makes available new public housing dwelling units, to carry out a local FSS program.

The proposed rule maintains reference to the reduction of the minimum program size in § 984.105(b)(2). Specifically, the proposed rule revises that paragraph to allow for a reduction of the minimum program size by one slot for each family that graduates from the FSS program, from either rental assistance program (Public Housing or Section 8) by fulfilling its FSS CoP on or after October 21, 1998. This change conforms to section 306 and to HUD's implementation of FSS alternative requirements in the Waivers and Alternative Requirements for the FSS Program Federal Register Notice (79 FR 78100, December 29, 2014).

The proposed rule also conforms to the list of local circumstances that make it unfeasible for a PHA to operate an FSS program and for which the PHA may get HUD approval for an exception to program operation or an exception to operate a smaller program. HUD has taken this opportunity to change the duration of any HUD-approved exception from 3three years to five years. HUD proposes that an increase of HUD-approved exceptions to five years is a more reasonable timeframe and provides for PHAs at the end of such period, to restart the exception approval process (if seeking to continue the exception). Additionally, if circumstances change within those five years, PHAs are not required to carry through the exception for the full five years.

Question 2: HUD welcomes feedback regarding this change. Specifically, do commenters agree that five years is a more reasonable duration for a HUD-approved exception? Or is there another timeframe that would more accurately balance changes in circumstances and the PHA's administrative responsibilities at the end of the exception?

§ 984.106 Cooperative agreements.

Section 306 of the Economic Growth Act provides that a PHA may enter into a Cooperative Agreement with one or more owners of multifamily properties to voluntarily make an FSS program available to the owner's assisted tenants. The PHA would manage the service coordination for eligible families that are covered under the Cooperative Agreement. This new section would provide that in addition to complying with the rest of part 984, the PHA administering the FSS program must do so in accordance with the requirements in this section. Those requirements are as follows: (1) FSS program waiting lists must be open to all eligible families residing in the multifamily properties covered by the Cooperative Agreement; (2) escrow amounts must be managed by each owner, including calculating and tracking of the escrow must be done in accordance with § 984.305; (3) an owner's assisted families covered by the Cooperative Agreement may be part of the calculation of the FSS award under §§ 984.107 and 984.302; (4) FSS funds awarded to the PHA may be used by the PHA to serve an owner's assisted families covered by the Cooperative Agreement; and (5) the Cooperative Agreement must clearly specify the terms and conditions of such agreement.

Question 3: HUD specifically requests comments on whether this list is comprehensive or if other items should be required of PHAs and owners entering into a Cooperative Agreement.

§ 984.107 FSS Award Funds Formula.

Section 306 of the Economic Growth Act provides the Secretary the authority to award funds by formula and set forth new procedures and processes. This section incorporates the statutory language providing that the Secretary may establish a formula by which funds for administration of the FSS program are awarded and indicating any changes to such formula, as permitted by statute, are accomplished by notice in the Federal Register.

§ 984.201 Action Plan.

Technical revisions to the list of parties who should be consulted in developing an action plan and the contents of the plan are included in this section of the proposed rule, to conform with the slight changes under section 306 of the Economic Growth Act. Additionally, since all PHAs would have already submitted an FSS Action Plan, HUD has taken this opportunity to remove the reference to the initial submission of an FSS Action Plan for PHAs with mandatory programs. The section also indicates that owners operating a voluntary FSS program would be required to have an approved FSS Action Plan but distinguishes the level of consultation required of PHAs versus owners. This distinction, on FSS requirements for owners in 24 CFR part 887, is discussed further below.

§ 984.202 Program Coordinating Committee (PCC).

HUD takes this opportunity to revise the provisions concerning required PCC membership to streamline, simplify, and unify such provisions. Specifically, the proposed rule would continue to require representatives from the participating PHA to be members of the PCC and require an FSS Coordinator or Coordinators to be PCC members as well. Additionally, the proposed rule would require that at least one resident participant from each HUD-assisted program served by FSS is a member of the PCC. PHAs would no longer be required to formally

solicit such participants from the resident groups identified in the regulation. Rather, PHAs may seek such group's assistance, if needed, to identify such participants.

The provisions concerning recommended membership in § 984.202(b)(2) and alternative committees in § 984.202(c) have also been revised to conform to changes made in section 306 of the Economic Growth Act. Specifically, reference to the JOBS and JTPA programs have been replaced with reference to programs under the Workforce Innovation and Opportunity Act. In addition, at least one participant of each HUD-assisted program served by FSS must be consulted in determining whether to use an existing entity as the PCC.

#### § 984.302 FSS Funds.

This rule adds that a PHA or owner may use FSS funds for costs associated with families who are enrolled in an FSS program under this part, including through a Cooperative Agreement with an owner of multifamily assisted housing in accordance with § 984.106.

#### § 984.303 Contract of Participation.

The Economic Growth Act revises the requirement that the Head of Household (for rental assistance purposes) must be the person to execute the Contract of Participation (CoP). Instead, it allows any adult member of the FSS family to execute the CoP. The proposed rule revises paragraph (a) to incorporate this change and clarifies that an adult family member, as designated by the FSS family in consultation with the PHA or owner, is eligible to execute the contract.

Question 4: While HUD has carefully considered all areas of the regulation that are impacted by this change, and revised them accordingly, HUD requests comment on whether there are other places that such clarification should be included.

The proposed rule revises the amount of time a family must be independent from welfare assistance prior to expiration of the CoP, in § 984.303 (b)(2). Currently, one of the required

goals for a family is that it must be independent from welfare assistance for 12 months before the expiration of the FSS CoP. In this proposed rule, a family must be independent from welfare at the time of graduation from FSS but not independent for a specified time period prior to graduating from the FSS program. This change would ensure that an FSS family's successful graduation, and access to escrow funds, is not jeopardized if they do not meet the 12-month time period, if the family has worked successfully towards all the other goals. It also provides some administrative relief to PHAs and owners who would no longer have to ensure that families have met the 12-month time period. HUD welcomes feedback regarding this change. Specifically:

Question 5: Would commenters recommend giving PHAs the discretion to set a specified time period (up to a maximum)? Is 12 months a reasonable maximum? What are some of the benefits and challenges PHAs face with the current 12-month time period?

Question 6: How would requiring families to be independent from welfare for a specified time period link with Temporary Assistance for Needy Families (TANF) requirements? How would it enhance or obstruct such requirements?

Question X: Would removing the 12-month requirement decrease the incentive for participants to permanently stay off welfare?

HUD adds language in paragraph (b)(2) that the FSS family goals must comply with the parameters of the FSS terms and conditions as prescribed by HUD, and the PHA or owner may not modify or add additional required activities that must be completed by every participant. Specifically, HUD requires that the CoP represent an individualized training and service plan, and, thus, PHAs and owners should not require a certain number of hours, rate of pay, or other mandatory requirements that apply to all participants across the board.

Consistent with the change to paragraph (a), paragraph (b)(4) is changed to reflect that employment must be maintained by the head of the FSS family, not the Head of Household, consistent with the statutory change permitting participation in the FSS program by any adult member of the family. Also, as required by the Economic Growth Act, HUD is deleting § 984.303(b)(5)(iii), which currently indicates that the PHA could terminate or withhold the family's Section 8 assistance for non-compliance with the COP. Eliminating the ability of a PHA to terminate or withhold assistance is expected to incentivize greater participation in the FSS program. With respect to 984.303(d), HUD proposes to expand the definition of "good cause" for a contract extension in paragraph (d), to include the active pursuit of a goal that will further self-sufficiency, such as a college degree or credit repair program. Additionally, any extension of the contract must be made pursuant to a current or additional stated goal for the FSS family.

Question 7: HUD requests comments on whether this definition should be clarified to include additional circumstances, like serious illness or involuntary loss of employment, which are already causes for extension.

Paragraph (g) is amended to remove the provision that automatically completes the FSS contract when thirty percent (30%) of the family's adjusted monthly income equals or exceeds the Fair Market Rent (FMR). HUD believes that the thirty percent (30%) provision no longer aligns effectively with current HCV requirements and creates confusion among FSS coordinators and partners. Removal of this provision would allow FSS families to use the FSS program to its full potential.

Question 8: HUD requests comments on the removal of this automatic completion provision; and, whether there are circumstances where an FSS contract should be automatically completed.

The section has a new paragraph (k) that discusses the nullification of a CoP. Nullification would occur when the PHA or owner determines that services integral to an FSS family's advancement towards self-sufficiency are unavailable or when the head of the FSS family becomes permanently disabled and unable to work or dies 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. The new paragraph describes the management of the escrow funds in the case of nullification.

Question 9: HUD requests comments about the language added regarding the handling of escrow funds in the case of nullification.

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

The proposed rule revises the provision concerning increases in family income. Prior to the Economic Growth Act, an FSS family's increases in earned income during their participation in FSS could not be considered as income or a resource for eligibility for other benefits, or amount of benefits payable to the family, under any HUD program, unless the family income equaled or exceeded 80 percent of the area median income. The Economic Growth Act removes this last provision and allows an FSS family's increases in earned income during their participation in FSS to be excluded as income or a resource regardless of whether the family income equals or exceeds 80 percent of the area median income. Additionally, HUD streamlines this section by removing a reference to the calculation of rent for the rental certificate



participants because the certificate program is obsolete and adds the regulatory citations for calculation of rent for the PBV program.

§ 984.305 FSS account.

Section 984.305(a)(2)(i) of the current regulation requires that, during the term of the FSS contract, the PHA credits the escrow amount to each family's FSS account periodically but not less than annually. The proposed rule revises and clarifies the requirement by differentiating between "determining the FSS escrow amount" and "crediting that FSS escrow amount" to a family's FSS account. Under the proposed change, during the term of the CoP, the PHA must determine the monthly escrow credit amount at each reexamination of income occurring after the effective date of the CoP. That amount is then deposited (i.e., credited) every month into each family's FSS account. This change aligns the calculation of the FSS escrow amount with the timing of the family's reexamination of income and provides the ability to report real-time information on a family's FSS account. The requirement to provide an FSS escrow account report to the family, at least annually, has not changed; however, a family may inquire about their FSS escrow balance at any time.

Question 10: Is the proposed frequency of depositing escrow amounts to a family's FSS account reasonable? Should HUD consider another frequency, and why?

Question 11: Current regulations do not address whether escrow should be credited to a family's FSS account if the family does not pay rent on time. HUD requests comments on whether the family's FSS account should be credited for late payments. Please provide comments both on regulation and on how the regulation could be implemented, especially in the case of the voucher programs where rent is paid to landlords and not directly to the PHAs.

The proposed rule revises the provision concerning reduction of amounts due by the FSS family under paragraph (a)(2)(iii) of this section. Under current regulation, the balance on a family's FSS escrow account must be reduced before prorating the interest income, by amounts not paid by the family for rent, or any other amounts due by the family under the applicable housing program. Such amounts are also reduced from a family's FSS escrow balance at the time of final escrow disbursement. The proposed rule no longer requires that the balance on a family's escrow account be reduced by these amounts each time interest income is prorated. Instead, the total balance on a family's FSS escrow account (including interest accrued over the life of the escrow account) is reduced by such amounts only at the time of final escrow disbursement in accordance with § 984.305(c). HUD believes that the regulation appropriately addresses amounts due by the family by adjusting the family's FSS escrow balance only at the time of final escrow disbursement. This change also streamlines management of the FSS escrow account and provides administrative relief to FSS PHAs and owners.

HUD is proposing to address the requirements concerning updating income information prior to the execution of an FSS CoP. Current FSS regulations do not address this requirement; however, the FSS CoP (form HUD-52650) requires PHAs to conduct an income recertification if more than 120 days have passed between the effective date of the last income recertification and the effective date of the CoP. HUD believes this is best left to PHA/owner discretion and is adding language to § 984.305(b)(1) to explicitly afford PHAs and owners discretion to decide whether to conduct a new income recertification if more time than the period specified by the PHA or owner has passed between the effective date of the last income recertification and the effective date of the CoP.

Question 12: While HUD recognizes that owners would not have the same flexibility that PHAs have for this type of income recertification, HUD requests comments from the public as to whether this should be available to multifamily owners as it is for PHAs.

Pursuant to the Economic Growth Act, § 984.305(b) is revised to update the calculation of the escrow amount and to remove any language that does not conform with the Act. Specifically, the statute, and the proposed rule, removes any difference in the calculation of escrow between very low-income and low-income families. HUD has also taken the opportunity to further update and streamline the escrow calculation. The proposed rule no longer differentiates in how family rent is defined for the Public Housing and the HCV programs. Instead, the proposed rule adds a new set of definitions, as described in § 984.103 of this preamble, to provide further clarity to the process of calculating the escrow credit. The proposed rule changes the calculation of escrow to the lower of: (i) thirty (30) percent of one-twelfth (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 amount by which the family's rent has increased. This calculation ensures that the FSS escrow credit is limited to increases in the amount of rent paid by the family that is attributable to increases in earned income. In the first part of the calculation, one-twelfth is used to calculate the growth in monthly, instead of annual, earned income, and 30 percent is used because that's the percentage of adjusted income generally used to determine the family's monthly rent.

The second part of the calculation, which looks at increases in the family's rent, uses 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 families, the difference between the baseline monthly rent and the current gross rent (i.e., rent to owner plus any utility allowance). This ensures that families are not escrowing more than the current gross rent for the unit (i.e., rent to owner plus any utility allowance) or the payment standard (for HCV families). And, it more accurately applies HCV and PBV rent rules to the calculation of escrow.

To put it another way: if a family has no change in earned income, but rent does go up for whatever reason (flat rent is recalculated, a non-income-based rent increase kicks in, an income disregard ends, increase in non-earned income, decrease in deductions, etc.), the paragraph (i) calculation will be lower. Or, a family has a change in earned income, but rent does NOT go up (due to flat rent, ceiling rent, income disregard, or some other non-income-based rent model) then the paragraph (ii) calculation will be lower.

HUD will update the current FSS escrow calculation worksheet applicable to HCV and Public Housing families to conform with the regulatory changes and to provide further clarity. HUD has made available a copy of the revised worksheet with this proposed rule in Appendix A. To review and test the proposed Sample FSS Escrow Calculation Worksheet, please find on the HUD FSS webpage: [https://www.hud.gov/program\\_offices/public\\_indian\\_housing/programs/hcv/fss](https://www.hud.gov/program_offices/public_indian_housing/programs/hcv/fss). Please submit comments on the proposed worksheet using the same process as commenting on the Proposed Rule. The Housing office will be creating a similar calculation worksheet that reflects any differences in escrow calculation in the multifamily program.

Question 13: Does the streamlined escrow calculation, as reflected in the regulation and the revised escrow calculation form, effectively simplify the calculation of escrow? Are there elements of the calculation that should be done differently? This includes how to address alternatives to income-based rents and any other specific situations you may encounter at your

PHA. If so, why and how? For PBRA Owners – please comment on any sections of the escrow calculation worksheet that should be modified for PBRA FSS participants. Please submit proposed edits to the form if needed.

Section 984.305(b)(4) is also revised to address the impact on escrow for HCV families who are in the process of moving to a new unit, in accordance with HCV program requirements, and that are not under a lease during that time. Specifically, § 984.305(b)(4) is revised to clarify that escrow credits cease during the HCV family's search period if the family is not under a lease. Escrow credits resume once the family finds a unit and enters into a lease. HUD interprets the FSS statute as requiring the payment of rent by a family in calculating the amount of the family's escrow credit. Similarly, the FSS statute provides that an eligible entity may use funds it controls under section 8 for purposes of making the escrow deposit for participating families, if those funds are offset by the increase in the amount of rent paid by the family. Such an offset would not be possible if the family is not under a lease and, consequently, not paying rent.

Section 984.305(f) currently provides that escrow funds are forfeited when the FSS contract is nullified under § 984.303(e), in cases where supportive services integral to the FSS family are unavailable to the FSS family. HUD proposes to change the policy and allow escrow funds to be disbursed to the FSS family in the case of a nullified contract. HUD believes that disbursement of escrow funds is justified because nullification of the CoP under these circumstances is at no fault of the family. Paragraph (c)(3) has been added to address this change and paragraph (f) has been modified to remove reference to forfeiture of escrow for nullified contracts.

Paragraph (f) is amended to conform with the statutory change under the Economic Growth Act, which provides that forfeited FSS escrow funds must be used for the benefit of FSS participants in good standing. The section provides the following list of activities for which forfeited escrow funds may be used: Support for FSS participants in good standing; training for program coordinators; and, other eligible activities as determined by the Secretary. A list of ineligible uses will be included.

Question 14: HUD requests comment on what definition should apply for “participants in good standing” and whether HUD should add items to the eligible activities list for which forfeited escrow funds may be used?

§ 984.306 HCV portability requirements.

HUD has taken this opportunity to change several provisions concerning FSS families that move with continued HCV assistance from the jurisdiction of one PHA to the jurisdiction of another PHA under portability. This section of the proposed rule seeks to carefully balance the complexities of a portability move, the shared FSS responsibilities between PHAs, and giving the FSS family that ports the best opportunity to successfully complete the FSS program. In addition to the changes described in the following paragraphs, editorial changes have been made to this section for clarity.

Under the current FSS regulation, a receiving PHA may, at its discretion, enroll into its FSS program an FSS family that ports into its jurisdiction. And, the initial PHA may determine that an FSS family that ports may continue to participate in the initial PHA’s FSS program, if the FSS family demonstrates to the satisfaction of the initial PHA that the family will be able to fulfill its responsibilities under the FSS contract. The proposed rule revises this framework, by instead requiring that the receiving PHA enroll into its FSS program FSS families that port,

unless the receiving PHA and the initial PHA agree to the family's continued participation in the initial PHA's FSS program. This change facilitates the continuity of services and case management to the family, it facilitates the family's move, and it prevents the potential loss of escrow funds. The change also recognizes that each PHA retains responsibility for certain FSS tasks after a portability move; therefore, receiving PHAs should have input on whether the family may continue to participate in the initial PHA's FSS program. Additionally, since this change is only applicable to families that were already enrolled in FSS prior to the portability move, HUD expects that this change will only impact a small number of families and PHAs.

The proposed rule addresses a scenario, not previously addressed in the regulation, in which a relocating FSS family moves to a receiving PHA that does not administer an FSS program. Under the proposed rule, continued FSS participation under this scenario is not possible. The proposed rule recognizes that there may be several options (for example, modification of the FSS contract to graduate the family, termination of the FSS contract and forfeiture of escrow, or locating a receiving PHA that administers an FSS program) available to the family and requires that the initial PHA discuss those options with the family for them to make a fully informed decision. Continued FSS participation under these circumstances is not possible because the receiving PHA would be responsible for certain FSS tasks after the move (even if the family continues to participate in the initial PHA's FSS program), and it would be burdensome to require a receiving PHA to manage such tasks for a small number of FSS families, especially in light of the administrative complexity of a portability move, which would be further complicated by the shared FSS responsibilities between PHAs.

Another situation not previously addressed in the regulation is also addressed in the proposed rule. That is, when a family who was not enrolled in FSS before the move requests

enrollment in the receiving PHA's FSS program. The proposed rule states that if the receiving PHA, at their discretion, absorbs the family into its HCV program, the receiving PHA may, also at their discretion, enroll the family into its FSS program. Receiving PHAs must consistently apply their existing FSS enrollment policies to families who have ported into their jurisdiction and request to enroll in the receiving PHA's FSS program. If the receiving PHA will bill the initial PHA for the housing assistance payments, the family cannot enroll in the receiving PHA's FSS program. This restriction recognizes, as mentioned previously, the administrative complexity of a portability move may be further complicated by the shared FSS responsibilities between PHAs, and the potential inefficiencies in the administration of the FSS contract.

Question 15: HUD requests comment on these proposed changes and additions to the FSS portability provisions and whether there are more effective ways to address the balance between the administrative complexity for the PHA and the family's desire to participate in FSS.

§ 984.401 Reporting.

The reporting section is amended to reflect the statutory requirement that reports include the number of families enrolled and graduated, and the number of established escrow accounts and positive escrow balances.

#### *Multifamily Housing FSS Program*

The Multifamily Housing FSS program's new subpart has eight sections that mirror the FSS program in 24 CFR part 984. The sections are listed as the following:

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

This section provides for the purpose, scope, applicability, and provision on tenant nonparticipation. Consistent with 24 CFR part 984, the purpose of the FSS program for multifamily owners is the same as for PHAs, to promote the development of local strategies to



coordinate the use of HUD assistance with public and private resources and to enable families eligible to receive HUD assistance to achieve economic independence and self-sufficiency. The new 24 CFR part 887 regulations provide the requirements that an owner must follow if the owner decides to implement an FSS program independently or by way of a Cooperative Agreement with a PHA or another owner. The new 24 CFR part 887 regulations are not applicable to PHAs that must follow 24 CFR part 984. Lastly, the section provides that tenant participation in an FSS program is voluntary, and an owner must not delay or terminate assistance under Section 8 for a family that elects not to participate in an FSS program.

#### § 887.103 Definitions.

The definitions for multifamily assisted housing are the same as those for PHAs in § 984.103, except that eligible families in 24 CFR part 887 means tenants of multifamily assisted housing.

#### § 887.105 Basic requirements for FSS program.

HUD implemented a voluntary FSS program for multifamily assisted housing through notice H 2016-08; the notice incorporated many of the provisions of 24 CFR part 984. For consistency among voluntary FSS programs, HUD proposes to make the FSS program requirements for multifamily assisted housing consistent with PHA requirements. These requirements will apply to both existing and new FSS programs. Specifically, an FSS program would be required to operate in conformity with the regulations of 24 CFR part 887 and other Section 8 regulations, as applicable. Those 24 CFR part 984 requirements are as follows: (1) coordination of supportive services as defined in § 984.103; (2) creation of an approved Action Plan, as described in § 984.201, before operating an FSS program; (3) handling FSS funds consistent with § 984.302; (4) entering into a CoP with eligible families, § 984.303; (5)

management of escrow accounts, as described in § 984.305; reporting information pursuant to § 984.401; and (6) operated in compliance with the nondiscrimination and equal opportunity requirements set forth in 24 CFR part 5. This section provides as follows: (1) owners are permitted to make available and utilize onsite facilities, as set forth in § 984.204; and (2) owners may employ appropriate staff, including a program coordinator to administer its FSS program, and may contract with an appropriate organization to establish and administer parts of the FSS program as provided by § 984.305.

The section requires consultation with a Program Coordinating Committee (PCC) in creating an Action Plan, but it does not require the creation of a PCC under § 984.202. The multifamily assisted housing regulation does not include minimum program size requirements at § 984.105 since FSS programs are voluntary; the formula award section applying only to mandatory programs at § 984.107; the family selection process at § 984.203; and the portability requirements at § 984.306. All other provisions are adopted either in part or in whole in its application to multifamily assisted housing.

Question 16: HUD specifically asks for comments on whether the exclusion or inclusion of certain requirements for the multifamily assisted housing regulation is appropriate. Specifically, HUD excluded the family selection process at § 984.203 because HUD does not believe those requirements would be necessary due to the size of most multifamily assisted housing FSS programs. Additionally, HUD excluded the creation of a PCC because it was not statutorily required for owners in the FSS statute, but HUD does believe that coordination with some of the members of a PCC is essential in developing an Action Plan and successfully implementing an FSS program.

§ 887.107 Cooperative agreements.

Section 306 of the Economic Growth Act provides that owners may enter into Cooperative Agreements with a PHA or other owner to offer an FSS program to their tenants. An owner entering into a Cooperative Agreement with a PHA must follow the requirements provided in § 984.106. An owner entering into a Cooperative Agreement with another owner must do so in accordance with the requirements in this section. The requirements are as follows: (1) waiting lists must be open to all eligible families residing in the properties covered by the Cooperative Agreement; (2) provide that escrow amounts are handled by each owner and the calculating and tracking of escrow must be done in accordance with § 984.305; and (3) the Cooperative Agreement must clearly specify the terms and conditions of such agreement.

Question 17: HUD specifically requests comments on whether this list is comprehensive or if other items should be required of owners entering into a Cooperative Agreement.

§ 887.109 Housing assistance and total tenant payment and increases in family income.

This section mirrors § 984.304 and provides that housing assistance payments for FSS families are the same as those provided to any other tenant living in the property. Paragraph (b) provides the process for determining total tenant payment. Paragraph (c) provides that when an FSS family's income increases during its participation in an FSS program, the increase 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. For multifamily assisted housing, money that goes into escrow is offset by additional housing assistance payment (HAP) to the owner from HUD as a positive adjustment to the monthly voucher.

§ 887.111 FSS Award Funds Formula.

Section 306 of the Economic Growth Act provides the Secretary the authority to award funds by formula and set forth new procedures and processes. This section incorporates the statutory language providing that the Secretary may establish a formula by which funds for administration of the FSS program are awarded and indicating any changes to such formula, as permitted by statute, are accomplished by notice in the Federal Register. This section mirrors § 984.107.

#### **IV. Findings and Certifications**

##### Regulatory Review – Executive Orders 12866 and 13563

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

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

addresses the costs and benefits of the proposed rule. HUD's RIA is part of the docket file for this rule.

The docket file is available for public inspection in the Regulations Division, Office of General Counsel, Room 10276, 451 7th Street, SW, Washington, DC 20410-0500. Due to security measures at the HUD Headquarters building, please schedule an appointment to review the docket file by calling the Regulations Division at 202-402-3055 (this is not a toll-free number). Individuals with speech or hearing impairments may access this number via TTY by calling the Federal Relay Service at toll-free 800-877-8339.

#### Executive Order 13771

Executive Order 13771, entitled "Reducing Regulation and Controlling Regulatory Costs," was issued on January 30, 2017. Section 2(a) of Executive Order 13771 requires an Agency, unless prohibited by law, to identify at least two existing regulations to be repealed when the Agency publicly proposes for notice and comment or otherwise promulgates a new regulation. In furtherance of this requirement, section 2(c) of Executive Order 13771 requires that the new incremental costs associated with new regulations shall, to the extent permitted by law, be offset by the elimination of existing costs associated with at least two prior regulations. For the reasons discussed in the Regulatory Impact Analysis, this proposed rule has been determined to be an Executive Order 13771 deregulatory action.

#### Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520), an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection displays a valid control number. The information collection requirements contained in this proposed rule have been submitted to the Office of Management

and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520) and assigned OMB control number 2577–0178.

The proposed rule would require changes to the existing approved paperwork to include multifamily, addition of a Notice of Funding Availability (NOFA) narrative, and the Cooperative Agreement. The overall reporting and recordkeeping burden are estimated as follows:

<b>Description of Information Collection</b>	<b>Number of Responses</b>	<b>Responses per Year</b>	<b>Total Annual Responses</b>	<b>Hours per Response</b>	<b>Total Hours</b>
SF-424 - Application for Federal Assistance	750	1	750	0.75	563
SF-LLL - Disclosure of Lobbying Activities	40	1	40	0.17	7
Form HUD 2880 - Applicant, Recipient, Disclosure, Update Form (OMB No. 2510-0011) <sup>3</sup>	800	1	800	0	0
NOFA Narrative	20	1	20	10	200
Cooperative Agreements	15	1	15	2	30
Form HUD-52755 - Sample Contract Admin. Partnership Agreement	20	1	20	0.17	3
Form HUD-2994-A You are Our Client (Optional Survey) (OMB No: 2535-0116)	50	1	50	0	0
Form HUD-52651 - FSS Application	800	1	800	1.5	1,200
Action Plan	73	1	10	10	730
Form HUD-52650 - Contract of Participation	1,000	10	10,000	.25	2,500
Form HUD-52652 - Escrow Account Credit Worksheet	600	90	54,000	.85	45,900
Form HUD-1044 – Grant Agreement*	700	1	250	N/A	N/A
Annual Report (Narrative)/ Performance Report	775	1	775	1	775
Form HUD-50058 – Family Report (OMB No. 2577-0083)	900	50	45,000	0	0
<b>Total</b>				<b>26.69</b>	<b>51,908</b>

\*HUD-1044, Award/Amendment is completed by HUD staff, signed by the recipient of the grant, and returned to HUD. This form is a certification and HUD ascribes no burden to its use.

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<sup>3</sup> Burden hours for forms showing zero burden hours in this collection are reflected in the OMB approval number cited or do not have a reportable burden.

In accordance with 5 CFR 1320.8(d)(1), HUD is soliciting comments from members of the public and affected agencies concerning the information collection requirements in the proposed rule regarding:

(1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) The accuracy of the agency's estimate of the burden of the proposed collection of information;

(3) Whether the proposed collection of information enhances the quality, utility, and clarity of the information to be collected; and

(4) Whether the proposed information collection minimizes the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology (e.g., permitting electronic submission of responses).

Interested persons are invited to submit comments regarding the information collection requirements in this rule. The proposed information collection requirements in this rule have been submitted to OMB for review under section 3507(d) of the Paperwork Reduction Act. Under the provisions of 5 CFR part 1320, OMB is required to make a decision concerning this collection of information between 30 and 60 days after the publication date. Therefore, a comment on the information collection requirements is best assured of having its full effect if OMB receives the comment within 30 days of the publication. This time frame does not affect the deadline for comments to the agency on the proposed rule. Comments must refer to the proposed rule by name and docket number (FR-6085) and must be sent to:



HUD Desk Officer  
Office of Management and Budget  
New Executive Office Building  
Washington, DC 20503  
Fax number: 202- 395-6947

and

Colette Pollard  
HUD Reports Liaison Officer  
U.S. Department of Housing and Urban Development  
451 7th Street, SW, Room 2204  
Washington, DC 20410

Interested persons may submit comments regarding the information collection requirements electronically through the Federal eRulemaking Portal at <http://www.regulations.gov>. HUD strongly encourages commenters to submit comments electronically. Electronic submission of comments allows the commenter maximum time to prepare and submit a comment, ensures timely receipt by HUD, and enables HUD to make them immediately available to the public. Comments submitted electronically through the <http://www.regulations.gov> website can be viewed by other commenters and interested members of the public. Commenters should follow the instructions provided on that site to submit comments electronically.

#### Unfunded Mandates Reform Act

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

#### Environmental Review

A Finding of No Significant Impact with respect to the environment has been 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(2)(C)). The Finding is available for public inspection during regular business hours in the Regulations Division, Office of General Counsel, U.S. Department of Housing and Urban Development, 451 Seventh Street, SW, Room 10276, Washington, DC 20410-0500. Due to security measures at the HUD Headquarters building, please schedule an appointment to review the Finding by calling the Regulations Division at 202-402-3055 (this is not a toll-free number). Individuals with speech or hearing impairments may access this number via TTY by calling the Federal Information Relay Service at 800-877-8339.

#### Regulatory Flexibility Act

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

regarding any less burdensome alternatives to this rule that will meet HUD's objectives as described in this preamble.

#### Executive Order 13132, Federalism

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

#### **List of Subjects**

##### **24 CFR Part 887**

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

##### **24 CFR Part 984**

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

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

1. Add part 887 to read as follows:

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

##### **Sec.**

887.101 Purpose, scope, and applicability.

887.103 Definitions.

887.105 Basic requirements of FSS.

887.107 Cooperative agreements.

887.109 Housing assistance and total tenant payments and increases in family income.

887.111 FSS Award Funds Formula.

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

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

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

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

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

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

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

**§ 887.103 Definitions.**

The definitions in 24 CFR 984.103 apply to this part, except that eligible families means tenant families living in multifamily assisted housing.

**§ 887.105 Basic requirements of FSS.**

(a) An FSS program that is voluntarily established under this part by an owner must comply with the following requirements:

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

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

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

(4) Shall work with a Program Coordinating Committee (PCC), as described in § 984.202, when available;

(5) May make available and utilize onsite facilities, as described in § 984.204;

(6) Shall comply with the FSS funds provision, as described in § 984.302;

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

(8) Shall establish and manage FSS accounts as described in § 984.305;

(9) Shall report information to HUD as described in § 984.401;

(10) Shall be operated in compliance with the nondiscrimination and equal opportunity requirements set forth in 24 CFR part 5.

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

**§ 887.107 Cooperative agreements.**

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

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

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

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

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

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

(3) The Cooperative Agreement must clearly specify the terms and conditions of such agreement, including the requirements of this subsection.

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

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

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

(c) *Increases in FSS family income.* Any increase in the earned income of an FSS family during its participation in an FSS program may not be considered as income or 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.

## **§ 887.111 FSS Award Funds Formula.**

The Secretary may establish a formula by which funds for administration of the FSS program are awarded consistent with 42 U.S.C. 1437u(i). Notice of, and changes to, such formula will be published in the Federal Register.

2. Revise part 984 to read as follows:

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

#### **Subpart A—General**

Sec.

984.101 Purpose, applicability, and scope.

984.102 Program objectives.

984.103 Definitions.

984.104 Basic requirements of the FSS Program.

984.105 Minimum program size.

984.106 Cooperative agreements.

984.107 FSS Award Funds Formula.

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

984.201 Action Plan.

984.202 Program Coordinating Committee (PCC).

984.203 FSS family selection procedures.

984.204 On-site facilities.

#### **Subpart C—Program Operations**

984.301 Program implementation.

984.302 FSS funds.

984.303 Contract of Participation (CoP).

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

984.305 FSS account.

984.306 HCV portability requirements.

#### **Subpart D—Reporting**

984.401 Reporting.

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

## **Subpart A—General**

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

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

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

(b) *Applicability.* This part applies to PHAs administering either or both a public housing program under section 9 and a project-based and/or tenant-based assistance program under section 8(o) of the U.S. Housing Act of 1937. See 24 CFR part 887 for program regulations applicable to owners of multifamily assisted housing.

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

(d) *Nonparticipation.* 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.

### **§ 984.102 Program objectives.**

The objective of the FSS program is to reduce the dependency of low-income families on welfare assistance and housing subsidies. Under the FSS program, HUD assisted families are



provided opportunities for education, job training, counseling, and other forms of social service assistance, while living in assisted housing, so that they may obtain the education, employment, and business and social skills necessary to achieve self-sufficiency, as defined in § 984.103. The Department will evaluate the performance of a local 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, HUD, Low income family, Public Housing, Public Housing Agency (PHA), Secretary, and Section 8, 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 disregard of earnings 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)*. 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.

*Contract of Participation (CoP) means* - a contract, in a form approved 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 reexamination of income which occurs after the effective date of the FSS contract. In calculating current annual earnings, all applicable exclusions of income will apply, including any disregard of earnings 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 reexamination of income, which occurs after the effective date of the FSS contract, for families paying an income-based rent as of the most recent reexamination of income; or

(ii) The amount of the flat rent, (which includes the applicable utility allowance), or ceiling rent and including any hardship discounts, as of the most recent reexamination 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 reexamination of income.

*Earned income* means income or earnings included in annual income 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)* - the day in which the FSS family and the PHA or owner execute the CoP.

*Eligible families* means current residents of Public Housing (section 9) and current Section 8(o) 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 or owner within its jurisdiction 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 account* means the FSS escrow account authorized by section 23 of the 1937 Act, and as provided by § 984.305.

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

*FSS family* means a family that resides in Public Housing (section 9) or receives Section 8(o) assistance, as defined in this section, and that elects to participate in the FSS program, and whose designated adult member, 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 not in current eviction proceedings and is otherwise in compliance with any repayment agreement and the FSS CoP.

*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* refers to the total number of families (as determined in the Action Plan and, for mandatory programs, in section 105 of this part) that the PHA will serve in its FSS program.

*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 adult family member of the FSS family who has signed the CoP. The head of the 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:

(i) A written plan that is prepared by the PHA or owner in consultation with the family member, and which sets forth:

- (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, services, 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 member who elects to participate in the FSS program, including the adult family member who has signed the CoP.

*Multifamily assisted housing* 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)* is the committee described in § 984.202.

*Section 8(o)* means assistance provided under section 8(o) of the 1937 Act (42 U.S.C. 1437f). Specifically, housing assisted under the Housing Choice Voucher (HCV) Program, including Project-Based Vouchers (PBV).

*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 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 places 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 certification;

(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;

(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.;

(ix) *Other services*—any other services and resources, including case management, reasonable accommodations for individuals with disabilities, that are determined 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 § 813.102.

*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 Temporary Assistance for Needy Families (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 Section 8(o) program participants:
    - (i) HCV regulations at 24 CFR part 982, for HCV program participants; and
    - (ii) PBV regulations at 24 CFR part 983, for PBV program participants.
  - (2) 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,
  - (3) The nondiscrimination and equal opportunity requirements 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) *Exception to program operation 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) 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 of a larger size than the minimum.

(b) *How to determine FSS minimum program size—(1) In general.* Each PHA that was required to administer an FSS program, 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) An 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, a PHA may be permitted to operate an FSS program that is smaller than the minimum program size if the PHA 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 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.);

(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) *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, 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, including calculating and tracking of escrow in accordance with § 984.305, and 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 by 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 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 subsection.

#### **§ 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). Notice of, and changes to, such formula will be published in the Federal Register.

### **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 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 local 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 Action Plan*. The Action Plan shall describe the policies and procedures for the 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 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, 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 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 any other relevant employment, child care, transportation, training, and education programs, and financial empowerment 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 proposed FSS program.

(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 and public housing) served by the FSS program.

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

(a) *General*. Each participating PHA 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 coordinators, and one or more participants from each HUD-assisted 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;

(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 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.* A PHA has the option of giving a selection preference for up to fifty (50) percent of its FSS slots 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 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, and disabilities, if any. Reasonable accommodations must be made for individuals with disabilities, including, e.g., mobility, manual, sensory, speech, mental, intellectual, 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 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 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 account, as provided by § 984.305.

#### **§ 984.302 FSS funds.**

(a) *Public housing program.* Subject to appropriations by Congress, PHAs may use funds provided under section 9 of the 1937 Act to cover reasonable and eligible administrative costs incurred by PHAs in carrying out the FSS program.

(b) *Section 8(o) program.* Subject to 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 funds may be used by PHAs or owners for costs associated with families who are enrolled in an FSS program under this part, including through a Cooperative Agreement in accordance with § 984.106.

#### **§ 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. The CoP shall be signed by a representative of the PHA or the owner and the head of the FSS family, as designated by the family in consultation with the PHA or the owner. 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, may measure 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, the PHA or owner must establish as an interim 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 § 984.303(b)(4) below. 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 that are applicable to every FSS program participant.

(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. All considerations allowed for other assisted residents for repayment agreements, etc., shall not be limited for FSS participants due to their participation in FSS.

(4) *Employment obligation.* (i) Although all members of the FSS family may seek and maintain suitable employment during the term of the contract, only one adult family member with an ITSP 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 based on the skills, education, and job training of the household member, and based on the available job opportunities within the jurisdiction served by the PHA or owner.

(5) *Consequences of noncompliance with the contract.* The CoP shall specify that if the FSS family fails to comply, without good cause, with the terms and conditions of the CoP, including compliance with the public housing lease or the Section 8 lease, the PHA or owner may:

- (i) Withhold the coordination of supportive services; or,
- (ii) Terminate the family's participation in the FSS program.

(c) *Contract term.* The CoP shall provide that each FSS family will be required to fulfill those obligations to which the FSS family has committed itself under the CoP no later than 5 years after the first recertification of income after the execution date of the CoP.

(d) *Contract 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. As used in this paragraph (d) of this section, "good cause" means circumstances beyond the control of the FSS family, as determined by the PHA or owner, such as a serious illness or involuntary loss of employment, or 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.). Extension of the CoP 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 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 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 declare the CoP null and void and follow the requirements in paragraph (k) of this section.

(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 the 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, on or before the expiration of the contract term, including any extension thereof.

(h) *Termination of the contract.* The CoP is automatically 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, including, for Section 8(o) participants, failure to comply with the contract requirements because the family has moved outside the jurisdiction of the PHA or out of multifamily assisted housing;

(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 and supportive service assistance. The PHA or owner may terminate or withhold the coordination of supportive services, and 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 as provided in paragraph (b)(5) of 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), or in remaining self-sufficient (if the family no longer resides in public, Section 8, or other assisted housing).

(k) *Nullification.* (1) The CoP is considered null and void when:

(i) Services that the PHA or owner has determined 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 or dies 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.

(2) Upon nullification of a CoP, escrow funds must be handled consistent with § 984.305(b)(3) and (c)(3).

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



(a) 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(o) programs: Calculation of total tenant payment.* (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 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.

#### **§ 984.305 FSS account.**

(a) *Establishment of FSS account—(1) General.* The PHA or owner shall deposit the FSS 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 account funds in one or more of the HUD-approved investments. This account may be part of the PHA's or owner's overall accounts, as long as it is in compliance with paragraph (a)(2) of this section. During the term of the CoP, the escrow credit amount shall be determined in accordance with paragraph (b) of this section at each reexamination of income, which occurs 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 account.

(2) *Accounting for FSS account funds*—(i) *Accounting records*. The total of the combined FSS 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 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 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 fraudulently under-reported income after the escrow calculation baseline was set, the amount credited to the FSS account will be based on the income amounts originally reported by the FSS family. If the FSS family is found to have fraudulently under-reported income in the certification used to set the baseline, the escrow for the entire period of the CoP will be re-calculated using the correct income to set the baseline and then subsequent escrow amounts.

(3) *Reporting on FSS 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 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 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 credit, the PHA or owner must set a policy to either conduct a new re-examination of income before the effective date of the FSS contract, or to use the amounts on the family's last income reexamination.

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

(i) Thirty (30) percent of one-twelfth (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 families, the difference between the baseline monthly rent and the current gross rent (i.e., rent to owner 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 account:

- (i) When the FSS family has completed the CoP, as defined in § 984.303(g);
- (ii) When the CoP is terminated or otherwise nullified; or
- (iii) During the time a HCV family is in the process of moving to a new unit, in accordance with HCV program requirements, and is not under a lease.

(c) *Disbursement of FSS account funds—(1) General.* The amount in an FSS 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 the 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 the 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 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 PHA or owner by the FSS family, as provided in paragraph (a)(2)(iii) of this section, shall be paid to the head of the 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 account funds for purposes consistent with 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 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 amounts if the family does not complete the CoP.

(3) *Disbursement under nullified contracts.* If the CoP is nullified in accordance with §984.303(k), the PHA or owner must disburse to the family, 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, the amount of escrow funds accumulated by the family before the effective date of the nullification of the contract.

(4) *Verification of family certification.* Before disbursement of the FSS 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 contacting welfare agencies.

(d) *Succession of 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 PHA or owner, shall have the right to designate another family member to receive the funds in accordance with paragraph (c) of this section.

(e) *Use of FSS account funds for homeownership.* An 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 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 expires, including any extension thereof.

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

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

(A) Support for FSS participants in good standing, including, but not limited to, transportation, child care, training, testing fees, and employment preparation costs.

(B) Training for Program Coordinator(s),

(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; for HAP expenses or public housing operating funds; or any other activity determined ineligible by the Secretary.

#### **§ 984.306 HCV portability requirements.**

(a) *Initial occupancy—(1) First 12 months.* An HCV family participating in the FSS program must lease an HCV-assisted unit, for a minimum period of 12 months after the effective

date of the CoP, in the jurisdiction of the PHA that selected the family for the FSS program. However, the initial PHA may approve a family's request to move outside of its jurisdiction under portability (in accordance with § 982.353 of this chapter) during this period.

(2) *After the first 12 months.* After the first 12 months of the FSS CoP, the FSS family may move outside the initial PHA jurisdiction under portability procedures (in accordance with § 982.353 of this chapter).

(b) *An FSS family moves to the jurisdiction of a receiving PHA that administers an FSS program.* 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 the receiving PHA and the initial PHA agree to the FSS family's continued participation in the initial PHA's FSS program if the initial PHA determines that the relocating FSS family has demonstrated that, notwithstanding the move, it will be able to fulfill its responsibilities under the initial or 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.

(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 of the FSS contract and forfeiture of escrow, or locating a receiving PHA that administers an FSS program.

(d) *Single FSS 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, there will be a single FSS account which will be maintained by the initial PHA if the receiving PHA is billing the initial PHA. If an FSS family will be absorbed by the receiving PHA, the initial PHA will transfer the family's FSS account to the receiving PHA and the receiving PHA will maintain the FSS account.

(e) *FSS program termination; loss of FSS 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 account will be forfeited. Termination of FSS program participation 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 and that the current CoP cannot be modified to allow for graduation prior to porting. 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 account, the funds in the family's FSS account will revert to the PHA maintaining the FSS 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 original CoP, executed by the initial PHA, will remain as the contract in place.



(g) *Enrollment of a non-participant in the receiving PHA's FSS program—(1) Billing.* If the receiving PHA bills the initial PHA, a family that was not an FSS participant at the initial PHA 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.

Assistant Secretary for Public and Indian Housing

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Dana T. Wade,  
Assistant Secretary for Housing –  
Federal Housing Commissioner

**[BILLING CODE: 4210-67]**

**Monthly FSS Escrow Credit Worksheet -  
for PH and HCV Families**

Enter Values in Shaded Cells		
↓		
<b>1. Month and Day</b>	February-19	This form must be completed at the time of each reexamination of income. Enter the month and date of the re-examination here.
<b>2. Year</b>	2019	Enter the year in which the reexamination was conducted
<b>3. Baseline Monthly Rent (TTP or Flat Rent/Ceiling Rent/Other Rent)</b>	\$400.00	A. For families paying an income-based rent as of the effective date of the FSS Contract of Participation, enter their TTP as of that date from form HUD 50058 line 9j. B. For families paying a flat rent, ceiling rent, or other non-income-based rent as of the effective date of the FSS Contract of Participation, enter the amount of the flat rent, ceiling rent or other non-income-based rent. The family actually paid (which should reflect any hardship discounts) plus any applicable utility allowance. See form HUD 50058 line 10(b) for the flat rent and line 10(c) for the ceiling rent.
<b>4. Baseline Annual Earned Income (Wages + Business Income)</b>	\$0.00	Guidance on Baseline Annual Earned Income:  Baseline annual earned income is the participating family's total annual income from wages and business income (if any) as of the effective date of the family's Contract of Participation. Baseline annual earned income should be calculated based on the data collected in the most recent determination of income conducted prior to, or at the same time as, the effective date of the family's Contract of Participation. (Note that PHAs are no longer required to conduct an income recertification on the effective date of the FSS contract if more than 120 days have passed between the last recertification and the effective date of the FSS contract.)  In calculating baseline annual earned income, apply all applicable exclusions of income, EXCEPT FOR earned income disallowances associated with self-sufficiency incentives, such as the disallowances for the Jobs Plus program. This will help ensure the FSS program works smoothly with Jobs Plus and other self-sufficiency initiatives. To do this, start with the total of all income items on form HUD 50058 column line 7f identified with one of the income codes for wage or business income: B, F, HA, M or W. Then manually add back in any earned income excluded based on an earned income disallowance associated with a self-sufficiency incentive.
<b>5. Current Monthly Rent (TTP or Flat Rent/Ceiling Rent/Other Rent)</b>	\$1,000.00	A. For families paying an income-based rent as of the month for which the FSS escrow credit is being determined, enter their TTP for that month from form HUD 50058 line 9j. B. For families paying a flat rent, ceiling rent, or other non-income-based rent as of the month for which the FSS escrow credit is being determined, enter the amount of the flat rent, ceiling rent or other non-income-based rent the family actually paid (which should reflect any hardship discounts) plus any applicable utility allowance. See form HUD 50058 line 10(b) for the flat rent and line 10(c) for the ceiling rent.
<b>6. Current Annual Earnings Income (Wages + Business Income)</b>	\$5,000.00	Guidance on Current Annual Earned Income:  Current annual earned income is the participating family's total annual income from wages and business income (if any) as of the month for which the escrow credit is being determined. It should be calculated based on the data collected in the most recent determination of income.  In calculating current earned income, apply all applicable exclusions of income applicable to the determination of annual income, INCLUDING earned income disallowances associated with self-sufficiency incentives, such as the disallowance in the Jobs Plus program. To do this, calculate the total of all income items on form HUD 50058 line 7f identified with one of the income codes for wage or business income: B, F, HA, M or W.
<b>7. Adjusted Annual Income</b>	\$58,447.00	Guidance on Adjusted Annual Income:  This can be found on form HUD 50058 line 8y.
<b>8. 80% of the Area Median Income (AMI) for the applicable household size</b>	\$80,000.00	Guidance on 80% of the Area Median Income (AMI):  This is 80% of the Area Median Income for the metropolitan area or non-metropolitan county. This number may be obtained by querying the income limits data tool on HUDUSER; a link is provided below. Be sure to use the income limit applicable to the family's household size.  Income limits calculator: <a href="https://www.huduser.gov/portal/datasets/il.html">https://www.huduser.gov/portal/datasets/il.html</a>
<b>9. Which Program is the family in?</b>	HCV -- Tenant-Based	Select the program the family is in from the following list: HCV -- Tenant-based, Public Housing, or Project-Based Vouchers (PBVs).
<b>10. Monthly Gross Rent (rent to owner plus utility allowance) for HCV and PBV families.</b>	\$950.00	If the family is an HCV participant (whether tenant-based or project-based), enter the gross rent of the unit. This can be found on line 12p (for tenant-based HCV) or line 11n (for PBVs) of form HUD 50058.  If the family is living in public housing, leave this cell blank.
<b>11. Applicable Payment Standard (for HCV families).</b>	\$850.00	If the family is a tenant-based HCV participant, enter the applicable voucher payment standard.  Leave this cell blank for public housing and PBV families.
<b>Calculation of FSS Escrow</b>		
A. Growth in Monthly Rent	\$600.00	This is the amount by which the current TTP exceeds the baseline TTP
B. Growth in Annual Earned Income	\$5,000.00	This is the amount by which the current annual earned income exceeds the baseline annual earned income.
C. 30% of Monthly Earnings Growth	\$125.00	This is 30 percent of the growth in monthly earned income (line B divided by 12). 30 percent is used because that's the percentage of adjusted income generally used to determine the TTP.
D. Preliminary FSS Escrow Credit	\$125.00	The preliminary escrow credit is the lower of: (a) the growth in monthly rent and (c) 30 percent of the growth in monthly earned income. This ensures the FSS escrow credit is limited to increases in the amount of rent paid by the family that is attributable to increases in earned income. The preliminary escrow credit cannot be less than \$0.
E. Max Escrow Amount	\$450.00	For tenant-based HCV participants, the FSS credit cannot exceed: (the lower of the gross rent (line 10) or the payment standard (line 11) minus the baseline rent (line 3)).  For PBV families, the escrow credit cannot exceed the (gross rent (line 10) minus the baseline monthly rent (line 3))  These caps do not apply to families in public housing
F. Eligible for Credit (Yes/No)	Yes	NOTE: Families are not eligible for the FSS credit if their adjusted annual income exceeds 80% of AMI
<b>G. Final FSS Escrow Credit</b>	<b>\$125.00</b>	For HCV holders (whether tenant-based or project-based) who are eligible for the credit (Line F), the Final FSS Escrow Credit is the lower of the Preliminary FSS Escrow Credit (Line D) and the Max Escrow Amount (Line E)  For public housing residents who are eligible for the credit the Final FSS Escrow Credit is the Preliminary FSS Escrow Credit (Line D)

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