THE FAMILY SELF-SUFFICIENCY PROGRAM: AN ADVOCATE'S GUIDE

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CHAPTER 1

THE FSS PROGRAM

1.1 GENERAL PROGRAM DESCRIPTION

Congress created the Family Self Sufficiency (FSS) program to enable eligible families to achieve economic independence. The FSS program began as a demonstration program in 1991 and 1992. By FY 1993, every Public Housing Agency (PHA), with the exception of Indian Housing Authorities, that receives incremental Section 8 or new Public Housing units was required to operate an FSS program. The size of the program should be equal to the number of incremental Section 8 or new Public Housing units received by the PHA. Nationwide, this means that annually there will be approximately 50,000 to 60,000 new Section 8 FSS program may be smaller because HUD may grant waivers to PHAs that are unable to develop a program or maintain the maximum size because of a lack of support services, lack of funding for reasonable administrative costs, lack of cooperation by local and state government, lack of interest by participants or other circumstances that HUD may deem appropriate.

Every PHA participating in the FSS program must submit an Action Plan to HUD for approval. The Action Plan describes the program's major aspects, including services to be provided, sets forth the characteristics and needs of the participating families, and a time table for implementing the program. Each PHA is required to establish a Program Coordinating Committee (PCC) to assist it in obtaining public and private resources for the operation of the FSS program and developing the Action Plan.

Eligible families include Section 8 Certificate and Voucher participants and Public Housing residents. Each participant signs a contract of participation and an individual plan for services. The plan and contract, not to exceed five years, should have interim and final goals. The participant may be terminated from the FSS program for good cause after being afforded

¹42 U.S.C.A. § 1437u(a) (West Supp. 1994)

²Id. § 1437u(b)(1)(A). Prior to 1991, HUD had also developed similar programs. Project Self Sufficiency, a demonstration program, ran between 1984 and 1988 and involved 10,000 single-parent families. Operation Bootstrap, developed in 1989, made available 3,000 Section 8 Certificates. For further discussion of these programs, see D. Bryson and R. Youmans, A PASSAGE FROM POVERTY: SELF-SUFFICIENCY POLICIES AND HOUSING PROGRAMS (Washington, D.C.: Low Income Housing Coalition, July 1991).

³42 U.S.C.A. § 1437u(b)(1)(B) (West Supp. 1994).

⁴Id. § 1437u(b)(3).

⁵Public and Assisted Housing: Linking Housing and Supportive Services to Promote Self-Sufficiency, GAO/RCED-92-142BR (Washington, D.C.: Government Accounting Office, Apr. 1992), p. 12 ("in recent years HUD has received about 50,000 to 60,000 new Section 8 units annually"); HUD Appropriations for Fiscal Year 1994, 23 HOUS. L. BULL. 98, 100 (Nov./Dec. 1993) (chart) (based upon appropriations for FY 1993 and FY 1994, HUD will receive funding for approximately 5,000 to 6,000 new Public Housing units in those fiscal years).

⁶42 U.S.C.A. § 1437u(b)(2) (West Supp. 1994); 24 C.F.R. §§ 962.105(c) and 984.105(c) (1994), 58 Fed. Reg. 30,858 (May 27, 1993).

⁷42 U.S.C.A. § 1437u(g) (West Supp. 1994); 24 C.F.R. §§ 962.201 and 984.201 (1994), 58 Fed. Reg. 30,858 (May 27, 1993).

^{*42} U.S.C.A. § 1437u(f) (West Supp. 1994); 24 C.F.R. §§ 962.202 and 984.202 (1994), 58 Fed. Reg. 30,858 (May 27, 1993).

⁹⁴² U.S.C.A. § 1437u(c)(3) (West Supp. 1994).

the opportunity for a hearing. 10 Participants may also lose their Section 8 assistance but they cannot be evicted from Public Housing for failure to comply with the terms of the FSS program.11

An escrow account shall be established for every participant whose earned income increases during the term of the contract.12 The amount in the escrow account will be given to the participant upon successful completion of the program so long as the participant is no longer receiving welfare assistance. Under certain conditions, the family may receive certain amounts in the escrow account before completion of the program.¹³

To administer the FSS program, PHAs will have to assume additional responsibilities.¹⁴ Congress has appropriated funds to cover the cost of administering the program. For the Public Housing FSS program, Congress has appropriated \$25.9 million¹⁵ In addition, \$8.4 million was earmarked for service coordinators. 16

For the Public Housing FSS program, PHAs may receive funding for the actual amount of reasonable and eligible administrative costs. 17 The fee structure for the Section 8 FSS program includes: (1) 8.2 percent of the two-bedroom Fair Market Rent (FMR); (2) a hard-tohouse fee of \$45; and (3) a preliminary fee of \$300 (\$25 more than allowed for new non-FSS Section 8 units). Both PHAs and the GAO regard this fee structure for Section 8 to be inadequate to cover administrative costs and pay for other program-related services. 18

The funding for service coordinators should help to cover the additional cost associated with the FSS program.

HUD issued a Notice of Funding Availability (NOFA) on August 29, 1994, announcing that the \$8.4 million would be available to PHAs administering a Section 8 Certificate and Voucher programs of less than 600 units and required to administer a FSS program of at least 25 slots. 19 PHAs with larger programs are not entitled to participate because HUD admits the \$8.4 million appropriated is insufficient and it further believes that the large Section 8 programs

¹⁰Id. § 1437u(c)(1).

 $^{^{11}}Id.$

¹²Id. § 1437u(d)(2). Note that pending legislation would make the escrow account optional with the PHA. H.R. 3838, 103d Cong., 2d Sess., § 102 (reported by House Committee on Banking, Finance and Urban Affairs), 140 CONG. REC. H6033 (July 21, 1994, and passed by House on July 20, 1994).

¹³Id.

¹⁴See 3.2, infra.

¹⁵⁴² U.S.C.A. § 1437u(h)(2) (West Supp. 1994); HUD, Interim Notice 93-24 (PHA) (issued May 27, 1993, expired Sept. 30, 1993), Family Self-Sufficiency, Question and Answer E-5, p. 28 (Public Housing).

¹⁶Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 1994, Pub. L. No. 103-124, 103d Cong., 1st Sess., 107 Stat. 1275, 1283 (1993) (Section 8); H.R. CONF. REP. NO. 237, 103d Cong., 1st Sess. 15 (Oct. 4, 1993).

¹⁷58 Fed. Reg. 30,870 (May 27, 1993).

¹⁸Id. at 30,865; GAO, FSS Report 1992, supra note 5, pp. 40-41.

¹⁹59 Fed. Reg. 44,550 (Aug. 29, 1994).

are more likely to have access to other resources for program administration.²⁰ The NOFA anticipates that a full-time FSS program coordination should be able to serve approximately 50 FSS participants.²¹

²⁰Id. at §44,550.

²¹Id. at 44,550.

CHAPTER 2

RIGHTS OF FSS APPLICANTS AND PARTICIPANTS

2.1 RIGHTS OF APPLICANTS

Because the FSS programs are a subset of the Section 8 and Public Housing programs, admission to the FSS programs may be affected by a PHA's admission policies for the overall for admission to the Public Housing and Section 8 programs that favor families with members who are working or who are interested in participating in educational or job training program because all applicants for the FSS program must be Public Housing residents or Section 8 participants.

To select among eligible applicants for the FSS programs, PHAs may prefer families already enrolled in or on the waiting list for job training programs and may use motivational screening.

2.1.1 ELIGIBLE FAMILY

If a PHA receives incremental Section 8 and Public Housing units, it is required to establish both a Section 8 and a Public Housing FSS program. To be eligible for the Section 8 FSS program, an applicant must be a current participant in the Section 8 Certificate or Voucher program. To be eligible for the Public Housing FSS program, an applicant must be a current Public Housing resident. The regulatory requirement that FSS applicants be either current Public Housing or Section 8 participants is in response to the statutory provision protecting families that choose not to participate in the FSS program by prohibiting any delay in receiving Section 8 due to such election. 23

The requirement that PHAs must establish two separate programs may create problems locally. Many PHAs will establish only a Section 8 FSS program because they receive incremental Section 8 but no new Public Housing units. Public Housing residents may want to participate in an FSS program but they will not be eligible to participate in the one set up for participation will not be counted in meeting the minimum program size for the Section 8 FSS. PHAs will be in a position to offer a voluntary FSS program.

²²Project-Based Certificate families also are eligible to participate in the Section 8 FSS program, but Section 8 Moderate Rehabilitation tenants are not eligible. HUD, Interim Notice 93-24, *supra* note 15, Questions and Answers A-16 and B-16, pp. 6 and 13.

²³42 U.S.C.A. § 1437u(b)(4) (West Supp. 1994) (assistance under Section 8 may not be delayed for a family that elects not to participate).

²⁴58 Fed. Reg. 30,869 (May 27, 1993) (Public Housing families may not be counted toward meeting the minimum program size for a Section 8 FSS program, and vice versa).

²⁵See § 1.12, supra, and § 3.2, infra, discussing funding.

2.1.2 HEAD OF FSS FAMILY

The head of an FSS family is the key participant in the program. It is the head of the family who signs the contract of participation and who is committed to seek and maintain

The head of the FSS family need not be the leaseholder but must be the adult member employment. of the family who is "the head of the household for purposes of determining income eligibility and rent."26 This provision was placed in the regulations in recognition that the leaseholder may be unable work and there may be other adults in the family who want to participate in the FSS program.27

In limited situations, there is a potential problem with the requirement that the FSS head of the household must also be the head for purposes of determining rent and eligibility. Some families will face a rent increase if they opt to participate in the FSS program even though their incomes have not changed. For example, in a family that includes a mother, daughter and the daughter's two children, if the mother is elderly or disabled the family qualifies as elderly.²⁸ Elderly families may deduct from income for rent setting purposes an amount equal to the medical expenses of the family that exceeds three percent of family income and a flat \$400 per year.29 If the daughter were to become head of household for FSS and rent-setting purposes, the medical and \$400 deductions would no longer be available because only elderly families can take those deductions. Under the current regulations, the family would have to forfeit the deductions and suffer an increase in rent for the privilege of participating in the FSS program.30

2.1.3 FEDERAL AND LOCAL PREFERENCES

The preference rules govern the order in which PHAs select participants for Section 8 and Public Housing. In any year, ninety percent of the Section 8 Certificates and Vouchers, and 50 percent of the available Public Housing units must be made available to applicants who qualify for a federal preference. Those who qualify for a federal preference are residents of substandard housing, including homeless people, people who face involuntary displacement, and people who pay more than 50 percent of their income for rent.31

PHAs are authorized to rank federal preference holders as a means of selecting among applicants who qualify for a federal preference.32 The HUD regulations suggest that a PHA may rank on the basis that members of a family are working or that they are graduates of or participants in educational and job training programs.33 On such preferred applicants are

²⁶24 C.F.R. §§ 962.103 and 984.103 (1994), 58 Fed. Reg. 30,858 (May 27, 1993).

²⁷58 Fed. Reg. 30,866 (May 27, 1993).

²⁸²⁴ C.F.R. §§ 813.2 and 913.2 (1993).

²⁹Id. §§ 813.102 and 913.102.

³⁰The handicapped assistance expenses would not be forfeited because, in that situation, the deduction is available to the family regardless of whether the handicapped member is the head. See, e.g., 24 C.F.R. § 813.102 (1993).

³¹42 U.S.C.A. §§ 1437d(c)(4)(A)(i) and 1437f(d)(1)(A)(i) (West Supp. 1994).

³²24 C.F.R. §§ 960.212(b) and 982.210(b) (1995), 59 Fed. Reg. 36,657 and 36,687 (July 18, 1994).

 $^{^{33}}Id.$

selected for Public Housing and Section 8, they may then be offered participation in the FSS program. However, no PHA may require that a family obligate itself to participate in FSS once it has been selected for Section 8, because a Section 8 applicant may not have housing assistance delayed because of its election not to participate in FSS.³⁴

HUD encourages PHAs to adopt local preferences relating to work, job training or education.³⁵ A PHA may establish local preferences for 50 percent of the Public Housing and 10 percent of the Section 8 Certificates or Vouchers that become available in a given year.³⁶ Congress specifically directed PHAs to consider establishing local preferences in both Section 8 and Public Housing to assist welfare recipients who want greater access to employment and educational opportunities.³⁷ Local preferences can be established only after a local hearing.³⁸ If the PHA creates a local preference for the Section 8 program for working families or families engaged in or applying for training programs, it must be careful not to violate the statutory prohibition against providing a special preference for applicants that agree to participate in the FSS program. Thus, a PHA would be limited to determining a tenant's interest in education, to participate in the FSS program because that would violate the statutory requirement that a family electing not to participate in the FSS program may not have Section 8 assistance delayed because of that election.³⁹

2.1.4 QUALIFYING A PUBLIC HOUSING RESIDENT FOR THE SECTION 8 FSS PROGRAM

If you are representing a Public Housing family who wants to participate in the Section 8 FSS program, the family must first become a Section 8 participant. Transferring from Public Housing to Section 8 typically is not easy, but it is possible if the Public Housing family qualifies for a preference for Section 8 through the use of a "retention preference." In 1990 Congress amended the Public Housing statute to provide that a family residing in Public Housing may not be denied a federal preference for other Section 8,40 solely because of its Public Housing residency. The legislative history of this provision confirms that its intention was

³⁴42 U.S.C.A. § 1437u(b)(4) (West Supp. 1994); 59 Fed. Reg. 36,668 (July 18, 1994). There are also additional limits on the use of a preference for working families. First, the preference cannot be used to discriminate on the bases of age or disability. Second, the preference may not be used in a way that will violate 42 U.S.C. § 1437n, which prohibits selecting a higher income applicant before a lower income applicant who is higher on the waiting list. In the case of Public Housing, the prohibition against selecting higher income families over lower income families applies only to the selection among federal preference holders.

³⁵⁵⁹ Fed. Reg. 36,619 (July 18, 1994).

³⁶⁴² U.S.C.A. §§ 1437d(c)94)(A)(ii) and 1437f(d)(1)(A)(ii) (West Supp. 1994).

³⁷Id. § 1437f(d)(1)(A)(ii)(I).

³⁸²⁴ C.F.R. § 982.211(b)(2) (1995), 59 Fed. Reg. 36,687 (July 18, 1994).

³⁹42 U.S.C.A. § 1437u(b)(4) (West Supp. 1994); 24 C.F.R. § 982.202(b)(4)(i)(E) (1995), 59 Fed. Reg. 36,685 (July 18, 1994) (the law and regulations prohibit a special preference for applicant families that agree to participate in the PHA's FSS program).

⁴⁰The federal preferences are for families who reside in substandard housing (including homeless), who pay more than 50 percent of the income for rent, or who are involuntarily displaced. See 42 U.S.C.A. §§ 1437d(c)(4)(A)(i) and 1437f(d)(1)(A)(i) (West Supp. 1994).

⁴¹Id. § 1437f(d)(1)(A)(i); see also Id. § 1437f(s).

to ensure that a family on a Section 8 waiting list, but whose name first comes up for Public Housing, be allowed to accept the Public Housing unit without jeopardizing its ability to subsequently obtain a Section 8 subsidy, as long as the family was eligible for a federal preference at the time its name came up on the Public Housing list. 42 The implementing regulations substantially limit the scope of the retention preference rule.⁴³ First, it is applicable only to families admitted to Public Housing on or after April 26, 1993.44 Second, it is applicable only to applicants admitted to Public Housing who are seeking Section 8 housing operated by the same PHA.45 Third, the tenants must have been on the Section 8 waiting list at the time of admission to their Public Housing unit.46

It is also possible that a PHA could create within the Section 8 program a local preference for Public Housing residents.⁴⁷ In addition, as mentioned above, a preference could be created for individuals who are working or are current participants or are on the waiting list for additional education or a job training program. Public Housing tenants could be eligible for a preference for Section 8 under such local preferences. PHAs may establish local preference for up to 10 percent of all Section 8 admittees.48

Assuming that a Section 8 participant may want to participate in the Public Housing FSS program, a PHA may also create a preference for Public Housing admission based upon the applicant's interest in job training or desire to obtain a job.49 The local preference for Public Housing based upon a participant's willingness to participate in job training may be created for up to 50 percent of new admittees. Such a preference may have little value in most jurisdictions, however, as few PHAs will receive new Public Housing units; and, therefore, most PHAs will not set up a Public Housing FSS program.

⁴²See Remarks of Rep. Bartlett explaining the effect of the provision in debate during the House Committee on Banking, Finance and Urban Affairs mark-up of the Omnibus Housing Bill of 1990, H.R. 1180 (June 12, 1990) (on file at National Housing Law Project).

⁴⁹In addition, HUD indicates that it is trying to get Congress to repeal the statutory rule on retention of preferences. 59 Fed. Reg. 36,678 (July 18, 1994). See also H.R. 3838, supra note 12; S. 2281, 103d Cong., 2d Sess., § 401 (Senate Committee on Banking, Housing and Urban Affairs, July 13, 1994).

⁴²⁴ C.F.R. § 982.210(c)(4)(ii), 59 Fed. Reg. 36,662 (July 18, 1994). HUD chose the date April 26, 1993 because that is the date that it was required to issue rules to implement the 1990 federal preference changes. HUD wholly ignored arguments that the retention of preference was originally mandated on November 28, 1990. Congress acted to require regulations by April 26, 1993 merely because HUD had failed to implement the 1990 amendments in a timely fashion. Thus, the April 26, 1998, date should not be used to deny benefits. See Pub. L. No. 101-625, § 545(a), 104 Stat. 4128 (Nov. 28, 1990); Pub. L. No. 102-550, §104, 106 Stat. 3684 (Oct. 28,

⁴⁵24 C.F.R. § 982.210(c)(4)(ii) (1995), 59 Fed. Reg. 36,662 (July 18, 1994).

⁴⁷Id. § 982.202(b)(2) (PHAs may target Section 8 assistance for families who live in Public Housing).

⁴⁸⁴² U.S.C.A. § 1437f(d)(1)(A)(i) (West Supp 1994).

⁴⁹Id. at § 1437d(c)(4)(A)(ii)(I); 24 C.F.R. §§ 982.210(b)(3)(iv) and (4) (1995), 59 Fed. Reg. 36,667-8 (July 18, 1994).

2.1.5 CERTAIN ELIGIBLE APPLICANTS FOR FSS MAY RECEIVE A

When selecting eligible applicants for the FSS program (i.e., current participants in either the Section 8 or Public Housing programs), PHAs are permitted to grant a preference for up to 50 percent of the FSS slots for persons with one or more other family members currently enrolled in an FSS-related program or on the waiting list for such a program. 50 An FSS-related program may include child care, job training, or an educational program. In practice, this means that a household may receive a preference for FSS if a member of the family is participating in a Job Opportunities and Basic Skills (JOBS)⁵¹ or Job Training Partnership Act (JTPA) program. 52 The remainder of the FSS participants must be selected by objective factors such as date of application, lottery, or length of time in subsidized housing.53

2.1.5.1 Motivational Screening

To select among the eligible applicants, a PHA may use motivational screening which solely measures the family's interest and motivation to participate in the FSS program.⁵⁴ To determine motivation, the PHA may require the family to answer questions regarding the its interest in the program, to attend orientation sessions or to complete simple tasks such as contacting child care referrals or determining bus schedules between certain locations such as home and the training site. The failure to show up or to show up on time for meetings or to complete tasks may be grounds for denial. But the PHA may not use screening factors such as: education level, prior job performance, a standardized motivational test, credit rating, marital

2.1.6 DENIAL

Eligible applicants may be denied the right to participate in the FSS program. The grounds for denying applicants should be set forth in the Action Plan and applicants should be provided with a procedure for challenging the denial.56

2.1.6.1 Grounds for Denial

According to program guidelines, PHAs may establish certain grounds for denying an application for an FSS program. The Action Plan could provide for a denial if the services needed by the family are not available in the community, 57 if the family had previously

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⁵⁰²⁴ C.F.R. §§ 962.203(a) and 984.203(a) (1994), 58 Fed. Reg. 30,858 (May 27, 1993).

⁵¹⁴² U.S.C.A §§ 682 - 687 (West 1991).

⁵²29 U.S.C.A. § 1501 (West 1985).

⁵³24 C.F.R. §§ 962.203(b) and 984.203(b) (1994), 58 Fed. Reg. 30,858 (May 27, 1993).

⁵⁴Id. §§ 962.203(c) and 984.203(c); HUD, Interim Notice 93-24, supra note 15, Question and Answer B-5, p.

^{5524.} C.F.R. §§ 962.203(c)(3) and 984.203(c)(3) (1994), 58 Fed. Reg. 30,858 (May 27, 1993).

⁵⁶Id. §§ 962.201(d)(4) and 984.201(d)(4) (1994).

⁵⁷HUD, Interim Notice 93-24, supra note 15, Questions and Answers B-7 and B-11, pp. 10 and 12.

participated in an FSS program and had failed,⁵⁸ or if the family owed a debt to the PHA.⁵⁹ Presumably, the PHA could also deny FSS services to an applicant who did not meet the motivational screening criteria.⁶⁰ However, an applicant cannot be excluded merely because the PHA believes that it will be too difficult for the applicant to become self-sufficient within the next five years.⁶¹

With the exception of the prior debt criterion, these grounds for denial are all related to the ability of the participant to fulfill the terms of the FSS program. Any ground for denial should be challenged if it is not designed to meet program objectives. Factors that cannot be used for motivational screening, such as education level, prior job performance, standardized motivational test, credit rating or marital status, should not be grounds for a rejection.

2.1.6.2 Procedures for Challenging a Denial of Acceptance to FSS Program

Public Housing and Section 8 tenants who are eligible to participate in the FSS program should be entitled to a hearing to challenge the denial, although HUD's regulations are not as clear as they should be on that point. The Public Housing grievance procedures permit the tenant to challenge "any PHA action or failure to act involving PHA regulations which adversely affect the individual tenant's rights, duties, welfare or status." The Section 8 regulations provide that a Section 8 participant is entitled to a hearing on "a decision to deny . . . assistance on behalf of the participant." HUD has acknowledged the right of FSS participants to use the Public Housing grievance procedures or Section 8 hearing procedures for issues that arise once the Public Housing or Section 8 tenant is an FSS participant. Unfortunately, the FSS's program regulations only make reference to the Section 8 hearing procedures and do so only in the context of a termination or withholding of Section 8 or FSS support services in the Section 8 FSS program.

FSS applicants should be entitled to use the Public Housing grievance and the Section 8 hearing processes in the event they want to challenge a PHA's denial of their applications. The denial will affect substantial rights of the participants, including the right to accrue funds in an escrow account, to participate in a program that is designed to facilitate self-sufficiency, and to receive the benefit of any other incentives designed by the PHA. The right to a hearing is important. Public Housing tenants have successfully argued in other contexts that the grievance hearing is not limited to eviction actions and may be used affirmatively by tenants to resolve

⁵⁸ Id., Question and Answer B-14, p. 13.

⁵⁹Id., Question and Answer B-18, p. 13.

⁶⁰See § 2.1.5.1, supra, discussing motivational screening.

⁶¹HUD, Interim Notice 93-24, supra note 15, Question and Answer B-11, p. 12.

⁶⁹²⁴ C.F.R. §§ 966.50 and 966.53 (1993); 42 U.S.C.A. § 1437d(k) (West Supp. 1994).

⁶⁹²⁴ C.F.R. §§ 882.216(b)(ii) and 887.405(b)(ii) (1993).

⁶⁴58 Fed. Reg. 30,872 (May 27, 1993) (Public Housing tenant can use grievance procedures to resolve problems with FSS).

⁶⁵²⁴ C.F.R. § 984.203(i) (1994), 58 Fed. Reg. 30,858 (May 27, 1993) (refers to the Section 8 hearing procedures; there is no reference in the regulations to the Public Housing grievance procedures).

2.1.7 OUTREACH TO TENANTS TO INFORM THEM OF THE PROGRAM

A PHA is urged to survey families to determine interest in the FSS program and if the PHA is unable to reach the required program size, the PHA should resurvey the tenants. ⁶⁷ To determine interest, the PHA may ask each participant at the time of the annual rent recertification or it may conduct a separate survey. The PHA's obligation to do outreach should not be ignored. It is an opportunity to ensure that the word is spread and that there is full participation in the FSS programs by members of both minority and non-minority groups. ⁶⁸

2.2 CONTINUED PARTICIPATION

There are important issues that may arise once an FSS participant has been selected for the program. Two key issues include the portability of the Section 8 Certificate or Voucher and the rent that each participant must pay. These two issues are discussed below.

2.2.1 RELOCATION AND PORTABILITY

One of the key features of the Section 8 Certificate and Voucher Programs is that the tenant can chose where to live and can move and take the subsidy to the new location. Different rules apply, depending upon whether the family wants to move within or outside of the jurisdiction of the PHA that initially issued the Certificate or Voucher. HUD's regulations limit FSS participants' rights to use the portability features of the Section 8 program, possibly in violation of the statute.⁶⁹

2.2.1.1 Within the PHA's Jurisdiction

FSS participants are permitted to move within the jurisdiction of the PHA. To Before moving, the family must notify the PHA of its intention and obtain a new Certificate or Voucher. PHAs must issue a new Certificate or Voucher unless the family has failed to comply with program regulations. A family may be denied a new Certificate or Voucher to move for failure to comply with the family's contract of participation under FSS. The family is entitled to a hearing to contest the denial of the Certificate or Voucher. As the regulations are currently written, this hearing does not have to be a prior hearing but it must be afforded within a "reasonably expeditious manner" after the participant has requested it. The failure to

⁶⁶See Samuels v. District of Columbia, 770 F.2d 184 (D.C. Cir. 1985) (tenants use grievance hearing to contest substandard conditions); Blevins v. Covington Hous. Auth., No 79-CI-443 (Ky. Cir. Ct., Kenton Cnty., Nov. 5, 1980), 14 CLEARINGHOUSE REV. 1,193 (No. 26,675, Mar. 1981) (same); Chavez v. City of Santa Fe Hous. Auth., 606 F.2d 282 (10th Cir. 1979) (grievance hearing must be offered prior to assessing damage charges); see also § 2.5.2, infra, regarding hearing rights for termination from the FSS program and Section 8 program.

⁶⁷24 C.F.R. §§ 962.201(d)(6) and 984.201(d)(6), 58 Fed Reg. 30,858 (May 27, 1993); HUD, Interim Notice 93-24, supra note 15, Question and Answer B-12, p. 12.

⁶⁸²⁴ C.F.R. §§ 962.201(d)(6) and 984.201(d)(6) (1994), 58 Fed. Reg. 30,858 (May 27, 1993).

⁶⁹⁴² U.S.C.A. § 1437f(r) (West Supp. 1994).

^{*24} C.F.R. §§ 882.209(m) and 887.167 (1993).

⁷¹Id. §§ 882.216 and 887.405.

⁷²Id. §§ 882.216(b)(5) and 887.405(b)(5).

provide a timely hearing will harm those FSS participants who are being forced to move or who want to move to enable the family to cure a breach in the FSS contract of participation. In an appropriate situation, a participant may have a valid claim to challenge the failure to provide a timely hearing.

2.2.1.2 Outside the Jurisdiction of the PHA

Section 8 FSS participants may use the portability feature of their Section 8 outside the jurisdiction of the PHA.⁷³ According to the FSS regulations, a family that wishes to participate in a Section 8 FSS program must live in the jurisdiction of the initial PHA for one year after the effective date of the contract of participation before exercising the portability feature of the program.⁷⁴ This restriction on portability cannot be extended beyond one year.⁷⁵ Additionally, the regulations authorize a termination of the Section 8 subsidy after the relocation of the family to another jurisdiction if the family is unable to fulfill its obligations under the contract.⁷⁶

The regulations do not specifically state what will happen if the family tries to use the portability feature of the Section 8 program before the end of the twelve month period. But presumably the PHA will deny any request to move and will terminate the family, if it does not remain in the jurisdiction for the one year period. This residency requirement may create problems for participants who encounter unforseen problems necessitating a move. It may also frustrate the purposes of the FSS program, if the reason for the move is that the family has found employment or better training in another jurisdiction.

The rule denying portability or requiring a termination of the Section 8 for violating the one-year residency requirement should be challenged. First, an argument can be made that any termination must be for good cause. Moving within the 12-month period should not alone justify a termination. Depending on the facts, it is likely that there may be no good cause to terminate the family from the Section 8 program because of a move within the first 12 months. For example, a tenant who must move because of personal reasons such as medical or the landlord's decision to increase the rent and the tenant's inability to find a suitable unit within the jurisdiction should not precipitate the loss of the Section 8. Additionally, there would be no good cause for a termination if the family moved for better employment or training opportunities. The employment or training may, in fact, satisfy the interim terms of the FSS contract of participation.

Second, the imposition of a residency requirement may be unconstitutional.⁷⁷ In other contexts, tenants have successfully challenged durational residency requirements as unconstitutional. The courts have held that a residency requirement that inhibits the migration of needy people or that stems from a desire of a community only to take care of its own

⁷³Id. § 984.306 (1994), 58 Fed. Reg. 30,858 (May 27, 1993); 42 U.S.C.A. § 1437f(r) (West Supp. 1994); 24 C.F.R. §§ 887.551 - 887.567 (1993).

⁷⁴24 C.F.R. § 984.306(b) (1994), 58 Fed. Reg. 30,858 (May 27, 1993).

⁷⁵HUD, Interim Notice 93-24, supra note 15, Question and Answer J-7, p. 44.

⁷⁶24 C.F.R. § 984.306(f), 58 Fed. Reg. 30,858 (May 27, 1993).

⁷⁷Shapiro v. Thompson, 394 U.S. 618 (1969).

residents is unconstitutional.78

Third, nothing is gained by so severely penalizing a family for failing to fulfill obligations that it now cannot perform. A family that moves within the first twelve months will forfeit the escrow and may give up the opportunity to participate it the FSS program. The family should not be further penalized.

Fourth, the 12-month waiting period violates the portability statute by imposing a requirement that is not authorized. HUD appears to recognize the importance of the portability feature. In the introductory comments, it states that "FSS families are not to be penalized in exercising their right to portability solely because they cannot participate in the FSS

Finally, if the family is able to fulfill its obligations under the contract after the move, the Section 8 subsidy should not be terminated.81

After the 12-month period, the regulations are clear that the family may exercise the portability features of the program and move outside of the jurisdiction of the PHA.82 But there is still ambiguity concerning whether the family could lose the Section 8 subsidy, if the move made it impossible for the family to fulfill the contract of participation. 83 The regulations permit a termination, but the introductory comments to the regulations state that the family should not be penalized for exercising the portability features of the program.84 If the move occurs, participation could continue under the auspice of the initial PHA or the receiving PHA. The family's escrow account could either remain with the initial PHA or be transferred to the

2.2.2 RENT

The FSS statute provides that so long as the family income is below 50 percent of median income for the area, the amount of rent paid by a participating family may not increase due to increases in earned income. 85 When family income exceeds 50 percent of median area income, but is not above 80 percent, the rent increases are designed to be staged until they reach 30

^{*}See, e.g., Cole v. Housing Auth. of Newport, 312 F. Supp. 43 (D.R.I. 1970), aff'd, 435 F.2d 807 (1st Cir. 1970); King v. New Rochelle Mun. Hous. Auth., 422 F.2d 646 (2d Cir. 1971), cert. denied, 404 U.S. 863 (1971).

⁷⁹42 U.S.C.A. § 1437f(r) (West Supp. 1994).

⁸⁰58 Fed. Reg. 30,877 (May 27, 1993) (the introductory comments further provide that a family's housing assistance should not be terminated in this situation.); 58 Fed. Reg. 30,877 (May 27, 1993); HUD Interim Notice 93-24, supra note 15, Question and Answer J-8, p. 45 (same); see also § 2.5.1, infra, discussing good cause for termination of Section 8; compare 24 C.F.R. § 984.306(f) (1994), 58 Fed. Reg. 30,858 (May 27, 1993) (a PHA may terminate the Section 8 assistance if the family moves and cannot fulfill the contract obligations in the new location).

⁸¹²⁴ C.F.R. § 984.306(f) (1994), 58 Fed. Reg. 30,877 (May 27, 1993).

⁸²²⁴ C.F.R. §§ 984.306(c) and (d) (1994) (1994), 58 Fed. Reg. 30,858 (May 27, 1993).

⁸³²⁴ C.F.R. § 984.306(f), 58 Fed. Reg. 30,858 (May 27, 1993).

⁸⁴⁵⁸ Fed. Reg. 30,877 (May 27, 1993).

⁸⁵⁴² U.S.C.A. § 1437u(d)(1) (West Supp. 1994).

percent of income at 80 percent of median family income.86 The statute also calls for the creation of an escrow account.⁸⁷ For families below 80 percent of median income, the amount to be placed in the escrow account is an amount equal to the difference between rent paid and 30 percent of adjusted family income. PHAs cannot create escrow accounts for families earning more than 80 percent of income.88

HUD has interpreted the statutory language to require FSS families to pay an increased rent as income increases through employment but it has provided that the increase in rent due to earned income is to be placed in an escrow account. This requirement to pay the increased rent is directly contrary to the clear statutory language89 and the legislative history.90 Unfortunately, however, the statute does not indicate how the escrow account should be funded and Congress provided no additional funds for escrow accounts. Without additional funds, HUD can argue that Congress could not have intended that participants receive both lower rent and an escrow account. In addition, HUD will also argue that it is entitled to deference in interpreting the statute. However, HUD may have to change its position on the issue of rent calculations, if the escrow account is optional.91 In that event, the argument that there is a conflict between the statutory mandate establishing rents and an escrow account has less significance. Without the escrow account, FSS tenants' rents should not increase due to an increase in earned income.

2.2.3 EXCLUSION OF INCOME RECEIVED UNDER TRAINING PROGRAMS

All Public Housing and Section 8 tenants, including FSS participants, are entitled to the exclusion for rent setting purposes of income from certain types of training programs. These exclusions include all payments received under programs funded in whole or part under the Job Training Partnership Act (JTPA). 92 Amounts received under HUD-funded training programs, which include cash and transportation payments and child care vouchers, are also excluded from

 $^{^{36}}Id.$

⁸⁷ Id. § 1437 u(d)(2).

 $^{^{88}}Id.$

⁸⁹ See, for example, 42 U.S.C.A. § 1437u(d)(1) (West Supp. 1994) which provides that "the amount of rent paid by any participating family . . . may not be increased on the basis of any increase in the earned income of the family " The rents for families between 50 and 80 percent of area median income shall be increased up to 30 percent of adjusted income. If the family continues to participate in the program after the contract of participation is completed, "the rent charged . . . shall be increased to 30 percent of monthly adjusted income." See also 42 U.S.C.A. §§ 1437u(d)(2) and (e) (West Supp. 1994).

⁹⁰The legislative history provides that "because of the ability of a PHA to hold a family's rent constant as income increases is permitted only in conjunction with an escrow savings account, it is the Committee's belief that these accounts will be a positive incentive for families to participate in the program". H.R. REP. NO. 760, 102d Cong., 2d Sess. 80 (1992).

⁹¹See n.12, supra.

⁹²29 U.S.C.A. § 1552(b) (West 1985); 55 Fed. Reg. 29,905 (July 23, 1990); see also Cotton v. Pierce, No. CV 85 HM5055NE (N.D. Ala. complaint filed Jan. 18, 1985) (Clearinghouse No. 48,621); Letter from Warren T. Lindquist, Assistant Secretary, Office of the Assistant Secretary for Public and Indian Housing, to Alison Berry, National Employment Law Project, New York, Re Treatment of Income Under the Job Training Partnership Act (JTPA) (Nov. 16, 1984) (on file at National Housing Law Project); Letter from Paul D. McCombs, Jr., Chief, Assisted Housing Management Branch, to Executive Directors, All Alabama Housing Authorities and Section 8 New Construction Owners, Re Treatment of Income Received Under JTPA (Jan. 8, 1985) (on file at National Housing Law Project).

If employment is a component of the training program, then the income from employment is also excluded for the duration of the training program. 93 Payments received by participants in publicly assisted programs which are compensation for out-of-pocket expenses are also excluded if they are designated for a particular purpose in advance or if they are paid after the expense has been incurred. Scholarships funded under Title IV of the Higher Education Act of 1965 are also excluded from income. The value of other kinds of scholarships are excluded to the extent that they cover the costs of tuition, fees, books, equipment, materials, supplies, transportation and miscellaneous personal expenses of a student at an educational But that portion of these scholarships designated for general living expenses is included in income.%

Public Housing tenants are entitled to an additional exclusion from income for rent setting purposes. The Public Housing statute provides that rents of Public Housing residents cannot be increased because of increased earnings gained as a result of participating in any self-sufficiency program, such as a JOBS program, while the residents are in the program or for 18 months after they get a job when they complete the program. 97 This provision is in effect and requires no appropriation but regulations have not been published to implement it. 98

These income disregards are important as they affect not only the amount of rent that the FSS family will pay but also the amount that the PHA will place in the escrow account. If, in the rent setting process, the participant qualifies for any of the above-mentioned exclusions from income, these exclusions will reduce the amount that the PHA sets aside in the escrow account. This is because, as mentioned above and described more fully below, the amount set aside in the escrow account is based upon any increase in rent due to employment since the family began participation in the FSS program. Thus, if the participant's rent does not increase, there may be no payment to the escrow account or the payment to the escrow account will not increase.

⁹³24 C.F.R. §§ 813.106(c)(8)(i) and 913.106(c)(8)(i) (1993); HUD Notice 92-48 (PHA), expires October 31, 1993, Subject: Exclusion of Income Received Under Training Programs, ¶ 2.

⁹⁴²⁴ C.F.R. §§ 813.106(c)(8)(iii) and 913.106(c)(8)(iii) (1993).

⁹⁵²⁰ U.S.C.A. § 1087uu (West Supp. 1993); Letter from Harold E. Sather, Director, Public Housing, HUD Region X to Gregory D. Provenzano, Evergreen Legal Services (Apr. 1, 1993) (on file at National Housing Law Project); Letter from Michael B. Janis, General Deputy Ass't Sec., to Gregory D. Provenzano, Evergreen Legal Services (Apr. 22, 1993) (on file at National Housing Law Project). For materials interpreting prior provisions of Title IV, see Crane v. Kemp, No. C 89-599 (W.D. Wash. Dec. 11, 1989), 23 CLEARINGHOUSE REV. 320 (No. 44,576, July 1989) (class certified and preliminary injunction granted which provided that student financial assistance received under Title IV of the Higher Education Act of 1965 shall not be considered as income, except to the extent such aid exceeds the cost of the tuition, fees, books and other school-related costs); HUD Notice PIH-89-51 (HUD), Re Determination of Student Income (Expires Nov. 30, 1990) (clarifies exclusion for federally funded scholarships) (on file at National Housing Law Project).

^{%24} C.F.R. §§ 813.106(c)(6) and 913.106(c)(6) (1993); see also Ortiz v. Department of HUD, 448 F. Supp. 953 (D.P.R. 1977).

⁹⁷42 U.S.C.A. § 1437a(c)(3) (West Supp. 1994); see also 42 U.S.C.A. § 12,714 (West Supp. 1994); Pub. L. 102-550, 102d Cong., 2d Sess. § 923, 106 Stat. 3884 (1992) (HUD has taken the position that this provision which provides for a disregard of income for newly employed individuals is not self-executing and will not be implemented); 58 Fed. Reg. 30,866 (May 27, 1993) (Section 957 (42 U.S.C. § 12,714) is subject to an appropriation and there has been no appropriation).

^{*}The 1994 housing legislation pending in the House and Senate would slightly alter these rules for public housing tenants, and the Senate bill would extend certain provisions to Section 8 tenants. H.R. 3838, 103d Cong., 2d Sess., § III (1994), supra note 12; S. 2281, 103d Cong., 2d Sess., § 207 (Senate Committee on Banking,

2.3 ESCROW ACCOUNT

The statute currently provides that PHAs must escrow savings for each participating family. On Contributions to this account will be made in accordance with a formula which is the lesser of: 1) 30 percent of family income disregarding earned income or 2) the difference between the family's current rent and the family's rent at the effective date of the contract of participation. The earned income of the family may include earned income from individuals who were not originally a part of the family or from an employed minor who reaches majority. Determination of the amount that should be paid into the escrow account is made at the annual recertification and may be modified by an interim recertification.

2.3.1 EFFECT ON ESCROW OF FRAUDULENT REPORTING OF FAMILY INCOME

The regulations provide that if the family fraudulently fails to report increases in family income, the amount credited to the escrow account will be based upon the amount the family under-reported, not the actual increased income. This provision is apparently designed to ensure that the family is penalized for the fraud. Under this scheme, the family will presumably have to reimburse the PHA for any increased rent retroactively charged for failure to report the increase in income. But the escrow account will not be credited with an amount equal to the increase in income.

Problems may arise regarding whether an alleged failure to report an increase in income was fraudulent. The FSS regulations do not define fraud. But other HUD regulations and court opinions have set forth a standard. To establish fraud, the PHA should be required to show the following elements: a false representation, in reference to a material fact, made with knowledge of its falsity and with intent to deceive, with action taken in reliance upon the representation. If the elements of fraud are not present, then the PHA cannot diminish the participant's payment to the escrow account. In another context, HUD and the courts have determined that rent can be retroactively increased but other penalties should not apply if the failure to report was merely a mistake and not fraud. Mistakes and program errors should be corrected but the family

⁹⁹See discussion in n.12, supra, regarding pending legislation which would make the establishment of an escrow account optional.

¹⁰⁰HUD Interim Notice 93-24, supra note 15, Questions and Answers C-8 and C-9, p. 19.

⁽definition of fraud and abuse in regulations directing PHAs to curb such activities by seeking to recover the excess subsidies); 24 C.F.R. § 28 (1993) (implementation of the Program Fraud Civil Remedies Act of 1986); HUD, OCCUPANCY REQUIREMENTS OF SUBSIDIZED MULTIFAMILY HOUSING PROGRAMS 4350.3, through CHG-25 (Nov. 1981 - May 1993). (Handbook applicable to Section 236 and 221(d)(3) BMIR tenants as well as all project-based Section 8 tenants except Moderate Rehabilitation, and Section 8 Project-Based Certificate tenants.), all project-based Section 8 tenants except Moderate Rehabilitation, and Section 8 Project-Based Certificate tenants.), information); see also HUD, PUBLIC HOUSING AGENCY ADMINISTRATIVE PRACTICES HANDBOOK FOR THE SECTION 8 EXISTING HOUSING PROGRAM 7420.7, through CHG-10 (Nov. 1979 - Sept. 1991), ¶ 9-12 (Nov. 1979) (program abuse includes willful abuse, intentional misrepresentation and fraud).

¹⁰²See, e.g., HUD Handbook 7420.7, supra note 101, ¶ 9-12c(2)(b)2 (Nov. 1979) (if PHA has sufficient evidence that the Section 8 Certificate family did not intentionally engage in program abuse, the PHA must require repayment but does not necessarily need to terminate the assistance); HUD Handbook 4350.3, supra note 101, ¶ 5-19, CHG-23 (Sept. 1992), and ¶ 5-20, CHG-21 (June 1992) (eviction is authorized for fraud but not for program violations). See also Holly v. Housing Auth., supra note 101 (PHA liable under Section 1983 for wrongful

should not be penalized for failure to report changes if the failure was not fraudulent. 103

2.3.2 OFFSETS TO ESCROW ACCOUNT

If a Public Housing FSS family owes the PHA rent or other amounts under the lease, the escrow account for the family will be reduced by the amount owed. For Section 8 FSS families who do not pay the full rent or other amounts due under the lease, the PHA will reduce the FSS account balance by the amount of unpaid tenant rent and charges. To avoid problems created by a landlord demanding illegal side payments, the charges must be set forth in the lease as reported to the PHA. These charges may include damage charges or vacancy losses.

Permitting the PHA to off set the payments to the escrow account for amounts allegedly owed under the lease may cause problems. Mistakes may be made by the PHA. Alternatively, the tenant may be withholding rent for reason such as habitability or because of a disputed damage charge. PHAs should not be permitted to offset amounts that are disputed. In addition, notify the participant of the proposed action and give the participant an opportunity to respond at a hearing. 105

2.3.3 REPORTS ON STATUS OF ESCROW ACCOUNT

The participating family must be given a yearly report on the status of its escrow account including all interest and deductions. These reports should be carefully review by the participating family because mistakes may be made and PHAs are not necessarily equipped or inclined to maintain accurately the information.¹⁰⁶

2.3.4 WITHDRAWAL AND DISTRIBUTION OF ESCROW ACCOUNT

Participants may withdraw funds from the escrow account before completion of the contract of participation if the family has met certain interim goals established by the PHA. The PHA may limit how the money is used to purposes consistent with program (e.g., for expenses related to school, job training, business start-up¹⁰⁷ and a "car when public transportation is

termination of Section 8 benefits precipitated by tenant's failure to report short-lived marriage and no fraud was established); *Ellis v. Ritchie*, 803 F. Supp. 1097 (E.D. Va. 1992) (PHA tried to terminate benefits for failure to report bank account but no fraud was alleged).

¹⁰³Compare 58 Fed. Reg. 30881 (May 27, 1993) (The introductory comments to the interim FSS regulations state that "under HUD's Section 8 and public/Indian housing programs, failure to report all income constitutes fraud.").

¹⁰⁴24 C.F.R. § 984.305(a)(2)(iii) (1994), 58 Fed. Reg. 30,858 (May 27, 1993).

¹⁰⁵ Chavez v. City of Santa Fe Hous. Auth., supra note 66; Escalera v. New York City Hous. Auth., 425 F.2d 853 (2d Cir. 1970), cert. denied, 400 U.S. 853 (1970); see also § 2.5.2, infra, discussing hearing rights for a termination, and § 2.1.6.2, supra, discussing hearing rights for a denial of admission.

¹⁰⁶58 Fed. Reg. 30,878 (May 27, 1993) ("commenters expressed concern that the FSS account would present a significant accounting burden").

¹⁰⁷24 C.F.R. §§ 962.305(c)(2) and 984.305(c)(2) (1994), 58 Fed. Reg. 30,858 (May 27, 1993).

unavailable,"108 or child care). 109 If the family fails to complete the FSS program, it is not obligated to repay the expended escrow funds, assuming that the release of the funds was not based upon fraud or misinformation by the family. 110

Upon completion of the FSS contract, the escrow account must be distributed to the head of the FSS household if the head of household can certify that no family member is a recipient of welfare assistance. Because the contract of participation includes a provision that the family must have stopped receiving welfare assistance one year before the expiration of the contract, the family's ability to certify should be known in advance. The FSS family will forfeit the escrow account if the family is terminated from the program or is still receiving welfare assistance at the end of the contract.

If the head of the FSS family ceases to reside with other family members, the remaining family members may, after consultation with the PHA, designate another family member to receive the funds. 113 This provision will cause some problems if, for example, the head of the FSS family left the household due to abuse. In anticipation of this problem, PHAs should seek a waiver of the provision that permits the remaining family members to determine who receives the escrow account in cases of spousal or other family abuse that have caused the head of household involuntarily to leave the household.

2.3.5 EFFECT OF ESCROW ON OTHER NEED-BASED PROGRAMS

The PHA must maintain all escrow accounts in one interest-earning depository account. The purpose of the depository escrow account for all FSS participants is to avoid problems with the definition of income and assets by other need-based welfare programs and the IRS. The IRS has concluded that if the escrow account contains the funds of all FSS participants, it is not a trust and the income earned on it need not be reported to the IRS. The IRS has further confirmed that the funds in the FSS account are not income to the FSS family because it is within the welfare benefits exclusion.

The Department of Health and Human Services (HHS) has determined that the money in an FSS family's escrow account is not income or resources under Aid to Families With Dependant Children (AFDC) and Medicaid. To date, HUD does not have equivalent rulings

¹⁰⁸HUD Interim Notice 93-24, supra note 15, Question and Answer C-5, p. 17; H. REP. NO. 760, 102d Cong., 2d Sess. 80 (1992).

¹⁰⁹H. REP. NO. 760, 102d Cong., 2d Sess. 80 (1992).

¹¹⁰HUD Interim Notice 93-24, supra note 15, Question and Answer C-33, p. 24.

¹¹¹²⁴ C.F.R. §§ 962.305(c)(1) and 984.305(c)(1) (1994), 58 Fed. Reg. 30,858 (May 27, 1993); see also discussion in § 2.4.1, infra, regarding welfare assistance.

¹¹²See § 2.4.1, infra, discussing welfare assistance.

¹¹³²⁴ C.F.R. §§ 962.305(d) and 984.305(d) (1994), 58 Fed. Reg. 30,858 (May 27, 1993).

¹¹⁴Id. §§ 962.305(a) and 984.305(a).

¹¹⁵⁵⁸ Fed. Reg. 30,879 (May 27, 1993).

¹¹⁶Id.

¹¹⁷ Id. at 30,880.

from the Department of Agriculture for the Food Stamp program or from the agencies administering other need-based programs where the issue may arise.

Nevertheless, with HUD's interpretation that any increase in earned income goes into the escrow account, the money in the account should not be considered income and should have already been counted as income when received by the other need-based programs. If the escrow account is nothing more than a diversion of family income from a rent payment into an escrow account, the escrow account does not represent additional income to the family and should not be counted by other programs (except perhaps for the interest earned). For example, if the head of an FSS family obtains work, that income will be included when determining eligibility for food stamps. It will be irrelevant that a portion of that income will ultimately go into an escrow

The only effect the escrow account arrangement would have on need-based programs is where the actual shelter costs is used to calculate benefits, e.g., in the food stamps program or in states like New York that have an "as paid" shelter grant system. In those situations, an argument could be made that the welfare department should calculate the rent as what the family is paying less that portion of the payment that is being diverted to the family's escrow account. But the response to that position is that the escrow does not vest until the FSS participant successfully completes the program. Thus, because the participant is not guaranteed the escrow, the portion of the rent that is being diverted should be ignored by other need-based programs. The rent should be determined by the amount that the FSS participant is out-of-pocket, not by what might be returned.

2.4 CONTRACT OF PARTICIPATION

Each participant in the FSS program is required to sign a HUD form contract. HUD is committed to producing a Spanish language translation of the contract. 119 The term of the contract is five years. The term can be extended for up to two years for good cause, which HUD has defined to mean "circumstances beyond the control of the FSS family, as determined by the PHA, such as a serious illness or involuntary loss of employment". 120 HUD also counsels that extensions should be granted only in exceptional circumstances but that they should be granted to permit the family reach the interim goal of one year free of welfare. 121

Despite the regulations, the statute does not limit the time period for an extension. In contrast, it requires PHAs to extend the five-year period for good cause. 122 There are circumstances that may arise that may justify an extension of the contract beyond the two-year extension period and the statutory language which provides for no limitation will support your argument for such an extension. For example the family may need a several-month extension beyond the two years to qualify for the one year free of welfare exemption. A family may also

¹¹⁸For a copy of the form contract see HUD Interim Notice 93-24, supra note 15, Family Self-Sufficiency Program Contract of Participation (Form HUD-52650, May 1993), and Question and Answer G-6, p. 35.

¹¹⁹58 Fed. Reg. 30,871 (May 27, 1993).

¹²⁰Id. at 24 C.F.R. §§ 962.303(d) and 984.303(d).

¹²¹HUD Interim Notice 93-24, supra note 15, Question and Answer G-18, p. 39.

¹²²42 U.S.C.A. § 1437u(c)(3) (West Supp. 1994).

need an extension if an adult child who may be receiving welfare assistance is forced to return to the FSS participant's home for personal and financial reasons. In that event, the family should not be forced to chose between providing temporary shelter to a family member and qualifying for the escrow account.

The contract of participation incorporates the individual training and service plan which addresses the needs and circumstances of the head of household and any other family members who want to participate. Specific interim and final goals must be established. One interim goal that must be included is that the family is independent of welfare assistance for 12 consecutive months before the expiration of the contract. 123

2.4.1 WELFARE ASSISTANCE

HUD defines welfare assistance as income assistance from Federal or State welfare programs including AFDC, SSI that is subject to an income eligibility test, medicaid, food stamps, general assistance, or other government assistance directed to meeting general living expenses such as food, health care, and child care. The only types of programs that are omitted from the definition of welfare assistance are the federal and state housing programs and transitional welfare assistance provided to JOBS participants. FSS participants may access their escrow account only if no one in the family is receiving welfare assistance.

If HUD continues to define welfare assistance in such broad terms, the consequence will be that many of the working poor will not be able to access their escrow funds upon completion of their FSS contracts or they will have to choose between the escrow account and these other benefits.

HUD's expansive definition of welfare assistance will negatively affect many FSS program participants and program goals. The FSS participants will be working and free from AFDC, SSI and GA; yet they will not be eligible to receive the escrow account funds. This occurs because even after becoming ineligible for AFDC, the working poor often will be eligible for subsidized child care and health care, as well as food stamps. In addition, the fact that families will not be eligible to the escrow account means that it will not be an incentive for participating in the program. Thus, the function and purpose of the escrow account will be minimal.

The problem can best be demonstrated by an example. California makes child care subsidies available to families whose earnings are less than 84 percent of state median income. Once the participant is in the program, he or she is eligible for a child care subsidy until the family income reaches a maximum of 100 percent of the median income level. Since the median annual income in California is relatively high (\$44,600), many of the working poor will qualify for child care subsidies. California also provides health care coverage to pregnant mothers and children of families earning up to 200 percent of the federal poverty line. Moreover, families who are able to work their way off of AFDC may receive up to twelve months of transitional

¹²³24 C.F.R. §§ 962.303(b)(2) and 984.303(b)(2) (1994), 58 Fed. Reg. 30,858 (May 27, 1993); HUD Interim Notice 93-24, supra note 15, Family Self-Sufficiency Program Contract of Participation (Form HUD-52650, May 1993), p. 3.

¹²⁴²⁴ C.F.R. §§ 962.103 and 984.103 (1994), 58 Fed. Reg. 30,858 (May 27, 1993).

 $^{^{125}}Id.$

Medicaid and transitional child care. Under HUD's definition of welfare assistance, such a family receiving transitional assistance will not be eligible to receive its escrow funds. In contrast, if the wage earner was a participant in the JOBS program, the family could receive transitional Medicaid and child care, yet still receive its escrow account funds.

New York State has similar programs for which families are eligible even though they are no longer eligible for AFDC or SSI. New York makes day care subsidies available to families earning up to 200 percent of the federal poverty line. It also provides medical assistance to the children of families with *net* income up to 200 percent of poverty, through its Medicaid and various state-funded health care programs. Under HUD's definition of welfare assistance, no family receiving subsidized child care or health care will receive its escrow funds. 126

The expansive definition of welfare assistance adopted by HUD is at odds with the statute which provides that the family must not receive "income assistance under Federal or State Welfare Programs." The statutory language is clear. It refers to "income assistance." This language was intended to cover federal AFDC or income assistance programs at the state level such as general assistance. HUD's expansion of the term "welfare assistance" to include high cost items such as child care and Medicare is inconsistent with Congress's efforts to amend the statute to eliminate the requirement that FSS participants be independent of all housing benefits, which is another high cost item. The current definition is contrary to the legislative intent and indefensible.

2.4.2 SEEK AND MAINTAIN SUITABLE EMPLOYMENT

The final goal for the head of household is to seek and maintain suitable employment. Suitable employment is determined by the PHA. It is dependant upon the employment market and the skills of the FSS participant. In general, it means something more than a minimum wage job; or, if the job is a minimum wage job, that there is opportunity for advancement. The broad discretion granted the PHA may cause problems for participants who have diligently participated in the program but have not achieved the optimum (i.e., more than a minimum wage job) because of market conditions or other personal factors. Care must be taken to assure that the PHA's discretion is not abused. Participants should be entitled to the escrow account if they have found employment, even it is just minimum wage employment. This is especially true if there are limited employment opportunities available.

¹²⁶See letter from David Cohen, et al., to Kathryn Greenspan, HUD, Office of Rental Housing (Aug. 8, 1994), which urges HUD to change its definition of welfare assistance; and Comments submitted by Barbara Weiner, Staff Attorney, Greater Upstate Law Project, Albany, NY, to the Rules Docket Clerk, HUD, Washington, D.C. (July 22, 1993) (both items are on file at National Housing Law Project).

¹²⁷42 U.S.C.A. § 1437u(d)(1) (West Supp. 1994).

¹²⁸The statute previously provided that the escrow account could not be distributed until the family was no longer a recipient of state or federal assistance for housing. Pub. L. No.101-625, 101st Cong. 2d Sess., § 554(a), 104 Stat. 4225 (1992).

¹²⁹24 C.F.R. §§ 962.303(b)(4) and 984.303(b)(4) (1994), 58 Fed. Reg. 30,858 (May 27, 1993).

¹³⁰HUD Interim Notice 93-24, supra note 15, Question and Answer G-3, p. 33.

¹³¹A study done by the Government Accounting Office (GAO) has concluded the obvious that for FSS participants keeping a job is as hard as getting one. See GAO FSS Report 1992, supra note 5, p. 33.

2.4.3 OTHER CONTRACT PROVISIONS

Other family members may agree to participate in the FSS program. If they do, they too must sign contracts of participation with an individual training and service plan. The final goal for family members who are other than the head of household may be limited to achieving certain educational or training goals and does not have to include seeking and maintaining a job.

Another provision of the contract is that the family must comply with the terms of the lease. For Public Housing tenants, in the event that there is a conflict between the lease and the contract, the provisions of the lease prevail. 133

In the event that the PHA is unable to obtain support services from another agency, the PHA may seek the same services from another agency, determine that the services are not essential or determine that the services are essential and declare the contract of participation null and void. 134

2.5 TERMINATION FROM FSS AND TERMINATION FROM SECTION 8

Under the FSS program, families may have FSS services withheld or terminated, and Section 8 participants their housing subsidies terminated, only if it can be established that the contract of participation was breached without good cause and the participant was afforded a hearing. The regulations provide that a Section 8 FSS family may be terminated from the Section 8 program for failing to comply with the terms of the contract of participation. Questions will arise as to what is good cause and what procedural protections should be provided in the hearing.

2.5.1 GOOD CAUSE

Congress in 1992 amended the FSS program to permit a PHA to terminate a Section 8 contract or the FSS services if the family fails to comply with the requirements of the FSS contract without good cause. Previously this good cause requirement had not been expressly provided for in the legislation. As remedial legislation the provisions should be liberally construed.

Congress defined good cause to include circumstances beyond the control of the family, such as a loss or reduction in access to support services, or a change in circumstances that makes the family or individual unsuitable for participation. In the legislative history, Congress further explained that there may be many reasons why a family cannot participate or meet established goals of the contract of participation, "including loss of child care, pregnancy,

¹³²²⁴ C.F.R. §§ 962.303(b)(3) and 984.303(b)(3) (1994), 58 Fed. Reg. 30,858 (May 27, 1993).

¹³³HUD Interim Notice 93-94, *supra* note 15, Family Self-Sufficiency Program Contract of Participation (Form HUD-52650, May 1993), p. 5.

¹³⁴²⁴ C.F.R. §§ 962.303(e) and 984.303(e) (1994), 58 Fed. Reg. 30,858 (May 27, 1993).

¹³⁵42 U.S.C.A. § 1437u(c)(1) (West Supp. 1994); 24 C.F.R. § 962.303(h)(2) and 984(b)(5) and (i)(i) (1995); 59 Fed. Reg. 7,638 (Feb. 16, 1994).

¹³⁶42 U.S.C.A. § 1437u(c)(1) (West Supp. 1994).

illness among family members, or disability during the term of the contract." Congress also distinguished the very serious consequences of a termination from the Section 8 program. As a result, it concluded that "only if tenants willfully abuse the program should they lose their housing subsidy." 138

The regulations for both the Section 8 and Public Housing FSS programs have been corrected to include the good cause requirement. 139

HUD regulations, the introductory comments to the regulations, and the HUD Notice provide additional limited guidance regarding the grounds for termination from the Section 8 program. The grounds that the PHA may consider for terminating a family from the Section 8 program include the failure of the head of household to seek and maintain suitable employment. 140 The Section 8 subsidy can also be terminated by the failure of the FSS family to meet other obligations under the contract of participation. ¹⁴¹ Because other family members may sign contracts of participation, this provision means that if a family member other than the head of household agrees to participate in training or other services and he or she does not fulfill the obligations, the Section 8 subsidy could be terminated. 142 This could produce especially For example, assume an FSS head of household who is fulfilling her commitments; assume further that a son agreed to participate in a drug rehabilitation program. If the son should fail, the family, under HUD's rules, may lose its housing subsidy. HUD further believes that a family may lose the Section 8 subsidy, if the head of household moves away from the family and thus fails to complete the contract of participation¹⁴³ or if the family exercises the portability provisions of the program and is unable to complete the FSS obligations at the new location. 144

HUD also provides examples of situations that do not constitute good cause for termination from the Section 8 program. A breach of the lease alone shall not be grounds for termination from the Section 8 program. In addition, the failure of the family to reach the interim goal of being free of welfare is not grounds for termination of the Section 8 nor is the failure of the family to be self-sufficient by the end of the contract term. It is also HUD's policy that termination of the FSS contract for reasons other than failure to comply with the contract such as the family's release from participation in the FSS program because of an absence of necessary supportive services is not grounds for termination of Section 8 housing

¹³⁷H. REP. NO. 760, 102d Cong., 2d Sess. 80 (1992).

 $^{^{138}}Id.$

¹³⁹24 C.F.R. §§ 962.303(b)(5) and 984.303(b)(5) and (i)(i), 59 Fed. Reg. 7,638 (Feb. 16, 1994).

¹⁴⁰Id. at § 984.303(b)(5)(iii).

¹⁴¹ Id.

¹⁴²HUD Interim Notice 93-24, supra note 15, Question and Answer G-4, p.34.

¹⁴³58 Fed. Reg. 30,881 (May 27, 1993).

¹⁴⁴Id. at §§ 984.303(h) and 984.306(f).

¹⁴⁵HUD Interim Notice 93-24, supra note 15, Question and Answer G-4, p. 38; compare 24 C.F.R. §§ 962.303(b)(5) and 984.303(b)(5) (1994), 58 Fed. Reg. 30,858 (Public Housing and Section 8 FSS participants must comply with the lease).

¹⁴⁶⁵⁸ Fed. Reg. 30,874 (May 27, 1993).

assistance.147 Finally, the contract of participation cannot be considered breached if family members, other than the head of household, never become employed or lose jobs obtained during their participation in the FSS program. 148

These examples of the grounds for termination of the Section 8 subsidy set forth in the regulations, the introductory comments and HUD Notice are, in some cases, confusing and inconsistent with the statue. The regulations also fail to provide adequate guidance regarding the circumstances under which the PHA may withhold or terminate the FSS services. PHAs, in their Action Plans, should address these issues and provide the necessary clarity.

If a family is facing a termination of its Section 8 subsidy, one may, to define good cause, draw on the principles set forth in cases involving evictions from federally assisted housing to challenge the PHA's action. ¹⁴⁹ In eviction actions, the courts have recognized the serious consequences of the action (i.e. the loss of a home and the opportunity to have affordable housing). 150 A termination of Section 8 due to the failure to comply with the contract of participation is also a disproportionately harsh consequence. In any FSS Section 8 termination, a family has lost or will lose, along with its ability to participate in the FSS program, an opportunity of assistance to be free of welfare and to obtain a job. With the termination of the Section 8 subsidy, the family will also lose its home because it will not be able to afford the rent without the Section 8 subsidy. The loss of the housing subsidy and one's home, although authorized, flies in the face of every objective of the FSS program which is to enable "families to achieve economic independence and self-sufficiency." This loss is particularly harsh in light of the fact that the family had the Section 8 housing subsidy before participating in the FSS program. In related settings where tenants accepted employment offered by their landlords, the courts have held that when the tenants lost the jobs, they regained the former benefits of local rent control or the Section 8 program. The courts recognize that in those situations where the housing was not contingent upon the offer of the job, the loss of the job should not terminate the tenancy or its benefits. 152

In eviction actions the courts have also focused upon the serious wrongdoing by the tenant. 153 Because of the dire consequences, the family should only be terminated from the

¹⁴⁷Id. at 30,874 and 30,875.

¹⁴⁸ Id. at 30,872 and 30,873.

¹⁴⁹ See National Housing Law Project, HUD HOUSING PROGRAMS: TENANTS' RIGHTS (Oakland: National Housing Law Project, 1994), Ch. 14.

¹⁵⁰See, e.g., Caramico v. Secretary of Dep't of HUD, 509 F.2d 694 (2d Cir. 1974); Lopez v. Henry Phipps Plaza S., Inc., 498 F.2d 937 (2d Cir. 1974).

¹⁵¹⁴² U.S.C.A. § 1437u(a) (West Supp. 1994).

¹⁵²Kearney Court Assocs. v. Spence and Pelley, 620 A.2d 1056 (N.J. Super A.D. 1993) (employees who had rent-controlled units prior to employment do not lose rent control status after losing employment with landlord); see also Atlantic Gardens v. Harris, No. 58948-83 (D.C. Super. Ct. Nov. 15, 1983), 17 CLEARING REV. 1243 (No. 35,758, Mar. 1983) (Section 8 New Construction tenant was protected by the Section 8 regulations after his employment as resident manager was terminated); compare 58 Fed. Reg. 30,874 (May 27, 1993) (in the introductory comments to the FSS regulations, HUD makes the assertion that "a family's participation in the Section 8 program before becoming a participant in the Section 8 FSS program has no bearing on the PHA's ability to terminate Section 8 assistance on the basis of the family's failure to comply with the terms of the FSS contract.").

¹⁵³See, e.g., Thorpe v. Housing Auth. of Durham, 386 U.S. 670, 679-80 (1967).

Section 8 program only because of serious wrongdoing by the head of the FSS family. Repeated failure to show up for job training, repeated failure to take any steps required by the contract to seek a job, and continuing substance abuse that interferes with job or training performance are all serious breaches of the FSS program and the contract of participation and may be grounds for termination from the FSS program. But these same abuses, although serious breaches of the FSS program, should not be grounds for termination of Section 8 assistance.

Eviction cases often consider if the tenant is responsible for or had control over the activity to determine if there is good cause to evict.¹⁵⁴ A family should not lose its Section 8 housing assistance because it cannot complete the obligations of the FSS program due to Section 8 because the services necessary to make the family self-sufficient are no longer available.¹⁵⁵ Practically speaking, this means that a family should not be punished with the loss of its housing subsidy if, for example, the child care arrangements do not work out. Additionally, if the family car is not adequate to get the head of household or other family family should not be so severely punished by these events that its housing subsidy is terminated. The family also should not be terminated if the head of household is complying with the contract of participation but other members of the family have not fulfilled their contracts.

Finally, in eviction cases, the courts have been reluctant to find good cause when faced with abuse of power by a PHA. Under the FSS program, the PHA has several options available when a FSS family is not performing on the contract. These options include modifying the contract, the withholding the support services, or terminating the family's participation in the FSS program. Termination of the Section 8 subsidy is the final and most draconian response. This last response can be justified only in cases of wilful abuse by the participant and, in most cases, should be set aside as "drastic beyond reasonable necessity" or simply not permitted. The program is a substant of the participant and the permitted of the participant and the permitted.

2.5.2 HEARING

Before a Public Housing FSS family can have FSS services withheld or a Section 8 FSS family may be terminated from the Section 8 program or have FSS services withheld, Congress determined that the PHA must provide an opportunity to be heard "in accordance with the requirements of section 1437d(k)." The substantial procedural protection provided for in the statute and the implementing regulations include the following:

- a right to be advised of the specific grounds of the adverse action;
- an opportunity to examine any documents or records or regulations related to the proposed action;

¹⁵⁴See, e.g., Tyson v. New York City Hous. Auth., 369 F. Supp. 513 (S.D.N.Y. 1974); Maxton Hous. Auth. v. McLean, 328 S.E.2d 290 (N.C. 1985).

¹⁵⁵⁴² U.S.C.A. § 1437u(c)(1) (West Supp. 1994).

¹⁵⁶²⁴ C.F.R. §§ 962.303(f) and 984.303(f) (1994), 58 Fed. Reg. 30,858 (May 27, 1993).

¹⁵⁷42 U.S.C.A. § 1437(u)(c)(2) (West Supp. 1994).

¹⁵⁸Thomas v. Hous. Auth. of Little Rock, 282 F. Supp. 575, 580 (E.D. Ark. 1967).

a right to exclude documents at the hearing which were not previously offered for examination;

a right to confront and cross examine adverse witnesses upon whose testimony the

a right to a decision based solely and exclusively upon the facts presented at the

the explicit allocation of the burden of proof to the PHA; and,

an express requirement to accommodate the needs of persons with disabilities.

HUD, in the introductory comments to the implementing regulations, recognizes the obligation to provide the protection of the Public Housing grievance procedures in the event of a termination of Section 8,159 but only requires PHAs to offer a hearing in accordance with the Section 8 hearing procedures.160 The Section 8 hearing procedures are an inadequate substitute and do not contain all the protection of the Public Housing grievance procedures. An argument could be made, however, that the Section 8 hearing regulations, satisfy all of the requirements of 42 U.S.C. § 1437d(l) with the exception that the Section 8 regulations are silent on the issue of participants' rights to see their own tenant folder. 161 Thus, if you are representing a FSS participant who is being terminated from Section 8 or for whom FSS services are being denied, you should demand the protection of Section 1437d(k) and the implementing regulations. But, you may have to settle for a limited modification of the Section 8 Certificate hearing procedure.

For any FSS participant facing termination, the notice of the action must state the grounds with enough specificity so that the participant can prepare a defense. 162 This means that the notice must indicate which party is at fault, the nature of the alleged breach of the contract, when the breach occurred and notice of adverse evidence so that it may be rebutted. 163

Prior to the hearing the participant should have the right to examine all documents that are relevant to the proposed action. If the PHA fails to provide a particular document, it cannot be relied upon at the hearing. 164

At the hearing the participant must first make a showing of entitlement to the relief sought and thereafter the PHA must sustain the burden of justifying the PHA action or failure to act. 165 Thus, for example, if a participant is being terminated because she has failed to

¹⁵⁹⁵⁸ Fed. Reg. 30,859 (May 27, 1993).

¹⁶⁰Id. at § 984.303(i); see also 58 Fed. Reg. 30,874 (May 27, 1993).

¹⁶¹ But see 58 Fed. Reg. 11,292 and 11,354, § 982.553(f)(1) (Feb. 24, 1993) (proposed Section 8 Certificate and Voucher Programs Conforming Rule which states that the Section 8 participant be provided with relevant documents and prohibits PHA use of documents that have not been provided).

¹⁶²Edgecomb v. Housing Auth. of Town of Vernon, 824 F. Supp. 312 (D. Conn 1993).

 $^{^{163}}Id$

¹⁶⁴² U.S.C.A. § 1437d(1) (West Supp. 1994); see also 58 Fed. Reg. 11,292 and 11,354, § 982.553(f)(1) (Feb. 24, 1993) (proposed Section 8 Certificate and Voucher Programs Conforming Rule which states that the Section 8 participant be provided with relevant documents and prohibits PHA use of documents that have not been provided).

¹⁶⁵²⁴ C.F.R. § 966.56(e) (1993).

attend job training, she has the burden of showing that the Section 8 subsidy should not be terminated because her failure to go to the training was due to circumstances beyond her control, or because there has been a change in her family circumstances. After the participant has made a showing of entitlement, the burden shifts to the PHA to justify its action. Depending upon the evidence at this point, the PHA could put forth evidence on how it or the service provider has worked with the participant and provided the necessary services. Finally, the participant would have the opportunity to rebut any evidence put forward by the PHA.

The information that the PHA relies upon cannot be wholly hearsay. 166 The participant must have the opportunity to cross examine any witness upon which the PHA relies. This means that if the PHA is relying upon the information supplied by a particular person to justify the termination or other action, the participant must have the opportunity to cross examine that

The decision must be based upon the facts that are presented at the hearing. 167 Information not presented at the hearing cannot be relied upon. The decision must set forth the elements of fact or law upon which the decision is based. f68

Public Housing FSS participants should have the right to a full grievance hearing if the PHA tries to terminate the FSS services. The regulations do not cross reference to the Public Housing grievance regulations but the introductory comments to the regulations do. 169

¹⁶⁶Billington v. Underwood, No 81-7978 (11th Cir. May 23, 1983) (CLEARINGHOUSE REV. No. 28,992); Edgecomb v. Housing Auth. of Town of Vernon, supra note 162; Kurdi v. DuPage Cnty. Hous. Auth., 161 III. App.3d 988, 514 N.E.2d 802 (1987) (reversing trial court approval of Section 8 termination decision based on alleged unauthorized occupant because decision based on hearsay and against "manifest weight of evidence").

¹⁶⁷24 C.F.R. § 966.56(b)(5) (1993).

¹⁶⁸Edgecomb v. Housing Auth. of Town of Vernon, supra note 162.

¹⁶⁹42 U.S.C.A. § 1437u(c)(1) (West Supp. 1994); 58 Fed. Reg. 30,872 (May 27, 1993) ("The Department declines to adopt a special grievance procedure for the FSS program. FSS families may utilize the grievance and hearing procedures currently provided under the regulations . . . for the public and Indian housing programs.").

CHAPTER 3

DEVELOPING AN FSS PROGRAM THAT MEETS PARTICIPANTS' HOUSING NEEDS

INTRODUCTION 3.1

Low-income housing advocates should get involved in the development and implementation of the FSS program. There are significant steps that can be taken at the local level to make the program more effective and to modify provisions that are harmful to lowincome participants.

OBLIGATION TO ESTABLISH A PROGRAM 3.2

Each local PHA that receives incremental Section 8 or new Public Housing units is required to establish a program. 170 PHAs that find it difficult to establish a program may seek a waiver from HUD. Waivers may be sought on the grounds that the PHA is unable to develop a program or maintain the maximum size because of a lack of support services, lack of funding for reasonable administrative costs, lack of cooperation by local and state government, lack of interest by participants, and other circumstances that HUD may deem appropriate. 171 Despite the ability to seek a waiver, HUD has announced that it is fully supportive of the program and that it believes that "it will be the exception and not the rule, that a PHA is unable to operate an FSS program."172 HUD may grant a waiver to run a smaller program before granting a PHA the right not to have any program. HUD's eagerness to have PHAs establish FSS programs is constrained by a statutory provision that prohibits HUD from retaliating against a PHA by denying or reducing assistance for its failure to carry out an FSS program. 173

FSS programs should be started within 12 months of the receipt of the special award or the receipt in fiscal year 1993 of new public housing units or Section 8 incremental units. Within the next 12 months, there should be full enrollment in the program and commencement of the delivery of support services. 174 This means that most programs will have to be fully operational in Fiscal Year 1995.

Many PHAs will be reluctant or have difficulty establishing a FSS program because the funds for establishing and maintaining the program are by most accounts inadequate to accomplish the job. 175 The establishment of an FSS program will require a significant effort. Some of the new activities that a PHA must carry out in order to establish a FSS program are outlined in a GAO Report. These activities include:

Establishing a program coordinating committee.

¹⁷⁰See § 1.1, supra, discussing this requirement.

¹⁷¹42 U.S.C.A. § 1437u(b)(2) (West Supp. 1994); 24 C.F.R. §§ 962.105(c) and 984.105(c) (1994), 58 Fed. Reg. 30,858 (May 27, 1993).

¹⁷²58 Fed. Reg. 30,870 (May 27, 1993).

¹⁷³42 U.S.C.A. § 1437u(b)(2) (West Supp. 1994); 58 Fed. Reg. 30,859 (May 27, 1993).

¹⁷⁴24 C.F.R. §§ 962.301(a) and 984.301(a) (1994), 58 Fed. Reg. 30,858 (May 27, 1993).

¹⁷⁵See § 1.1, supra, discussing the funding of the FSS program.

Preparing an Action Plan.

Obtaining commitments from the organizations providing supportive services to the participating families.

Informing potential participants about the program.

Selecting the program participants.

Developing each family's contract of participation.

Ensuring the provision of supportive services specified in the contract.

Monitoring the family's compliance with the contract.

Taking appropriate action, which may include withdrawing housing assistance and supportive services, if a family does not comply with the contract.

Investing the escrow funds and account for contributions to the family's escrow

savings accounts.

Disbursing the funds from the family's escrow savings account.

Reporting annually to HUD on the program's status and effectiveness. 176

HUD and the PHAs agree that a full-time service coordinator is important to the success of the FSS program. PHAs have routinely argued that the monitoring of FSS participants is costly but critical to the success of the program.¹⁷⁷ It is the most troubled families that will need the most intensive counseling by the service coordinators early in their participation. This intensive monitoring tapers off once the families become established in the program. 178 In the fall of 1993, Congress appropriated and earmarked \$8.5 million for service coordinators. 179 These funds were made available to PHAs with a Section 8 Certificate and Voucher programs of less than 600 total units and a requirement to run a FSS program of at least 25 slots. 180 The maximum amount that a PHA may receive is \$40,000 to support one FSS program coordinator. 181 The applications for Fiscal Year 1994 funds must be submitted by October 13,

Recognizing that funds from HUD to monitor the participants success may be inadequate, HUD urges PHAs to look to other agencies for the funds for the Section 8 FSS program, and to use the operating reserves (i.e., excess administrative fees) from the regular Section 8 assistance program. 182 The ability to rely upon the operating reserves, however, will be less in the coming year because the Section 8 FMRs upon which the fees are based have generally been reduced. 183

¹⁷⁶GAO, 1992 FSS Report, supra note 5, p. 39.

¹⁷⁷Id., p. 41; Funding Poses Problem for Family Self-Sufficiency Program, HOUS. & DEV. RPTR. (May 9,

¹⁷⁸Funding Poses Problem, supra note 177. (The New Jersey Department of Community Affairs reports that they have hired, at the cost of \$400,000, nine service coordinators to oversee 200 participants.) Compre the HUD Notice of Funding Availability for Service Coordinators for the Section 8 FSS program recommends one coordinator for 50 participations. Supra note 19.

¹⁷⁹Pub. L. No. 103-124, 103d Cong., 1st Sess., 107 Stat. 125, 1275 (1993); H.R. CONF. REP. NO. 237, 103d Cong., 1st Sess. 15 (Oct. 4, 1993).

¹⁸⁰Supra note 19; see also Section 1.1, supra, discussion program coordinators.

¹⁸²58 Fed. Reg. 30865, 30870 (May 27, 1993); GAO FSS Report 1992, supra note 5, p. 41; Funding Poses Problem, supra note 177; see also § 1.1, supra, discussing the funding of the FSS program.

¹⁸³See § 1.1, supra, discussing funding and the fee structure for the Section 8 FSS program.

3.3 PROJECT COORDINATING COMMITTEE (PCC)

Each PHA is required to establish a PCC whose function will be to assist the PHA in establishing and implementing the FSS program. The PCC should help the PHA develop the Action Plan, establish FSS policies, and obtain administrative and support services for the participating families and funding.

A representative from the PHA and the residents of Public Housing or participants in the Section 8 program depending upon whether the program is a Section 8 or Public Housing FSS program must serve on the PCC. 186 Other members of the committee should include representatives of the local government, and local agencies responsible for carrying out JOBS or JTPA programs, local welfare agencies, educational institutions, child care providers and other public or private entities with resources to assist with the FSS program. A PHA may use an existing entity to perform the function of the PCC so long as the tenant and PHA representative can join the group for purpose of the FSS program and the membership of the entity is drawn from one or more of the other organizations listed in the regulations. For example, a PHA could use the local Private Industry Council (PIC) which is used to plan and oversee local JTPA program if the PHA and tenant representative could be added to the PIC. Also more than one PHA may share the same PCC.

In some jurisdictions, Legal Services attorneys have served on the PCC. Their participation has resulted in the development of a program that is more tailored to the needs of low-income tenants. Assuming that the PCC is in existence and the Action Plan already developed, advocates for low-income housing residents and FSS participants should seek, if necessary, to amend the Action Plan.

3.4 ISSUES TO RESOLVE

The following section identifies some of the housing issues that an advocate for low-income housing could address in developing an FSS program.

3.4.1 TERMINATION OF SECTION 8

The most significant problem is the fact that the contract of participation provides that a Section 8 FSS participant may lose its Section 8 housing subsidy for a violation of the contract of participation. This provision, if it is not modified by the Action Plan, will have two substantial negative impacts. First, it will discourage current Section 8 participants from participating in the FSS program. The GAO, in its review of the FSS program, recognized this

¹⁸⁴24 C.F.R. §§ 962.202(a) and 984.202(a) (1994), 58 Fed. Reg. 30,858 (May 27, 1993).

¹⁸⁵See 58 Fed. Reg. 30,871 (May 27, 1993) (the introductory comments state that HUD decided not to require, but did not prohibit, PHAs from submitting to the PCC the Action Plan prior to submitting it to HUD).

¹⁸⁶See 58 Fed. Reg. 30,861 (May 27, 1993) (the introductory comments state that these representatives "share the highest interest in and expend the greatest effort toward making the FSS program a success." Their input "is vital to the success of the FSS program.").

¹⁸⁷Most PHAs will have adopted an Action Plan because they must do so within 90 days of notification by HUD of the approval of the application for new Public Housing units or incremental Section 8. 24 C.F.R. §§ 962.201(c)(ii) and 984.201(c)(ii) (1994), 58 Fed. Reg. 30,858 (May 27, 1993).

¹⁸⁸See § 2.5, supra, which discusses issues relating to the termination of the Section 8 housing subsidy.

problem. Other reports of job training and housing programs have concluded that major obstacles to the success of these programs include fear of failure by the participants and distrust of outsiders who attempt to help or provide services. The fear of failure and distrust of outsiders will only be exacerbated when a participant learns that by participating in the FSS program, the family's Section 8 may be compromised. For some Section 8 participants, the fact that they may lose their Section 8 for a violation of the FSS contract of participation will be the determining factor for deciding not to participate in the FSS program. The second negative impact is that FSS participants will lose or be threatened with the loss of their housing if they fail some aspect of the FSS program.

At least two PHAs, on the advice of the local Legal Services attorneys, included provisions in their Action Plans that prohibit the termination of the Section 8 subsidy when the FSS participant obtained the subsidy prior to participating the in FSS program. The FSS termination procedures for the King County Housing Authority provide that:

A family who had a Section 8 Certificate or Housing Voucher prior to enrollment in the Authority's FSS Program will not be terminated from the Section 8 Housing Assistance Program due to [the] failure to comply with the FSS contract, . . . termination from the FSS Program, or [the] inability to attain economic self-sufficiency. 192

This or a similar provision should be in the Action Plan of every PHA that is operating a Section 8 FSS program. This provision will resolve another problem with the regulations by eliminating the most severe penalty (i.e., termination of the subsidy) that could result if a family exercises its right to use the portability features of the Section 8 program and leave the jurisdiction of the PHA within the first 12 months of the program.¹⁹³

3.4.2 RENT

One of the problems that Public Housing and Section 8 tenants have faced is that as income increases so does rent. The fact that the family has to pay 30 percent of every dollar earned for rent, and rent is based upon gross income rather than net income, have worked together as a disincentive to increase income through work. The disincentive is somewhat addressed in the FSS Program. Although HUD has interpreted the FSS statute to require

¹⁸⁹GAO, 1992 FSS Report, *supra* note 5, p. 24 (Termination of the Section 8 subsidy "might render the FSS program family homeless and deter future program volunteers.").

¹⁹⁰Coordination of Housing and Job Training Services: A Review of Best Practices in 12 Cities, Research and Evaluation Report Series 92-D (Washington, D.C.: U. S. Department of Labor, Employment and Training Administration, 1992), pp. 8-9 and 11-17.

¹⁹¹The prior FSS regulations provided that a PHA could select FSS participants from the Section 8 waiting list. See 56 Fed. Reg. 49,592, § VII (Sept. 30, 1991).

¹⁹²King County Housing Authority, FSS Termination Procedures, (on file at the National Housing Law Project); see also Seattle Housing Authority (SHA), FSS Termination Procedures ("SHA and the FSS Program Coordination Committee believe that under no conditions should a family have to relinquish their housing subsidy due to their inability to follow the procedures and rules of the FSS program.") (on file at National Housing Law Project).

¹⁹³See § 2.2.1, supra, discussing portability.

participants to pay an increased rent as family income increases due to employment, ¹⁹⁴ these increases in rent attributed to the increase in employment income are placed in the escrow account. If the family successfully completes the FSS program and is not receiving welfare assistance, it is entitled to the escrow account. ¹⁹⁵

To further reduce the work disincentive, care should be taken to ensure that all the Section 8 and Public Housing rules are in place and enforced to reduce the amount of earned income or training income that the PHA considers for purposes of setting rent for all FSS participants. These steps will minimize the amount that is placed in the escrow account, but that is probably a trade-off that most FSS participants would not find objectionable. These rent rules are not limited to FSS participants but are also applicable to all Section 8 and Public Housing participants.

For both Section 8 and Public Housing participants, rents could be set annually. The current regulations for Public Housing and Section 8 require only annual recertifications. The manner in which interim recertifications are conducted is left to the PHA. 196 PHAs may establish a policy that provides that tenants with earned income should not be required to report every increase in income. Because income, especially earned income, often fluctuates, tenants can be harmed by strict reporting requirements. This is especially true if there are delays in either reporting or processing and if the increased rent is assessed retroactively. Additionally, the reporting requirements and the increased rent act as a disincentive to increase income. To avoid these adverse consequences, tenants should be required to report increases in income only on an annual basis. To avoid hardship when income decreases, interim recertification must be permitted when income decreases. Alternatively, participants should be required to report increases in earned income only at the annual recertification. Again, increases in earned income should not have to be reported on an interim basis, but decreases could be reported and rent decreased as a result. Under this latter system, changes in income unrelated to earned income would have to be reported. The major disadvantage to this latter scheme is that it may be confusing for the participants and they may be harmed by the confusion.

For Public Housing residents, the PHA could set a ceiling rent. The ceiling rent would counter the work disincentive if it were set at an appropriate level. With ceiling rents, tenants know that rents will increase as income does, but that there is a ceiling beyond which rents will not increase. Some PHAs have complained that the statutory restraints on ceiling rents have made it impossible to set them at a reasonable level. Nevertheless, the establishment of ceiling rents should be explored where appropriate.

For Public Housing residents, the PHA also could implement the JOBS income disregard. For both Public Housing and Section 8 programs, care should be taken to ensure that the PHA is fully implementing all the exclusions from income for certain types of training

¹⁹⁴See § 2.2.2, supra, discussing the statutory language on what the FSS rent should be.

¹⁹⁵See §§ 1.1 and 2.3, supra, discussing the escrow account. If there is no escrow account, the argument is very strong that participants should not face an increased rent attributed to increases in earned income.

^{1%}See 24 C.F.R. §§ 813.109(a), 882.118(a), 882.204(b)(3)(ii)(B), 882.212(b) and 960.209(b) and 966.4(c)(1) (1994).

¹⁹⁷42 U.S.C.A. § 1437a(a)(2)(A) (West Supp. 1994).

¹⁹⁸ See § 2.2.3, supra, discussing the income disregard for JOBS applicants.

3.4.3 GOOD CAUSE HEARING

Under the HUD FSS regulations, if a family fails to comply with the contract of participation, it may be terminated from the Section 8 program or have its FSS services reduced. The regulations fail to inform PHAs that they must give the family a hearing in accordance with the requirements of the Public Housing grievance procedures.

This failing could be rectified in the PHA's Action Plan. If the PHA does not adopt the provision noted above in § 3.4.1, *supra*, stating that the Section 8 subsidy cannot be terminated for violation of the contract of participation, the Action Plan should state, at a minimum, that the Section 8 housing subsidy can be terminated only if the failure to comply with the contract of participation was without good cause. The Action Plan should define or give examples of good cause. For example, it should state that good cause includes circumstances beyond the control of the participant, such as a loss of or reduction in access to support services or a change in circumstances that makes the participant unable to continue to participate in the program.

The Action Plan should also state that the family may be terminated from the FSS program only if it has failed to comply with the requirements of the contract without good cause.

The Action Plan should also provide that any individual grievance that a Section 8 or Public Housing FSS participant or applicant has with the manner in which the PHA is administering the FSS program may be grieved in accordance with the Public Housing grievance procedures. The basic elements of those procedures are set forth in § 2.5.2, supra. The issues that should be subject to a grievance hearing would include a decision to terminate FSS participation, offsets to the escrow account, a denial of admission into the FSS program, and other problems that might arise. If it is not possible to require the PHA to offer a Public Housing grievance hearing, the Section 8 hearing process should be modified to require the PHA to give to the FSS grievant all relevant materials prior to the hearing.

There is one issue that a PHA cannot resolve without seeking a waiver of the current regulations. This issue is the definition of welfare assistance. HUD has determined that an FSS participant is not entitled to the escrow account if the family is receiving welfare assistance at the end of the contract of participation. Welfare assistance is defined to include government assistance directed to meeting food, health care and child care. Some states have health and child care programs available to families who are low income but over income for eligibility for AFDC and SSI assistance. You should check to see what the health care and child

¹⁹⁹See § 2.2.3, supra, for a discussion of these income disregards.

²⁰⁰See § 2.5, supra, for a discussion of the regulations and statute regarding termination from the Section 8 program and reduction in services.

²⁰¹See § 2.5, supra, discussing a termination from the FSS program and Section 8.

²⁰²See § 2.3.2, supra, discussing offsets to the escrow account.

²⁰³See § 2.1.6, supra.

²⁰⁴See § 2.5.2, supra.

²⁰⁵See § 2.4.1, supra, for a discussion of the definition of welfare assistance, and § 2.2.1, supra, for a discussion of the 12-month restriction on portability.

care eligibility and continued participation levels are within your state to determine if the HUD definition of welfare assistance will be too restrictive and result in a denial of payment of the escrow account to the family. If families who are over-income for AFDC and SSI qualify for the state's health and child care programs, you should seek a waiver of HUD's definition of welfare assistance. 206

3.4.4 ADMISSION PREFERENCES

Admissions and preferences for admissions for Public Housing and Section 8 is a complex area. But these policies should be reviewd to respond to the need to build a viable FSS program. The preference system as it affects the FSS program is set forth in Section 2.1.3, supra. Under the current system, PHAs could rank federal preference holders based upon employment or participant's involvement with an educational or training program. In addition, PHAs may establish a local preference for admission to the Public Housing and Section 8 programs for welfare recipients who are seeking access to employment and training.207 The PHA must establish this other local preference after a hearing that takes into account the local needs. The PHA may also adopt a preference for Public Housing tenants for the Section 8. This latter preference will be especially important if the PHA is running a Section 8 FSS program only.208

Care should be taken when establishing preferences or ranking federal preferences to consider the impact of such preferences upon the general applicant pool for Public Housing and Section 8. Preferences and the ranking of preference holders is significant because in many jurisdictions applicants without a preference are never admitted and the ranking of federal preference holders also becomes critical in determining who gets admitted.

HUD has addressed some of the discriminatory effects of preferring the working poor over the nonworking poor by requiring that the disabled and elderly be considered to qualify for any working preference adopted by the PHA. 209 But, the newly published regulations give no guidance on who should be considered working (i.e., does it include families with less than fulltime work, those recurring unemployment, a single parent on parenting leave, etc.). 210 What qualifies for an educational or training program also is not defined. These matters should be fully considered by the PHA before adopting such preferences.

²⁰⁶See letter from David Cohen, et al., to Kathryn Greenspan, supra note 126 (arguing that the definition of welfare assistance should be modified).

²⁰⁷See § 2.1.3, supra, discussing local preferences.

²⁰⁸See Hodges v. Columbus Metro Hous. Auth., No. C2-93-27 (S.D. Ohio filed May 17, 1993), 27 CLEARINGHOUSE REV. 491 (No. 49,068, Aug-Sept. 1993) (the housing authority in Columbus, Ohio, has agreed to provide a preference for a certain number of Public Housing tenants to transfer to the Section 8 program. This agreement was reached in lieu of setting up a more complicated scheme of retention preferences.).

²⁰⁹24 C.F.R. § 982.210(b)(3)(iv) and (4), 59 Fed. Reg. 36,667-8 (July 18, 1994).

 $^{^{210}}Id.$

APPENDIX

A	Family Self-Sufficiency Program, 42 U.S.C.A. § 1437u (West Supp 1994)	A1 - A7 B1 - B47 C1 - C3
В	Family Self-Sufficiency Program Interim Rule, 58 Fed. Reg. 30,858 (May 27, 1993)	
С	Family Self-Sufficiency Program Correction, 59 Fed. Reg. 7,638 (Feb. 16, 1994)	

§ 1437u. Family self-sufficiency program

(a) Purpose

The purpose of the Family Self-Sufficiency program established under this section is to promote the development of local strategies to coordinate use of public housing and assistance under the certificate and voucher programs under section 1437f of this title with public and private resources, to enable eligible families to achieve economic independence and self-sufficiency.

(b) Establishment of program

(1) Required programs

Except as provided in paragraph (2), the Secretary shall carry out a program under which each public housing agency that administers assistance under subsection (b) or (o) of section 1437f of this title or makes available new public housing

(A) may, during fiscal years 1991 and 1992, carry out a local Family Self-Sufficiency program under this section; and

(B) effective on October 1, 1992, the Secretary shall require each such agency to carry out a local Family Self-Sufficiency program under this section. Each local program shall, subject to availability of supportive services, include an action plan under subsection (g) of this section and shall provide comprehensive supportive services for families electing to participate in the program. In carrying out the self-sufficiency program under this section, the Secretary shall consult with the heads of other appropriate Federal agencies and provide for cooperative actions and funding agreements with such agencies. Each public housing agency administering an approved local program may employ a service coordinator to administer

(2) Exception

The Secretary shall not require a public housing agency to carry out a local program under subsection (a) of this section if the public housing agency provides certification (as such term is defined under title I of the Cranston-Gonzalez National Affordable Housing Act [42 U.S.C.A. § 12701 et seq.]) to the Secretary, that the establishment and operation of the program is not feasible because of local circumstances, which may include-

(A) lack of supportive services accessible to eligible families, which shall include insufficient availability of resources for programs under the Job Training Partnerships Act [29 U.S.C.A. §1501 et seq.] or the Job Opportunities and Basic Skills Training Program under part F of title IV of the Social Security Act [42 U.S.C.A. § 681 et seq.];

(B) lack of funding for reasonable administrative costs;

(C) lack of cooperation by other units of State or local government; or

(D) any other circumstances that the Secretary may consider appropriate. In allocating assistance available for reservation under this chapter, the Secretary may not refuse to provide assistance or decrease the amount of assistance that would otherwise be provided to any public housing agency because the agency has provided a certification under this paragraph or because, pursuant to a certification, the agency has failed to carry out a self-sufficiency program.

(3) Scone

Each public housing agency required to carry out a local program under this section shall make the following housing assistance available under the program in

(A) Certificate and voucher assistance under section 1437f(b) and (o) of this title, in an amount equivalent to the increase for such year in the number of families so assisted by the agency (as compared to the preceding year).

(B) Public housing dwelling units, in the number equal to the increase for such year in units made available by the agency (as compared to the preceding year).

Each such public housing agency shall continue to operate a local program for the number of families determined under this paragraph subject only to the availability under appropriations Acts of sufficient amounts for assistance.

(4) Nonparticipation

Assistance under the certificate or voucher programs under section 1437f of this title for a family that elects not to participate in a local program shall not be delayed by reason of such election.

(c) Contract of participation

(1) In general

Each public housing agency carrying out a local program under this section shall enter into a contract with each leaseholder receiving assistance under the certificate and voucher programs of the public housing agency under section 1437f of this title or residing in public housing administered by the agency, that elects to participate in the self-sufficiency program under this section. The contract shall set forth the provisions of the local program, shall establish specific interim and final goals by which compliance with and performance of the contract may be measured, and shall specify the resources and supportive services to be made available to the participat-

ing family pursuant to paragraph (2) and the responsibilities of the participating family. The contract shall provide that the public housing agency may terminate or withhold assistance under section 1437f of this title and services under paragraph (2) of this subsection if the public housing agency determines, through an administrative grievance procedure in accordance with the requirements of section 1437d(k) of this title, that the family has failed to comply with the requirements of the contract without good cause (which may include a loss or reduction in access to supportive services, or a change in circumstances that makes the family or individual unsuitable for participation).

(2) Supportive services

A local program under this section shall provide appropriate supportive services under this paragraph to each participating family entering into a contract of participation under paragraph (1). The supportive services shall be provided during the period the family is receiving assistance under section 1437f of this title or residing in public housing, and may include-

- (A) child care:
- (B) transportation necessary to receive services;
- (C) remedial education;
- (D) education for completion of high school;
- (E) job training and preparation;
- (F) substance abuse treatment and counseling;
- (G) training in homemaking and parenting skills;
- (H) training in money management;
- (I) training in household management; and
- (J) any other services and resources appropriate to assist eligible families to achieve economic independence and self-sufficiency.

(3) Term and extension.

Each family participating in a local program shall be required to fulfill its obligations under the contract of participation not later than 5 years after entering into the contract. The public housing agency shall extend the term of the contract for any family that requests an extension, upon a finding of the agency of good

(4) Employment and counseling

The contract of participation shall require the head of the participating family to seek suitable employment during the term of the contract. The public housing agency may, during such period, provide counseling for the family with respect to affordable rental and homeownership opportunities in the private housing market and money management counseling.

(d) Incentives for participation

(1) Maximum rents

During the term of the contract of participation, the amount of rent paid by any participating family whose monthly adjusted income does not exceed 50 percent of the area median income for occupancy in the public housing unit or dwelling unit assisted under section 1437f of this title may not be increased on the basis of any increase in the earned income of the family, unless the increase results in an income exceeding 50 percent of the area median income. The Secretary shall provide for increased rents for participating families whose incomes are between 50 and 80 percent of the area median income, so that any family whose income increases to 80 percent or more of the area median income pays 30 percent of the family's monthly adjusted income for rent. Upon completion of the contract of participation, if the participating family continues to qualify for and reside in a dwelling unit in public housing or housing assisted under section 1437f of this title, the rent charged the participating family shall be increased (if applicable) to 30 percent of the monthly adjusted income of the family.

(2) Escrow savings accounts

For each participating family whose monthly adjusted income is less than 50 percent of the area median income, the difference between 30 percent of the adjusted income of the participating family and the amount of rent paid by a participating family shall be placed in an interest-bearing escrow account established by the public housing agency on behalf of the participating family. For families with incomes between 50 and 80 percent of the area median income, the Secretary shall provide for escrow of the difference between 30 percent of the family income and the amount paid by the family for rent as determined by the Secretary under paragraph (I). The Secretary shall not escrow any amounts for any family whose adjusted income exceeds 80 percent of the area median income. Amounts in the escrow account may be withdrawn by the participating family after the family ceases to receive income assistance under Federal or State welfare programs, upon successful performance of the obligations of the family under the contract of participation entered into by the family under subsection (c) of this section, as determined according to the specific goals and terms included in the contract, and under other circumstances in which the Secretary determines an exception for good cause is warranted. A public housing agency establishing such escrow accounts may make certain amounts in the accounts available to the participating families before full performance of the contract obligations based on compliance with, and completion of, specific interim goals included in the contract; except that any such amounts shall be used by the participating families for purposes consistent with the contracts of participation, as determined by the public

(3) 1 Plan

Each public housing agency carrying out a local program under this section shall establish a plan to offer incentives to families to encourage families to participate in the program. The plan shall require the establishment of escrow savings accounts under paragraph (2) and may include any other incentives designed by the public housing agency.

(3) 1 Use of escrow savings accounts for section 1437f homeownership

Notwithstanding paragraph (3), a family that uses assistance under section 1437f(y) of this title to purchase a dwelling may use up to 50 percent of the amount in its escrow account established under paragraph (3) for a downpayment on the dwelling. In addition, after the family purchases the dwelling, the family may use any amounts remaining in the escrow account to cover the costs of major repair and replacement needs of the dwelling. If a family defaults in connection with the loan to purchase a dwelling and the mortgage is foreclosed, the remaining amounts in the escrow account shall be recaptured by the Secretary.

(e) Effect of increases in family income

Any increase in the earned income of a family during the participation of the family in a local program established under this section may not be considered as income or a resource for purposes of eligibility of the family for other benefits, or amount of benefits payable to the family, under any program administered by the Secretary, unless the income of the family equals or exceeds 80 percent of the median income of the area (as determined by the Secretary with adjustments for smaller and larger families).

(f) Program coordinating committee

(1) Functions

Each public housing agency shall, in consultation with the chief executive officer of the unit of general local government, develop an action plan under subsection (g) of this section, carry out activities under the local program, and secure commitments of public and private resources through a program coordinating committee established by the public housing agency under this subsection.

(2) Membership

The program coordinating committee may consist of representatives of the public housing agency, the unit of general local government, the local agencies (if any) responsible for carrying out programs under the Job Training Partnership Act [29 U.S.C.A. § 1501 et seq.] and the Job Opportunities and Basic Skills Training Program under part F of title IV of the Social Security Act [42 U.S.C.A. § 681 et seq.] and other organizations, such as other State and local welfare and employment agencies, public and private education or training institutions, nonprofit service providers, and private businesses. The public housing agency may, in consultation with the chief executive officer of the unit of general local government, utilize an existing entity as the program coordinating committee if it meets the requirements of this subsection.

g) Action plan

(1) Required submission

The Secretary shall require each public housing agency participating in the selfsufficiency program under this section to submit to the Secretary, for approval by the Secretary, an action plan under this subsection in such form and in accordance with such procedures as the Secretary shall require.

(2) Development of plan

In developing the plan, the public housing agency shall consult with the chief executive officer of the applicable unit of general local government, the program coordinating committee established under subsection (f) of this section, representatives of residents of the public housing, any local agencies responsible for programs under the Job Training Partnership Act and the Job Opportunities and Basic Skills Training Program under part F of title IV of the Social Security Act [42 U.S.C.A. § 681 et seq.], other appropriate organizations (such as other State and local welfare and employment or training institutions, child care providers, nonprofit service providers, and private businesses), and any other public and private service providers affected by the operation of the local program.

(3) Contents of plan

The Secretary shall require that the action plan contain at a minimum-

- (A) a description of the size, characteristics, and needs of the population of the families expected to participate in the local self-sufficiency program;
- (B) a description of the number of eligible participating families who can reasonably be expected to receive supportive services under the program, based on available and anticipated Federal, State, local, and private resources;
- (C) a description of the services and activities under subsection (c)(2) of this section to be provided to families receiving assistance under this section through the section 1437f of this title and public housing programs, which shall be provided by both public and private resources;
- (D) a description of the incentives pursuant to subsection (d) of this section offered by the public housing agency to families to encourage participation in the program;
- (E) a description of how the local program will deliver services and activities according to the needs of the families participating in the program;
- (F) a description of both the public and private resources that are expected to be made available to provide the activities and services under the local
 - (G) a timetable for implementation of the local program;

- (H) assurances satisfactory to the Secretary that development of the services and activities under the local program has been coordinated with the Job Opportunities and Basic Skills Training Program under part F of title IV of the Social Security Act [42 U.S.C.A. § 681 et seq.] and program under the Job Training Partnership Act [29 U.S.C.A. § 1501 et seq.] and any other relevant employment, child care, transportation, training, and education programs in the applicable area, and that implementation will continue to be coordinated, in order to avoid duplication of services and activities; and
- (I) assurances satisfactory to the Secretary that nonparticipating families will retain their rights to public housing or section 8 [42 U.S.C.A. §1437f] assistance notwithstanding the provisions of this section.

(h) Allowable public housing agency administrative fees and costs

(1) Section 1437f fees

The Secretary shall establish a fee under section 1437f(q) of this title for the costs incurred in administering the provision of certificate and voucher assistance under section 8 through the self-sufficiency program under this section. The fee shall be the fee in effect under such section on June 1, 1990, except that for purposes of the fee under this paragraph the applicable dollar amount for preliminary expenses under section 1437f(q)(2)(A)(i) of this title shall, subject to approval in appropriations Acts, be \$300. Upon the submission by the Comptroller General of the United States of the report required under section 554(b) of the Cranston-Gonzalez National Affordable Housing Act, the Secretary shall revise the fee under this paragraph, taking into consideration the report of the Comptroller General.

(2) Performance funding system

Notwithstanding any provision of section 1437g of this title, the Secretary shall provide for inclusion under the performance funding system under section 1437g of this title of reasonable and eligible administrative costs (including the costs of employing a full-time service coordinator) incurred by public housing agencies carrying out local programs under this section. The Secretary shall include an estimate of the administrative costs likely to be incurred by participating public housing agencies in the annual budget request for the Department of Housing and Urban Development for public housing operating assistance under section 1437g of this title and shall include a request for such amounts in the budget request. Of any amounts appropriated under section 1437g(c) of this title for fiscal year 1993, \$25,000,000 is authorized to be used for costs under this paragraph, and of any amounts appropriated under such section for fiscal year 1994, \$25,900,000 is authorized to be used for costs under this paragraph.

(i) Public housing agency incentive award allocation

(1) In general

The Secretary shall carry out a competition for budget authority for certificate and voucher assistance under section 1437f of this title and public housing development assistance under section 1437c(a)(2) of this title reserved under paragraph (4) and shall allocate such budget authority to public housing agencies pursuant to the

(2) Criteria

The competition shall be based on successful and outstanding implementation by public housing agencies of a local self-sufficiency program under this section. The Secretary shall establish performance criteria for public housing agencies carrying out such local programs and the Secretary shall cause such criteria to be published

(3) Use

Each public housing agency that receives an allocation of budget authority under this subsection shall use such authority to provide assistance under the local selfsufficiency program established by the public housing agency under this section.

(4) Reservation of Budget Authority

Notwithstanding section 1439(d) of this title, the Secretary shall reserve for allocation under this subsection not less than 10 percent of the portion of budget authority appropriated in each of fiscal years 1991 and 1992 for section 1437f of this title that is available for purposes of providing assistance under the existing housing certificate and housing voucher programs for families not currently receiving assistance, and not less than 10 percent of the public housing development assistance available in such fiscal years for the purpose under section 1437c(a)(2) of this title (excluding amounts for major reconstruction of obsolete projects).

(j) On-site facilities

Each public housing agency carrying out a local program may, subject to the approval of the Secretary, make available and utilize common areas or unoccupied public housing units in public housing projects administered by the agency for the provision of supportive services under the local program. The use of the facilities of a public housing agency under this subsection shall not affect the amount of assistance provided to the agency under section 1437g of this title.

(k) Flexibility

In establishing and carrying out the self-sufficiency program under this section, the Secretary shall allow public housing agencies, units of general local government, and other organizations discretion and flexibility, to the extent practicable, in developing and carrying out local programs.

(I) Reports

(1) To Secretary

Each public housing agency that carries out a local self-sufficiency program approved by the Secretary under this section shall submit to the Secretary, not less than annually a report regarding the program. The report shall include-

- (A) a description of the activities carried out under the program;
- (B) a description of the effectiveness of the program in assisting families to achieve economic independence and self-sufficiency;
- (C) a description of the effectiveness of the program in coordinating resources of communities to assist families to achieve economic independence and self-sufficiency; and
- (D) any recommendations of the public housing agency or the appropriate local program coordinating committee for legislative or administrative action that would improve the self-sufficiency program carried out by the Secretary and ensure the effectiveness of the program.

(2) HUD annual report

The Secretary shall submit to the Congress annually, as a part of the report of the Secretary under section 3536 of this title, a report summarizing the information submitted by public housing agencies under paragraph (1). The report under this paragraph shall also include any recommendations of the Secretary for improving the effectiveness of the self-sufficiency program under this section.

(m) GAO Report

(1) In general

The Comptroller General of the United States shall submit to the Congress reports under this subsection evaluating and describing the Family Self-Sufficiency program carried out by the Secretary under this section.

(2) Timing

- The Comptroller General shall submit the following reports under this subsection:
 - (A) An interim report, not later than the expiration of the 2-year period beginning on November 28, 1990.
 - (B) A final report, not later than the expiration of the 5-year period beginning on November 28, 1990.

(n) Definitions

As used in this section:

- (1) The term "contract of participation" means a contract under subsection (c) of this section entered into by a public housing agency carrying out a local program under this section and a participating family.
- (2) The term "earned income" means income from wages, tips, salaries, and other employee compensation, and any earnings from self-employment. The term does not include any pension or annuity, transfer payments, or any cash or in-kind
- (3) The term "eligible family" means a family whose head of household is not elderly, disabled, pregnant, a primary caregiver for children under the age of 3, or for whom the family self-sufficiency program would otherwise be unsuitable. Notwithstanding the preceding sentence, a public housing agency may enroll such families if they choose to participate in the program.

- (4) The term "local program" means a program for providing supportive services to participating families carried out by a public housing agency within the jurisdiction of the public housing agency.
- (5) The term "participating family" means a family that resides in public housing or housing assisted under section 1437f of this title and elects to participate in a local self-sufficiency program under this section.
- (6) The term "vacant unit" means a dwelling unit that has been vacant for not less than 9 consecutive months.

(o) Effective date and regulations

(1) Regulations

Not later than the expiration of the 180-day period beginning on November 28, 1990, the Secretary shall by notice establish any requirements necessary to carry out this section. Such requirements shall be subject to section 553 of Title 5. The Secretary shall issue final regulations based on the notice not later than the expiration of the 8-month period beginning on the date of the notice. Such regulations shall become effective upon the expiration of the 1-year period beginning on the date of the publication of the final regulations.

(2) Applicability to indian public housing authorities

Notwithstanding any other provision of law, the provisions of this section shall be optional for Indian housing authorities.

(Sept. 1, 1937, c. 896, Title I, § 23, as added Nov. 28, 1990, Pub.L. 101-625, Title V, § 554(a), 104 Stat. 4225, and amended Oct. 28, 1992, Pub.L. 102-550, Title I, §§ 106, 185(b), 106 Stat. 3684, 3747.)

1So in original. Subsec. (d)(3) was enacted twice.



Thursday May 27, 1993

Part II

Department of Housing and Urban Development

Office of the Assistant Secretary

24 CFR Part 905 et al. Family Self-Sufficiency Program; Interim Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Public and Indian Housing

24 CFR Parts 905, 962, 984

[Docket No. R-93-1633; FR-2961-I-02] RIN 2577-AB15

Family Self-Sufficiency Program— Interim Rule

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

ACTION: Interim rule with request for comments.

SUMMARY: This interim rule implements the requirements and procedures that will govern local Family Self-Sufficiency (FSS) programs beginning or continuing in Federal fiscal year (FY) 1993 (October 1, 1992 through September 30, 1993). The FSS regulations contained in this interim rule are based on the notice of FSS program guidelines which was published in the Federal Register on September 30, 1991 (56 FR 49592), take into consideration the public comments received on those guidelines, and incorporate the changes made to the FSS program by the Housing and Community Development Act of 1992.

Elsewhere in today's edition of the Federal Register, the Department is publishing a notice of final rulemaking which adopts the regulations contained in this interim rule as the FSS final regulations. Because section 554 of the National Affordable Housing Act, which created the FSS program, provides that the FSS final regulations will not be effective until one year after the date of publication of the FSS final rule, the Department has found it necessary to issue this interim rule pending the FSS final rule becoming effective. The reasons for the one-year delay in the effective date of the FSS final rule, and for issuance of this interim rule are further discussed in the supplementary information section of this document. DATES: Effective Date: June 28, 1993.

Comment Due Date: July 26, 1993.

ADDRESSES: Interested persons are invited to submit comments regarding this rule to the Office of General Counsel, Rules Docket Clerk, room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410.

Communications should refer to the above docket number and title. A copy of each communication submitted will be available for public inspection and

Obpying on weekdays between 7:30 a.m. and 5:30 p.m. at the above address.

FOR FURTHER INFORMATION CONTACT:
For section 8 issues: Madeline Hastings,
Director, Rental Assistance Division,
room 4226. Telephone number (202)

708–2841.
- For public housing issues: Edward Whipple, Director, Occupancy, Division, room 4206. Telephone number (202) 708–0744.

For Indian Housing issues: Dominic Nessi, Director, Office of Indian Housing, room 4140. Telephone number (202) 708–1015.

For supportive service issues: Paula Blunt, Supportive Services Coordinator, Office of Resident Initiatives, room 4112. Telephone number (202) 708– 4214.

The address for each of these contacts is the Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410. The telephone numbers listed are not toll-free numbers. Hearing-impaired persons may contact these offices via TDD by calling (202) 708–9300 or 1–(800) 877–8339

SUPPLEMENTARY INFORMATION:

I. Paperwork Reduction Act Statement

The information collection requirements contained in the interim rule have been submitted to the Office of Management and Budget (OMB) for review under the Paperwork Reduction Act of 1980. The interim rule does not add new information collection requirements to those contained in the Notice of FSS Program Guidelines published on September 30, 1991 at 56 FR 49592, and for which the estimated reporting burden was published at 56 FR 49601. No person may be subjected to a penalty for failure to comply with the information collection requirements contained in the interim rule until they have been approved and assigned an OMB control number. The OMB control number when assigned will be announced by separate notice in the Federal Register.

II. Procedural Matters

Section 554 of the National Affordable Housing Act (NAHA) (Pub. L. 101–625, approved November 28, 1990) amended the U.S. Housing Act of 1937 (the 1937 Act) by adding new section 23 (42 U.S.C. 1437u) (the FSS statute) which creates the FSS program. The purpose of the FSS program is to promote the development of local strategies that coordinate the use of public housing assistance and housing assistance under the section 8 rental certificate and youcher programs with public and

private resources, to enable eligible families to achieve economic independence and self-sufficiency.

As originally enacted, the FSS statute provided that for FY 1991 and FY 1992 participation in the FSS program was voluntary for public housing agencies (PHAs) and Indian housing authorities (IHAs), but that commencing in FY 1993, PHAs and IHAs which receive new public or Indian housing units or new section 8 rental certificates or rental vouchers must implement and administer a local FSS program. (The mandatory participation requirement for IHAs was removed by a 1992 statutory amendment to section 23, and is discussed later in this preamble.) For those PHAs and IHAs that received an FSS incentive award or that voluntarily participated in the FSS program in FY 1992, their local FSS programs were administered in accordance with program guidelines published by the Department on September 30, 1991 (56 FR 49588) (the FSS Guidelines or Guidelines)

The Guidelines were issued in accordance with the FSS statute, which directs the Department to issue a notice of the requirements necessary to carry out the FSS program not later than the expiration of the 180-day period beginning on the date of enactment of the NAHA (November 28, 1990). The FSS statute also directs the Department to issue final regulations based on the notice not later than the expiration of the eight-month period beginning on the date of the notice, and provides that the final regulations "shall become effective upon the expiration of the 1-year period beginning on the date of the publication of the final regulations."

Although the reason behind the oneyear delayed effective date of the FSS final regulation was not explained in the Conference Report accompanying the NAHA, it is the Department's understanding that the intent was to synchronize the effective date of the FSS final regulations with the mandatory implementation and operation of local FSS programs. That is, the Guidelines would govern the FSS program in FY 1991 and FY 1992, when participating in program was optional for PHAs and IHAs, and the rule would replace the Guidelines when the program became mandatory in FY 1993. Had the Department been able to meet the publication dates set forth in the FSS statute for the notice of Guidelines and the FSS final regulations, the FSS final regulations would be effective in early 1993—the approximate time the Department would be issuing notices of

funding availability for new public/

Indian housing units and new section 8

APPENDIX B Page B - 2 rental certificates and vouchers.
However, because the NAHA constitutes significant housing legislation, creating several new housing programs (including the HOME Investments Partnerships Program, the Homeownership and Opportunity for People Everywhere (HOPE) programs, the HOPE for Elderly Independence program), all of which require regulatory guidance, the Department's limited resources were hard pressed to meet the statutory deadlines established for issuance of regulations for all these new programs.

In order that the mandatory implementation and operation of local FSS program, which continues to be required of PHAs, not be without regulatory guidance, the Department is issuing this interim rule which sets forth the regulations in 24 CFR parts 905 (subpart R), 962 and 984, that will govern, respectively, commencing in FY 1993 operation of: HUD's Indian housing FSS program (for those IHAs that opt to participate in this program); HUD's public housing FSS program; and HUD's section 8 rental certificate and voucher FSS programs.

The Department believes that further justification for issuance of this interim rule is found in Title I of the Housing and Community Development Act of 1992 (Pub. L. 102-550, approved October 28, 1992) (the 1992 Act). Section 106 of Title I amends the FSS statute to provide PHAs with increased flexibility in the implementation and administration of FSS programs. (The changes made to the FSS program by section 106 are discussed in Section III.B. of this preamble.) Section 191 of title I is the "implementation" section of Title I, and provides that HUD shall issue any final regulations necessary to implement the provisions of, and amendments made by. Title I not later than the expiration of the 180 day period beginning on the date of enactment of the 1992 Act. This implementation section indicates that the Congress intended PHAs to be able to take advantage of the changes made to the FSS program by section 106 earlier than the one year effective date provided by the NAHA.

Accordingly, this interim rule is based on the notice of the FSS Guidelines that was published on September 30, 1991 (56 FR 49592); takes into consideration the public comments received on the Guidelines; and also incorporates the changes made to the FSS program by the 1992 Act. The Department solicits additional comments on this interim rule. Comments received on the interim rule will be taken into consideration in connection with possible amendments

to the FSS final regulations, once those regulations become effective.

By separate notice of final rulemaking published elsewhere in today's Federal Register, the Department is adopting as its FSS final regulations the regulations contained in this interim rule. In accordance with the FSS statute, these final regulations will be effective one year from today's date.

Since the regulations in this interim rule are being adopted in their entirety, without change, by the FSS final rule, the terms—"FSS rule," or simply the "rule" are used in the remainder of this preamble.

III. Background

A. Implementation of FSS Program by FSS Program Guidelines

On September 30, 1991 (56 FR 49592), the Department published a notice of FSS Program Guidelines. As required by the FSS statute, the Guidelines established the requirements for (1) those PHAs and IHAs implementing and administering an FSS program funded pursuant to notices of funding availability issued for the incentive award competitions for FY 1991 and FY 1992, and (2) those PHAs and IHAs that voluntarily implemented and administered an FSS program. Although the FSS Guidelines were effective upon publication (as authorized by the statute), the Department invited public comment on the Guidelines to assist in the development of FSS final regulations. One hundred seventy (170) comments were received on the Guidelines. These comments, and the changes made to the FSS program requirements and procedures in response to these comments, are discussed in Section V of the preamble.

B. Changes Made to the FSS Program by the 1992 Act

Several changes were made to the FSS program requirements and procedures by amendment to the FSS statute 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.) These changes include the following:

Exception to Required Establishment of Program. The 1992 Act amendment clarifies that a lack of supportive services, which may affect a PHA's ability to implement and carry out an FSS program, includes insufficient job opportunities, specifically an insufficient availability of resources for programs under the Job Training Partnerships Act (JTPA) or the Job Opportunities and Basic Skills Training

Program under part F of title IV of the Social Security Act (JOBS).

No refusal or Reduction of Funding if PHA Certifies to Inability to Implement Program. The 1992 Act amendment provides that the Department, in allocating assistance made available for the FSS program, may not refuse to provide assistance or reduce the amount of assistance that would otherwise be provided to any PHA because the PHA has submitted a certification that establishment and operation of an FSS program is not feasible because of local circumstances.

No Delay in Assistance to Section 8
Families Who Elect Not to Participate in a Section 8 FSS Program. The 1992 Act amendment provides that with respect to the section 8 certificate and voucher programs, the Department shall not delay assistance to an applicant for section 8 assistance on the basis that the applicant has elected not to participate in the FSS program.

Inclusion of Interim Goals in Contract of Participation. The 1992 Act amendment provides that the contract of participation shall establish specific interim and final goals by which compliance with and performance of the contract obligations may be measured.

Termination and Withholding of Section 8 Assistance in Accordance with Established Grievance Procedures. The 1992 Act amendment provides that the contract of participation shall provide that the PHA may terminate or withhold section 8 assistance and services if the PHA determines through an administrative grievance procedure, established in accordance with section 6(k) of the 1937 Act (42 U.S.C. 1437d(k)), that the section 8 family has failed to comply with the contract obligations without good cause (which may include a loss or reduction in access to supportive services, or a change in circumstances that makes the family unsuitable for participation).

Conditions under which FSS Account Funds May Be Withdrawn. Before its amendment by the 1992 Act, the FSS statute provided that: "Amounts in the escrow account may be withdrawn by the participating family only after the family is no longer a recipient of any Federal, State, or other public assistance for housing." The amendment made by the 1992 Act replaced this language with the following:

Amounts in the escrow account may be withdrawn by the participating family after the family ceases to receive income assistance under Federal or State welfare programs, upon successful performance of the obligations of the family under the contract of participation entered into by the family under subsection (c) [42 U.S.C

1437u(c)), as determined according to the specific goals and terms included in the contract, and under other circumstances in which the Secretary determines an exception for good cause is warranted. A public housing agency establishing such escrow accounts may make certain amounts in the accounts available to the participating families before full performance of the contract obligations based on compliance with, and completion of, specific interim goals included in the contract; except that any such amounts shall be used by the participating families for purposes consistent with the contracts of participation as determined by the public housing agency.

Incentives for FSS Family
Participation. The 1992 Act amendment added a new component to the FSS program. This new component provides that each public housing agency carrying out a local FSS program shall establish a plan to offer incentives to families to encourage families to participate in the program. The plan shall require the "establishment of escrow savings accounts and may include any other incentives designed by public housing agency."

Additional Items for Inclusion in Action Plan. The 1992 Act amendment provides that the Action Plan shall include the following additional items:

(1) A description of the incentives offered by the public housing agency to families to encourage participation in the FSS program; and

(2) Assurances satisfactory to HUD that nonparticipating families will retain their rights to public housing or

section 8 assistance. New Definition for "Eligible Family". The 1992 Act amendment provides that the term "eligible family" shall be defined to mean a family whose head of household is not elderly, disabled, pregnant, a primary caregiver for children under the age of 3, or for whom the family self-sufficiency program would otherwise be unsuitable. The 1992 Act amendment, however, also provides that notwithstanding this definition, a public housing agency may enroll families whose head of household is elderly, disabled, pregnant, a primary caregiver for children under the age of 3, if these families choose to participate in the program.

Optional Participation for IHAs. The 1992 Act amendment also made operation of an FSS program optional for IHAs.

Regulatory Adoption of 1992 Act Changes. With the exception of the definition of "eligible family," all of the above statutory changes to the FSS program have been incorporated in the FSS rule. Although the FSS rule contains a definition of "eligible family," the regulatory definition is not

the same as the statutory definition. The Department has not incorporated the statutory definition of "eligible family" because the 1992 Act permits families not meeting the statutory definition to participate in the FSS program if they so choose. Participation in the FSS program is voluntary, and, under the FSS rule, if the titular head of the household is an individual who is unable to seek employment because of age, disability or other family responsibilities, the family may designate another family individual as the head of the household for FSS purposes. Accordingly, this provision is in conformance with the intended effect of the statutory definition of "eligible family." In the FSS rule, "eligible family" is defined to mean, depending upon the FSS program (i.e., section 8, public housing, or Indian housing), current section 8 participants, current public housing residents or current Indian housing residents. The basis for this definition is addressed in Section V of the preamble under the discussion family selection procedures.

IV. Overview of the FSS Rule

A. Organization

The FSS rule, as codified in part 962 (public housing FSS program) and part 984 (section 8 FSS program), is organized into four subparts.

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Subpart A, "General," sets forth the purpose, application, and objectives of the FSS program. This subpart also defines the principal terms used in the FSS program, lists the other regulations applicable to the FSS program, and sets forth the method for determining minimum program size.

Subpart B, "Program Development and Approval Procedures" contains the regulations governing the Action Plan, the Program Coordinating Committee, the FSS family selection process, and the utilization of on-site facilities.

Subpart C, "Program Operation," addresses the implementation deadline for the FSS program, and the applicable administrative fees, and establishes the regulations governing the contract of participation, the FSS account, and tenant rent and increases in family income. Subpart C of part 984 (the section 8 FSS program) also contains the regulations governing section 8 residency and portability in the section 8 FSS program.

Subpart D, "Reporting," contains the reporting requirements applicable to the

FSS program.
The FSS rule for the Indian housing
FSS program, as codified in subpart R
of part 905, organizes subpart R into
four undesignated headings. These four

undesignated headings and the regulations organized under each heading parallel the four subparts contained in parts 962 and 984.

B. Differences Between FSS Guidelines and FSS Rule

The FSS rule follows substantially the organization and content of the FSS Guidelines. However, the FSS rule makes a number of changes to the Guidelines. These changes include: (1) The statutory changes made to the FSS program by section 106 of the 1992 Act, and which were discussed above; (2) the changes prompted by the public comments received on the Guidelines (and which are further discussed in section V of the preamble); (3) those changes initiated by the Department following further consideration of how the FSS program should be administered; and (4) those changes initiated by the Department because of the recent statutory changes made to the FSS program—that is, a statutory change to a certain component of the FSS may require an administrative change to another program component for purposes of consistency and fairness in the operation of the program.

In the remaining sections of this preamble: PHAs and IHAs are sometimes collectively referred to, as "housing agencies or HAs," or in the singular, "housing agency or HA"; a family participating in the FSS program is referred to as an "FSS family"; the "escrow savings account," provided by the FSS statute, is referred to as the "FSS account": "FSS slots" refer to the total number of units or the total number of section 8 rental certificates or vouchers that determine the minimum size of an FSS program; and "FY" refers to a Federal fiscal year (starting with October 1, and ending September 30, and designated by the calendar year in which it ends). (Several of these terms are also used in the FSS rule, and are defined in the definition section of the

rule.)
When discussing the regulations applicable to an Indian housing FSS program, the Department notes that these regulations are applicable only to those IHAs that elect to operate and administer an FSS program.

The changes made to the FSS Guidelines by the FSS rule include the following:

Action Plan. HAs operating a section 8 FSS program are required to submit an administrative plan by the section 8 program, and an Action Plan by the FSS program. The FSS rule provides that certain information that was required by the FSS Guidelines to be included in the Action Plan, is to be included instead in

the HAs section 8 administrative plan. This change will eliminate duplication of information for HAs operating section

8 FSS programs,

Program Coordinating Committee. The sections of the FSS rule concerning the Action Plan and the Program Coordinating Committee (PCC) are revised to require that membership on the PCC include an HA representative, and also include a resident representative. Although the section of the FSS statute governing the PCC (42 U.S.C. 1437u(f)) recommends, and does not require, that certain individuals, or representatives of certain entities or organizations serve on the PCC, the Department believes that it is important that the HA operating the FSS program, and the residents of housing participating in the FSS program have representation on the PCC. These are the two parties—the HA and the residents because of their existing involvement in assisted housing (whether it is public/ Indian or section 8 assisted housing) that share the highest interest in and expend the greatest effort toward making the FSS program a success. Thus, HA and resident input in the planning and implementation of the FSS program is vital to the success of the FSS program. The requirement that HA and resident representatives serve on the PCC is imposed under the authority provided to the Department by the FSS statute to establish any requirements necessary to carry out the provisions of the FSS statute.

Where an HA utilizes an existing entity as its PCC, the existing entity will be required under the FSS rule to increase or modify its membership to include the HA and resident representatives. The FSS rule also provides that where a city-wide resident council exists, the resident representation should be from that

organization.

Minimum Program Size. The FSS rule has been revised to clarify which units count, and which units do not count, in . determining the minimum size of an FSS program. Additionally, the FSS rule makes certain changes to the listed exceptions to operating an FSS program and meeting the minimum program size. In accordance with the amendment made by the 1992 Act, the FSS rule provides that a lack of supportive services, and specifically, an insufficient availability of resources for job training programs, constitutes good cause for not operating an FSS program, or for meeting the minimum program size. Because eligible FSS participants are limited by the FSS rule to current section 8 certificate or voucher holders and current public or Indian housing

residents (as discussed later in this preamble), the FSS rule includes a lack of interest in participating in the FSS program, on the part of eligible families, as a good cause reason for permitting a smaller FSS program, or exempting an HA from implementing an FSS program.

Full Enrollment and Delivery of Services. The FSS rule establishes a time frame within which (1) enrollment of the total number of FSS families required to be served, based on the minimum program size, must be completed, and (2) delivery of supportive services must begin. The rule provides, as did the FSS Guidelines, that outreach activity and participant selection must begin within 12 months from the date of notification of approval of the first application for new units, which includes applications approved under the FSS incentive award competitions. The rule further provides that enrollment must be completed, and delivery of supportive services for all FSS families begun, no later than two years from the date of notification of approval of the application for new units. The FSS rule provides that the delivery of services deadline may be extended by the HUD Field Office after considering the efforts of the HA to deliver these services, as well as the availability of services resources, and other local circumstances which may affect the ability of the HA to meet the delivery of services deadline.

FSS Family Selection Procedures.

The FSS rule makes three significant changes to the procedures governing selection of families for participation in the FSS program. These changes are as follows:

Selecting FSS Participants from Current Section 8, Public Housing/ Indian Housing Families. As discussed under Section III of this preamble, the 1992 Act amendment to the FSS statute provided that the Department shall not delay assistance to a family on the section 8 waiting list solely on the basis that the family elects not to participate in the FSS Program. Although the 1992 Act amendment addressed the issue of delayed assistance solely in the context of the section 8 program, the Department believes that it would be inappropriate to apply a different standard to families on the public housing or Indian housing waiting list than that applied to families on the section 8 waiting list—that is, it would be inappropriate to prohibit delayed assistance to section 8 waiting list families, but permit delayed assistance to public or Indian housing waiting list families. The Department believes that this position is supported by the fact

that the 1992 Act amendment to the Action Plan includes a requirement that HAs will provide assurances to HUD that families not participating in the FSS program will retain their rights to public housing or section 8 assistance.

Accordingly, the FSS rule requires that: (1) For the section 8 FSS program. selection of FSS participants from current section 8 certificate or voucher holders; (2) for the public housing FSS program, selection of FSS participants from current public housing residents; and (3) for the Indian housing FSS program, selection of FSS participants from current Indian housing residents. This requirement is different from that set forth in the FSS Guidelines which permitted FSS participants to be selected from the section 8, public housing and Indian housing waiting lists. The FSS Guidelines permitted an HA to skip over (1) families on the waiting list who opted not to participate in the FSS program, and (2) families who needed services which were unavailable under the program—which provided for the possibility of delayed assistance to these two categories of families. The Department believes that this requirement to select from current section 8 participants and public/Indian housing residents will ensure that assistance to a waiting list family under any of three programs (section 8, public housing, or Indian housing) will not be delayed, or deprived, solely because the family elects not to participate in the FSS program.

Selection Preference. The FSS rule provides an HA implementing an FSS program with the option of giving a selection preference for up to 50 percent of the total number of FSS slots. The selection preference is limited to families, who are currently section 8 participants and public/Indian housing residents (depending upon the FSS program being carried out) and who have one or more family members currently enrolled in an FSS related service program (as defined in the FSS rule), or on the waiting list for an FSS related service program. The rule provides that an HA that decides to exercise this option must specify in its Action Plan or section 8 administrative plan, the service programs to which it will give a preference in the FSS selection process. If the HA elects to exercise this selection preference, then the remaining 50 percent of the FSS slots (or the entire number of FSS slots if the HA does not exercise this option) must be filled from current section 8 participants, or current public or Indian housing residents through the objective processes described in the FSS

Guidelines, and which are incorporated in the FSS rule.

Mativational Screening. The rule permits, to a limited degree, the use of motivational screening in the selection process. The motivational screening factors that are permitted in the selection process are those which solely measure the family's interest and motivation to participate in the FSS program.

Contract of Participation

The FSS rule makes several changes to the Guidelines' provision concerning the contract of participation.

Completion of contract. The rule uses the term "completion" (as opposed to "termination") to refer to the status of the contract of participation when the family's obligations are determined to be fulfilled. Fulfillment of the family's obligations occurs when the participating family members have complied with all requirements under the contract, and completed all activities as set forth in the contract, within the term of the contract, and any extension thereof. Fulfillment of the family's obligations also occurs when 30 percent of the family's monthly adjusted income equals or exceeds the published existing housing fair market rent for which the family qualifies based on the HA's occupancy standards. When the family's income reaches this level, the family is released from its obligations under the contract.

Inclusion of Interim Goals. In accordance with the amendment made by the 1992 Act, the FSS rule provides that the contract of participation must establish specific interim goals as well as final goals in order to measure the participating family's progress toward fulfilling the contract of participation and moving toward economic independence. The FSS rule provides that if a family is receiving welfare assistance (as this term is defined in the FSS rule) at the time the family enters into, or after entering into, the contract of participation, the HA must establish as an interim goal that the family become independent of welfare assistance, and remain independent of welfare assistance for a period of at least one year before expiration of the term of the contract of participation, including any extension thereof.

Unavailable supportive services. The rule also prescribes the procedures to be followed by the HA in the event there is a failure on the part of a social service provider to deliver the supportive services that it agreed to deliver under the FSS program.

Head of the FSS Family

The FSS rule clarifies who is the head of the family under the FSS program. The FSS statute requires the HA carrying out a local FSS program to enter into a contract of participation with each leaseholder receiving assistance under either HUD's section 8, or public/Indian housing programs that elects to participate in this FSS program. The FSS statute further provides that the contract of participation shall require the head of the FSS participating family to seek suitable employment. To eliminate ambiguity concerning which family member is the "head of the family" as designed in the contract of participation, and which family member is the leaseholder, and to eliminate problems that may arise if the leaseholder is unable to work, the FSS rule provides the head of the family is the adult member of the FSS family who is the head of the household for purposes of determining income eligibility and rent. Thus, if the leaseholder is a member of the family who is unable to work, the leaseholder's inability to work will not preclude the family from participation in the FSS. provided that another adult member of the family is able and willing to work. This adult member will be considered the head of the family for the FSS program.

The FSS rule retains the language of the FSS Guidelines which requires the head of the family to seek and maintain suitable employment. The inclusion of the term "maintain" in the Guidelines and in the rule is to ensure that the head of the family is sincere in his or her efforts to achieve self-sufficiency, and is not simply going through the motions of job seeking, without any sincere intent of obtaining and maintaining employment.

FSS Account

The FSS rule makes several changes to the Guidelines' provision governing the establishment and administration of the FSS account.

Combined Account. The FSS rule provides that HAs must combine the funds being held for all families into a single depository account. As will be discussed in more detail later in this preamble, this change was made in response to a ruling by the Internal Revenue Service, which indicated that FSS funds may be subject to Federal income tax if the HA establishes a separate account for each FSS family.

Cap on FSS Account Contribution. The rule provides that an HA will cease making credits to a family's FSS account

when 30 percent of the family's monthly adjusted income equals or exceeds the published existing housing fair market rent for the unit size for which the family qualifies based on the HA's occupancy standards

Conditions for Withdrawal of FSS Account Funds. Consistent with the 1992 Act amendment to the FSS statute. the FSS program no longer requires that the family be independent of Federal. State, or other public assistance for housing as a condition for receipt of the family's FSS account funds. The FSS statute, as amended by the 1992 Act, now requires, in lieu of this condition, that the family no longer be a recipient of welfare assistance (income assistance under Federal or State welfare programs). Welfare assistance is defined in the FSS rule to include assistance for general living expenses, such as food, health care, child care, but does not include assistance solely directed to meeting housing expenses (e.g., rent, mortgage or utilities payments). The Department believes that independence from welfare assistance is a condition easier to meet than independence from housing assistance, and, therefore, has not included in the FSS rule, the provision contained in the Guidelines which allowed participating families 10 years, from the date of entering into the contract of participation, to become independent of public assistance for housing.

Although the 1992 Act amendment removed economic independence from public assistance for housing as a condition for receipt of the FSS account funds, economic independence from such assistance, although not a condition for receipt of the FSS account funds, remains an objective of the FSS program, and HAs should make every effort to assist participating families gain economic independence from public assistance for housing, particularly section 8, public or Indian

housing rental assistance.

The 1992 Act amendment also revised the statutory account provisions to permit the HA to make certain amounts of the FSS account funds available to the participating family before the family has fulfilled all obligations imposed by the contract of participation, provided that (1) the family has met certain interim goals established in the contract of participation, and (2) the use of these amounts (withdrawn before completion of the contract) is for purposes consistent with the contract of participation. The FSS rule provides for use of FSS account funds for purposes consistent with the contract of participation including expenditure for

such items as: higher education (e.g., college or graduate school), job training, and small business start-up expenses.

Use of FSS Account Funds for Homeownership. As discussed in the preceding paragraph, the 1992 Act amendment removed the requirement that withdrawal of FSS account funds is conditioned upon the family no longer receiving any Federal, State or other public assistance for housing. This former statutory language made it difficult for FSS families to use their FSS account funds for the purchase of a home under a Federal, State or local homeownership program because many of these programs involve a post-sale public subsidy for housing (as for example, a mortgage interest rate subsidy). Under the FSS Guidelines, a post-sale subsidy for housing would make the family ineligible to receive its FSS account funds because the family would not be independent of public assistance for housing as originally required by the FSS statute. Again, however, the removal of the former statutory language concerning "other public assistance for housing" allows the FSS family to use its FSS account funds for the purchase of a home under a homeownership program, even if the program involves a post-sale public subsidy for housing, unless the statute or regulations governing the particular homeownership program prohibit use of such **a** funding source.

With respect to the section 8 FSS program, the Department notes that section 185 of the 1992 Act authorizes the implementation of a homeownership component for the section 8 rental certificate and rental voucher programs. Section 185 provides that FSS families may use up to 50 percent of the amount in their FSS account funds for a downpayment under this program. This section further provides that, after purchasing a unit, the PSS family may use any remaining FSS account funds for the costs of major repair and replacement needs. The regulations for the section 8 homeownership program, which will be part of a separate rulemaking process, will provide further guidance in this

Section 8 Residency and Portability Requirements

The FSS rule makes a number of changes to this section to clarify the responsibilities of the FSS family who is relocating to the jurisdiction of another HA, and the responsibilities of the initial HA and receiving HA in this situation.

Additional Changes

In addition to the above changes, the FSS rule adds several new definitions, including definitions for the following terms and phrases: "FSS related service program"; "individual training and services plans"; "self-sufficiency" and "welfare assistance." "Welfare assistance" is the abbreviated term used in the FSS rule to refer to the new statutory phase—"income assistance under Federal or State welfare programs."

The rule also makes a number of editorial revisions to several sections of the Guidelines to clarify the requirements or procedures addressed by these sections. The discussion of public comments, which follows, further describes the changes made to the FSS Guidelines by this rule.

V. Discussion of Public Comments

The public comment period for the FSS Guidelines expired on November 30, 1991. During the comment period, the Department received 170 comments. The 170 commenters included 119 PHAs; 8 IHAs; 33 social service agencies; 4 housing consultants; 3 legal organizations; and 3 associations

representing housing agencies.

The majority of the commenters stated that they "supported," "commended" or 'applauded" the objectives of the FSS program. This statement, however, generally was followed by a summary of the problems which the commenter found with the Department's implementation of the FSS program. The sections of the Guidelines most frequently criticized by the commenters were those which addressed the following program components: the mandatory nature of the program; determination of minimum program size; establishment and management of the FSS account; participant selection; portability; and the possibility of fermination of section 8 assistance for failure by a participating family to fulfill the terms of the FSS contract of participation.

The following presents a discussion of the substantive issues raised by the commenters, and the Department's response to each issue. The discussion begins with the comments that are applicable to the entire program (i.e., General Comments), and is followed by a discussion of the comments received on specific sections of the Guidelines. The FSS guidelines contain 16 sections. The section-by-section discussion follows the order in which these sections were presented in the Condelines.

The discussion of comments concludes with the discussion of the

comments submitted on a proposal by the Department to include a provision in the contract of participation permitting the HA, under certain circumstances to require an FSS family, or a non-FSS family, to move to another unit to make room for another FSS family. The provision was not part of the FSS Guidelines, but simply a proposal on which the Department requested public comment.

General Comments

Comment. Six commenters stated that the lead Federal agency for the FSS program should not be HUD, but rather the Department of Health and Human Services (HHS), a Federal agency already charged with responsibility for administering social service programs that may lead to economic independence. These commenters stated that the responsibility of HUD and of HAs is to provide decent, safe and sanitary housing, and these agencies should not have the added responsibility of providing social services. One commenter stated that the Department should permit the FSS program to be operated by private, nonprofit organizations.

Fourteen commenters stated that the success of the FSS program requires substantial coordination among Federal, State and local agencies, and that unless HUD secured the cooperation of these other agencies in assisting HAs with the operation of their local FSS programs, the FSS program would fail.

Response. The Congress vested the Secretary of HUD with the responsibility to implement the FSS program. Accordingly, the Congress made the decision that HUD was the appropriate agency to carry out the FSS program. The Department believes that at the basis of this decision was the fact that the availability of affordable housing is critical to the success of the FSS program: A stable housing environment frees FSS families from worrying about one of the basic essentials in life—adequate shelter—and thus, allows them to focus better on education, job training and job search. Additionally, the Department reminds the commenters that HUD was the lead agency in the Project Self-Sufficiency and Operation Bootstrap programs. These two successful demonstration programs confirmed HUD's ability and that of housing agencies to administer and operate a program which combines housing assistance with local social services resources.

With respect to private, non-profit organizations operating FSS programs, the FSS statute authorizes PHAs and IHAs to carry out the FSS program.

Although the Department strongly encourages private, non-profit organizations to participate in local FSS programs by offering job training, employment opportunities, supportive services, and administrative expertise, or by offering to serve on the FSS program coordinating committee, the overall responsibility for administration and operation of the program remains

with PHAs and IHAs.

The Department points out that under the FSS program, housing agencies are not required to be the direct providers of supportive services to FSS participants. Although the FSS statute requires "each local FSS program" to provide comprehensive supportive services to families electing to participate in the program, the delivery of these services is not the responsibility of the individual housing agency, but rather of the local service agencies that have committed their support to the program.

The FSS statute requires the Secretary of HUD to coordinate with the heads of other appropriate Federal agencies, and to provide for cooperative actions and funding agreements. The Secretary of HUD has numerous efforts underway with other Federal agencies to coordinate self-sufficiency programs and initiatives at the Federal, State and local levels. A Memorandum of Understanding exists between HUD and each of the following agencies: The Department of Health and Human Services (HHS), the Department of Labor (DOL), and the Department of Transportation (DÕT). HUD is also working with the Departments of Agriculture, Education and Justice to secure their cooperation in assisting HUD and HAs with implementation of local FSS programs. Additionally, HUD has initiated contact with other public and private agencies and organizations to encourage their participation in the FSS program and to solicit their suggestions on ways to coordinate and integrate with the FSS program those programs operated by these agencies and organizations that are similar or complementary to the FSS program. Many interagency agreements exist between HAs and other organizations on the local level throughout the country to more effectively help low income families move toward economic independence.

Comments. One IHA commenter expressed concern about the implementation of FSS programs on Indian reservations. The commenter recommended that HUD coordinate FSS efforts with the Bureau of Indian Affairs to determine what resources are available on reservations to make the

FSS program a viable program on reservations.

Response. The 1992 Act addressed this concern by amending the FSS statute to make participation in the FSS program optional for IHAs. The FSS rule clarifies that the requirements governing the Indian housing FSS program, codified in part 905, subpart R, apply only to those IHAs that elect to operate FSS programs. Implementation of a section 8 FSS program is also optional on the part of ÎHAs.

Comment. Twenty-two commenters stated that the FSS Guidelines are too stringent, and allow little flexibility for HAs to appropriately respond to the needs of their local communities. Many of these commenters complained of the restrictions placed on selection preference, and on the use of motivational criteria in the selection

Response. In response to the overwhelming request from the commenters that the Department reconsider use of selection preferences and motivational screening in the FSS selection process, the Department has reevaluated these issues and decided that the FSS rule should permit selection preference and motivational screening, subject to certain restrictions, as described below.

Selection Preference

As discussed earlier in this preamble, HAs operating an FSS program must select FSS participants from families who are currently section 8, public or Indian housing program participants ("eligible families"). From this group, the FSS rule provides HAs with the option of giving a selection preference for up to 50 percent of its FSS slots to eligible families who have one or more members currently enrolled in an FSS related service program or on the waiting list for such a program. For example, if a PHA has 50 FSS slots, and 100 public housing residents have expressed an interest in participating in the FSS program, then the PHA may give a preference for up to 25 of the FSS slots to any of the 100 interested residents who have one or more family members currently enrolled in or on the waiting list for an FSS related service program.

An FSS related service program is defined in the FSS rule to mean any publicly or privately sponsored program which offers any of the kinds of supportive services set forth in the definition of "supportive services." FSS related service programs include, but are not limited to educational programs, employment and job-training programs,

and child-care programs.

The Department limited the selection preference to a maximum of 50 percent of a housing agency's FSS slots because the Department wanted to ensure that families who are not already participants in, or who are not already on the waiting lists for, FSS related service programs also have an opportunity to participate in the FSS program, and to obtain the benefits and assistance offered by FSS related service programs, and of the FSS program, generally.

The HA may limit its selection preference to one or more eligible FSS related service programs. An HA that chooses to exercise the selection preference option must identify in its Action Plan (if operating a public or Indian housing FSS program), or its section 8 administrative plan (if operating a section 8 FSS program): (1) The percentage of FSS slots for which it will give a selection preference, (2) the services programs to which the HA will give a preference to the programs' participants or applicants, and (3) the method of outreach to, and selection of, families who qualify for the selection preference.

Revised Selection Process

With the inclusion of a selection preference option in the selection process, the FSS rule revises the section in the FSS Guidelines pertaining to the selection of families for participation in the FSS program to accommodate this option. The revisions include the

following:

Selection without preference. The FSS slots which are not filled using the selection preference option (the number of which must not be less than 50 percent of the total number of FSS slots) must be filled from current section 8 participants or current public/Indian housing residents (depending upon the type of FSS program), and those individuals must be selected based on an objective system, such as a lottery, length of time living in subsidized housing, or date the family expressed an interest in participating in the FSS program. The method of selection of current public or Indian housing residents must be described in the HA's Action Plan. For HAs operating a section 8 FSS program, the method of selection must be described in the HA's section 8 administrative plan.

Motivational Screening

With respect to motivational screening, the FSS rule permits the use of criteria that solely measure the family's interest in, and motivation to participate in the FSS program. For example, before enrolling a family in the

FSS program, an HA may require the family to respond to certain questions from the HA concerning the family's interest in the FSS program, or require the family to attend one or more FSS orientation sessions at which the HA describes the FSS program, and explains the family responsibilities under the program. The HA also may assign families interested in participating in the FSS program certain tasks such as attending an FSS preselection interview or counseling appointment, contacting child care referrals, or determining bus schedules between designated locations (for example, between the family's home and an educational or job training center). The above questions and tasks constitute the type of factors that assist the HA in determining the family's interest in and motivation to participate in the FSS program.

The following constitute acceptable reasons, based on motivational screening, for refusing to offer an FSS slot to a family: (1) Nonattendance or tardy attendance at scheduled activities, or (2) failure or unwillingness to undertake any tasks assigned by the HA (such as contacting child care referrals or determining bus schedules), provided that the activities and tasks assigned to the prospective FSS family are those that may be readily accomplishable by the family based on the family members' educational level, and disabilities, if any. In no case, however, shall an HA refuse to offer an FSS slot to a family based on such factors as the family's educational level, educational or standardized motivational tests results, previous job history or job performance, credit rating, marital status, the number of children, or similar factors. The FSS rule requires that the HA must describe in its Action Plan or section.8 administrative plan the motivational screening procedures, if any, that it intends to use in the selection process.

Comment. Of the 22 commenters referred to in the preceding comment, many criticized other components of the FSS Guidelines. These commenters criticized the FSS contract term as being too short, the FSS account requirement as being too burdensome, the employment requirement as being unreasonable, and the minimum size of the program as being discriminatory of families unable or unwilling to participate in the FSS program. The commenters stated that it is extremely important that HAs be given the broadest discretion and flexibility possible for designing and changing the program, as needed, around resources locally available and the FSS families'

Response. The "five year" contract term is a statutory requirement. The FSS statute provides that the family participating in the FSS program shall fulfill its obligations under the contract of participation not later than 5 years after entering into the contract. The employment obligation imposed on the head of the family is also a statutory requirement, as are the establishment of the FSS account, and the method for determining minimum program size. The 1992 amendment to the FSS statute did not change any of these aspects of the FSS programs.

Where the FSS statute provides the Department with discretion in implementing the FSS statutory requirements, the Department has strived to the maximum extent possible, without jeopardizing basic standards of uniformity in operating the FSS program, to provide HAs with flexibility in implementing their local FSS programs. This flexibility includes extending the term of the contract of participation from five years to seven years for good cause. Additionally, the FSS Guidelines and the FSS rule provide housing agencies with considerable flexibility in implementing their Action Plans, and in developing the individual training and services plans for FSS families.

Comment. Fifty-four commenters stated that the FSS program creates significant added responsibilities and duties for HAs without providing needed funds to meet these additional

duties and responsibilities.

Response. The Department recognizes that the anticipated funding for the FSS program administrative costs for FY 1991 and FY 1992 was not forthcoming. Although the FSS statute authorized funding for FY 1991 and FY 1992 for administrative costs associated with implementation of the FSS program, the Congress did not appropriate the funds. Despite the absence of funding for FY 1991 and FY 1992, the Department believes that some of the administrative costs associated with the FSS program will be alleviated by public and private organizations that will commit resources, financial and non-financial, to the program, as was the case with the Project Self-Sufficiency and Operation Bootstrap programs.

In the matter of administrative fees for the section 8 FSS program, the FSS statute specifies that the administrative fee shall be that which is in effect under section 8(q) of the U.S. Housing Act of 1937 on June 1, 1990, with the exception that the applicable dollar amount for preliminary expenses under section 8(q)(2)(A)(i) shall, subject to approval in appropriations acts, be

\$300. Accordingly, the administrative fee structure, provided by the FSS statute, is as follows: (1) An ongoing administrative fee of 8.2 percent of the fair market rent for a two bedroom unit; (2) a hard-to-house fee of \$45; and (3) subject to approval in appropriations, a preliminary fee of \$300 (\$25 higher than the current \$275 maximum preliminary fee allowed for new, non-FSS units). The Congress did not provide appropriations approval for the \$300 preliminary fee for the FY 1991 and FY 1992 section 8 incentive award units. Therefore, the \$275 maximum preliminary fee will apply to HAs receiving incentive award units, and will continue to apply until the Congress provides appropriations for the \$300 preliminary fee, or another fee structure is adopted by HUD after analysis of actual FSS administrative costs.

With respect to funding for administrative costs in the public/ Indian housing FSS programs, the FSS statute requires the Department to include under the performance funding system (PFS) "reasonable and eligible administrative costs, including the costs of employing a full-time service coordinator," if the Congress appropriates funds for this purpose. As noted above, the Congress did not provide any appropriations for FSS administrative costs for FY 1991 or FY 1992 for the public/Indian housing FSS incentive award units. However, the Congress has included \$25.9 million in its appropriation for operating subsidy funding for FY 1993.

Comment. One commenter stated that contrary to the statement in the FSS Guidelines, the FSS program requirements and procedures will have a significant economic impact on a substantial number of small entities.

Response. The Department maintains that its statement in the FSS Guidelines is correct. The obligation imposed on PHAs to implement an FSS program is a statutory obligation, not a regulatory one. (The 1992 Act amendment to the FSS statute made implementation of an FSS program optional for IHAs.) The obligation only arises if the PHA receives new units or new certificates or vouchers, and is not otherwise excepted from the program. The FSS program requirements imposed on HAs (PHAs and those IHAs that elect to operate an FSS program) by the FSS statute do not distinguish between small HAs and large HAs, or between urban HAs and rural HAs.

The Department notes that the size of an FSS program which an HA will be required to operate depends upon the number of units (or:certificates or vouchers) awarded to the HA under the FY 1991 and FY 1992 incentive award competitions, plus the number of any additional new units (or additional certificates or vouchers) received by the HA beginning in FY 1993. Any HA, regardless of its size, may apply to HUD to operate a smaller FSS program, or may request an exception from implementing an FSS program, as provided by the FSS statute, the FSS Guidelines, and the FSS rule, if local circumstances make operation of a minimum size FSS program or any FSS program infeasible.

Where the FSS statute provides HUD with discretion in implementing the FSS statutory requirements, the Department has strived to the maximum extent possible, without jeopardizing basic standards of uniformity in operating the FSS program, to provide HAs with flexibility in implementing their local FSS programs. For the foregoing reasons, the Department believes that neither the FSS Guidelines nor the FSS rule will have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility

Comment. One commenter asked that the FSS rule clarify whether section 957 of the NAHA (Maximum Annual Limitation on Rent Increases Resulting from Employment) is applicable to the FSS program, specifically the FSS account. Section 957 provides in relevant part as follows:

"Notwithstanding any other law, and subject to approval in appropriations Acts, the rent charged for any dwelling unit assisted under any housing assistance program administered by the Secretary * to a family whose monthly adjusted income increases as a result of the employment of a member of the family who was previously unemployed, may not be increased as a result of the increased monthly adjusted income due to such employment by more than 10 percent in each 12-month period during the 36-month period beginning such employment.

Response. Section 957 specifically provides that it is subject to approval in appropriations acts. No approval was provided in the FY 1992 or FY 1993 appropriations acts. Additionally, and as further discussed in the section of this preamble pertaining to FSS accounts, under the FSS program, an increase in rent is not treated the same as increases in rent under other programs. Under the FSS program, a portion of any increase in rent, which under other programs would be credited solely as rent, is credited to the FSS family's FSS account.

Comment. One commenter asked that the FSS rule clarify whether section 515 of NAHA (Family Investment Centers) is applicable to the FSS program. This statutory section, as noted by the commenter, includes an 18-month restriction on increasing rent contributions based on income or benefits that the family receives under the Family Investment Centers program or through programs provided under comparable Federal, State or local law.

Response. The Department's position is that the FSS statute is not a "comparable Federal law" within the meaning of section 515. To consider the FSS statute comparable to section 515 would defeat the purpose of the statutorily required escrow account (or FSS account), a central component of the FSS program. The Department does not believe that this was the intent of the Congress.

Comment. One commenter suggested that in order to serve housing clients with less confusion and greater efficiency, HUD should consolidate certificates and vouchers into one mode

of housing assistance.

Response. Consolidation of HUD's section 8 rental certificate and rental voucher programs is beyond the purview of the FSS rule. However, on February 24, 1993 (58 FR 11292), the Department published a proposed rule, which would conform the section 8 certificate and voucher programs to the extent possible under the current statute.

Section I. Definition

Comment. Two commenters requested that the FSS rule include a definition of "adult." One commenter stated that the FSS Guidelines were unclear on whether "adult" refers only to a person of 18 years or older, or includes an emancipated minor.

Response. The Department declines to adopt a definition of "adult" in the FSS rule. In determining who is an "adult" for FSS program purposes, HAs should apply the same standards or criteria for making this determination as provided under existing public/Indian housing program policies and guidelines, and existing section 8 program policies and guidelines.

Comment. One commenter asked if the definition of "certification" applies only to the situation in which an HA provides a certification to HUD of its inability to carry out an FSS program, or if the definition also applies to the situation in which the head of the FSS family, in order to receive the family's FSS account funds, certifies, to his or her knowledge, that no family members

are receiving Federal, State, local, or other public assistance for housing.

Response. The definition of "certification" applies to both kinds of situations, and this has been clarified in the FSS rule.

Comment. One commenter requested that the FSS rule define or clarify what is meant by "Federal, State, local or other public assistance for housing."

Response. A definition for this phrase is no longer necessary because the 1992 Act amendment to the FSS statute removed this phrase from the FSS statute, and substituted the following: "income assistance under Federal or State welfare programs," which the FSS rule refers to more succinctly as "welfare assistance." This term is defined in the rule to mean "assistance provided under the Aid to Families with Dependent Children (AFDC) Program, certain Supplemental Security Income (SSI funds); Medicaid, food stamps, or other assistance provided under a Federal or State program directed to meeting general living expenses, such as food, health care, child care, but does not include assistance solely directed to meeting housing expenses (e.g., rent, mortgage or utilities payments), and does not include transitional welfare assistance (such as medicaid) provided to JOBS participants.

Comment. One commenter requested that the definition of "head of family" in the FSS rule clarify that the ''head of the family" for FSS purposes is the same individual who signs the FSS contract of participation and who signs

the lease.

Response. As discussed earlier in this preamble, the FSS rule defines head of the FSS family as the adult member of the family who is the head of the household for purposes of determining income eligibility and rent. Under this definition, the head of the FSS family may be the leaseholder, but is not required to be. The FSS rule does not require the head of the FSS family to be the leaseholder because there may be situations in which the leaseholder is unable to work. If the leaseholder is unable to work, the leaseholder's inability to work will not preclude the family from participating in the FSS program provided that another adult member of the family is able and willing to work. In addition, leases will not have to be amended if they do not designate which signatory to the lease is the leaseholder.

Comment. One commenter stated that it was not clear from the Guidelines which family members constitute the

'participating family.' Response. The term "participating family" is defined in the FSS statute.

The statute provides that: "The term participating family' means a family that resides in public housing or housing assisted under section 8 and elects to participate in a local self-sufficiency program." The election to participate is made by the head of the FSS family (the meaning of which term was discussed earlier) who enters into a contract of participation on behalf of the participating family (or "FSS family," as referred to in this preamble and in the FSS rule). Thus, the entire family of this individual (the head of the FSS family) is the "participating family" or "FSS family." However, this does not mean that all members of the FSS family must participate in educational or job training programs, or seek employment. As noted in the preceding response, under the FSS program, only the head of the family must seek and maintain employment.

The contract of participation includes as "participating family members" those members of the FSS family age 18 years and older who have executed individual training and services plans. Again, no one other than the head of the family is required to be an active participant in the FSS program. However, if other family members execute individual training and services plans, these family members are obligated to fulfill the

terms of their plans.

Comment. Eight commenters requested that the FSS rule define "self-sufficiency". The commenters stated that a definition is needed in order to provide a standard against which program success can be evaluated and performance of the FSS families' obligations consistently measured.

Response. The Department agrees with the commenters that a definition of "self-sufficiency" would help evaluate the success of individual participating families and the success of an individual FSS program. The Department emphasizes, however, that achievement of "self-sufficiency," as this term is defined in the FSS rule, is not a condition for the family's entitlement to its FSS account funds. The FSS rule defines "self-sufficiency" to mean that an FSS family is no longer receiving section 8, public or Indian housing, or any Federal, State, or local rent or homeownership subsidies or welfare assistance. If an FSS family is able to become independent of these types of public assistance, then the program has worked optimally in the case of this family. However, as discussed below, the Department takes other factors into consideration in evaluating the success of an individual FSS program, and does not base its evaluation solely on the number of

families who have achieved "selfsufficiency." With respect to entitlement to its FSS account funds, the FSS family must have completed all obligations under its contract of participation, which includes becoming independent of "welfare assistance," as this term is defined in the rule.

Returning to the subject of program success, the Department recognizes that the success of a local FSS program is not measured simply by the success of the number of families who achieve selfsufficiency, as defined in the FSS rule, but by a number of factors, which include the following: One or more family members obtaining a job for the first time, or obtaining higher paying jobs; families becoming independent of welfare benefits, either completely or partially; family members obtaining a high school diploma, or higher educational degree; families whose income increases to a level where 30 percent of monthly adjusted income equals or exceeds the published existing housing fair market rent for the units for which they qualify based on the HAs' occupancy standards; and families becoming independent of any welfare assistance or housing subsidies. If an FSS program assists a substantial percentage of families achieve one or more of these important milestones, the local FSS program will be considered to be operating successfully.

Comment. One commenter requested that the FSS rule include a definition of "suitable employment" to provide important safeguards for families, and to make local administration of the FSS program easier.

Response. The Department declines to adopt the commenter's suggestion. A determination of "suitable employment" will vary from family to family, and thus, is a decision which properly rests with the HA following consideration and evaluation of the head of the family's skills, education, and job training, and an assessment of the available job opportunities in the area in which the FSS family resides. The HA may delegate the responsibility for determining suitable employment to the FSS coordinator, the Program Coordinating Committee or another administrator or administrative entity.

Comment. One commenter stated that "case management" should be added to the list of services provided in the definition of supportive services.

Response. The Department agrees with the commenter and has included "case management" in the list of supportive services.

Section II. Purpose

No comments were received on this section.

Section III. Applicability of Program Regulations

No comments were received on this section.

Section IV. Elements of the FSS Program and Minimum Program Size

Comment. Five commenters objected to language in the preamble to the FSS Guidelines, which stated that HAs could continue to operate Project Self-Sufficiency or Operation Bootstrap programs only until all current participants in these programs have transferred to the FSS program or completed the Project Self-Sufficiency or Operation Bootstrap programs. The five commenters requested that HUD permit HAs to have the option to continue to operate Project Self-Sufficiency and Operation Bootstrap programs.

Response. The Department declines to adopt the commenters' suggestion. The FSS program is based on the same concept and has the same objective as the Project Self-Sufficiency and Operation Bootstrap program coordinating housing assistance with supportive services to help low-income families obtain economic independence. The FSS program builds upon these two successful demonstration programs, but includes modifications, and introduces new components to reflect the current progress of welfare reform and the lessons learned from these two programs. Because the FSS program has the same goal as the Project Self-Sufficiency and Operation Bootstrap and operates in a very similar fashion, the Department finds no need to permit operation of these programs once the current participants in these programs have transferred to an FSS program or have completed the demonstration programs. The Department already has instructed HAs operating these demonstration programs to not enroll any new families, and to discontinue any implementation plans for these programs.

The Department notes that families participating in either the Project Self-Sufficiency or Operation Bootstrap programs or other local self-sufficiency programs do not count towards meeting the FSS minimum program size, unless the families transfer to the FSS program. Families actively participating in these demonstration programs (i.e., receiving supportive services) who execute an FSS contract of participation are counted toward satisfying the minimum

FSS program size. Such a transfer is voluntary, at the sole option of the family.

Comment. Twelve commenters objected to the fact that beginning in FY 1993, each HA must operate an FSS program of the minimum program size specified under the FSS guidelines. unless the HA receives an exception from operating an FSS program, as

provided in the guidelines. Response. The requirement to carry out a local FSS program beginning in FY 1993 is a statutory requirement. The FSS statute provides: "Effective on October 1, 1992, the Secretary shall require each such agency to carry out a local Family Self-Sufficiency Program under this section." Although the 1992 Act amendment to the FSS statute removed this requirement for IHAs (and made participation optional for IHAs), the mandatory participation requirement remains in effect for PHAs. However, this requirement is applicable to a PHA only if the PHA applies for and receives additional section 8 rental certificates or vouchers, or additional public housing units, and does not otherwise receive an exception from operation of an FSS program. If a PHA does not receive new section 8 rental certificates or vouchers, or new public housing units, then the PHA is not required to implement an FSS program. (This requirement also applies if the PHA received FY 1991 or FY 1992 FSS incentive award units.)

Comment. Several commenters requested that the FSS program be optional for HAs under certain circumstances, the description of which varied among the commenters. Three commenters suggested that the FSS rule provide for the FSS program to be optional for HAs in high cost areas. One of the commenters stated that if the FSS program could not be optional in high cost areas, the program for these areas should allow more than five years to become self-sufficient. Eight commenters stated that the FSS program should be optional for HAs serving rural areas. These commenters stated that rural HAs have massive service areas, and no access to educational, employment or child care resources for tenants. Another commenter stated that because of the difficulty of implementing and administering a successful FSS program on reservations, the FSS program should be optional for IHAs.

Response. With respect to the last comment, the 1992 Act amendment to the FSS statute, as previously discussed. provides that implementation and operation of an FSS program is optional for IHAs. However, implementation of

an FSS program remains mandatory for a PHA that receives new section 8 certificates or vouchers or new public housing units.

With respect to the other comments. the FSS statute provides a list of local circumstances under which an HA may receive an exception from implementing an FSS program. These circumstances include: Lack of supportive services accessible to eligible families, including job training opportunities; lack of funding for reasonable administrative costs; lack of cooperation by other units of State or local government; and any other circumstances that the Secretary of HUD may consider appropriate. As discussed earlier in this preamble, HUD has included lack of interest in participating in the FSS program, on the part of eligible families, as a circumstance under which HUD may grant an exception from implementing an FSS program, or authorize implementation of a smaller program. Thus, if an HA serving a high cost area or rural area lacks supportive services accessible to eligible families, funding for reasonable administrative costs, cooperation by other units of State or local government, or interest on the part of eligible families, then the HA may receive an exception from establishment and operation of a local FSS program, or the HA may be permitted to operate a smaller FSS program. However, the fact that the HA serves a high cost area or a rural area is not reason in and of itself for granting an exception from the FSS program.

With respect to the commenter's suggestion that FSS families in high cost areas require more than five years to become self-sufficient, the FSS rule takes into consideration (as did the FSS Guidelines) the fact that an FSS family may need more than five years to become self-sufficient. The FSS rule provides (as did the Guidelines) that the HA may extend the term of contract of participation for a period not to exceed two years for any FSS family who requests, in writing, an extension of the contract, provided that the HA finds that good cause exists for granting the

extension.

Comment. Several commenters had questions concerning which units count in determining the FSS minimum program size. One commenter stated that although the minimum program size is explained in the preamble, the FSS regulations need to provide equal detail because most administrators of FSS programs in future years will not have access to the preamble. One commenter noted that the preamble provided that in determining the size of the housing authority's FSS program, all

additional rental units except those used to replace expiring rental certificates or vouchers will be counted. The commenter requested that the FSS rule clarify that additional units do not include those reserved in order to replace expiring subsidies. Another commenter stated that the FSS rule should clarify that formerly vacant public housing units that are returned to occupancy as a result of comprehensive modernization will not count for FSS purposes. Two commenters stated that to eliminate confusion, the FSS rule should clarify what constitutes "additional units reserved". Another commenter stated that the FSS Guidelines were unclear about whether an Indian housing FSS program involved only additional low rent units received in FY 1993, or also included mutual help units received in FY 1993. Three commenters indicated no confusion in determining minimum program size, but requested a different method in determining minimum program size. Two of the commenters believed that the FSS minimum program size should equal 25 percent of additional units reserved. The third commenter stated that HAs should determine minimum program size based on clientele interest, and community resources and financial support needed.

Response. Addressing first the comment of the final three commenters, which suggested an alternative approach to determining minimum program size, the Department notes that the FSS statute establishes the method for determination of minimum program size. The FSS statute provides that for the section 8 FSS program, the minimum program size shall be "an amount equivalent to the increase for such year in the number of families so assisted by the agency (as compared to the preceding year)." For the public and Indian housing FSS program, the FSS statute provides that the minimum program size shall be "the number equal to the increase for such year in units made available by the agency (as compared to the preceding year)." The FSS statute does not provide for the minimum program size to be equal to a percentage of the above-specified increases.

For example, a PHA receiving 50 public housing units under the FY 1991 and FY 1992 incentive award competition, and 50 public housing units in FY 1993, must operate a 100 family public housing FSS program. As the contracts of participation for these initial 100 FSS families are terminated or expire, replacement FSS families must be selected so that there are always at least 100 families participating in the

FSS program. Alternatively, if a PHA did not receive any public housing units under the FY 1991 and FY 1992 incentive award competition, but receives 50 public housing units in FY 1993 and another 50 public housing units in FY 1994, then, again, the PHA must operate a 100 family public housing FSS program.

or the HA needs new certificates or vouchers, or new public or Indian housing units, in excess of the number of families who are willing and able to participate in the FSS program, the HA may request approval from HUD to operate a smaller FSS program. If the HA's assessment of its local situation indicates that operation of an FSS program, no matter how small, is simply not feasible, the HA may request that HUD grant an exception from operation

of an FSS program.

Although the FSS statute speaks in terms of "an increase in the number of families" assisted under the section 8 certificates and voucher programs, and "an increase in the number of units" under the public and Indian housing programs, the Department believed, at the time of development of the FSS Guidelines, that for clarity and consistency the computation of minimum program size of all FSS programs should be addressed in terms of "units reserved" or "additional units reserved" for a given fiscal year. The Department believed that "units reserved" was a well-defined concept, and would therefore minimize any ambiguity in determining minimum program size. However, the commenters have raised valid issues concerning which types of units may constitute "units reserved" for purposes of the FSS program. Accordingly, the Department has incorporated in the FSS rule the preamble language concerning minimum program size, and has further revised the minimum program size provision of the rule to clarify which units count, and which units do not count in determining minimum program

In response to the question of whether mutual help units are counted toward minimum program size, the answer is that they are not. Mutual help units are excluded in determining the minimum size of an Indian housing FSS program because the FSS program only applies to rental units, not homeownership units.

Comment. One commenter stated that the minimum size of the FSS program should be limited to new units reserved in a given fiscal year, and the HA should not be required to continue to replace units reserved for the FSS program in previous years with FSS participants.

Response. As noted in a response to an earlier comment, the FSS statute provides for the FSS minimum program size to be; (1) For the section 8 FSS program, an amount equivalent to the increase for such year in the number of families so assisted by the housing authority, as compared to the number of families assisted in the preceding year; and (2) for the public and Indian housing FSS program, the number equal to the increase for such year in units made available by the housing authority, as compared to number made available the preceding year. Thus, the provision in the FSS rule (and which was also in the FSS Guidelines) that provides for determination of minimum program size by adding units reserved for the FSS program in subsequent years to units reserved for the FSS program in previous years is consistent with the FSS statute.

Comment. One commenter requested that the FSS rule permit HAs to count all FSS families, both section 8 and public housing FSS families, in meeting the minimum program size requirements. The commenter stated that a PHA should not be penalized if more public housing tenants wish to participate in the FSS program than section 8 rental certificate or voucher holders, or vice versa.

Response. The Department declines to adopt the commenter's suggestion. Participants in each FSS program—the section 8 FSS program, the public housing FSS program, and the Indian housing FSS program—must come from current participants or residents of that program.

Comment. One commenter stated that the FSS program conflicts with the fair share allocation whereby funding was given based on local need.

Response. For FY 1991 and FY 1992, the FSS statute specifically exempted the FSS program from the fair-share and metropolitan/non-metropolitan requirements of section 213(d) of the Housing and Community Development Act of 1974 (the 1974 Act). Whether the FSS program will be exempted from section 213(d) of the 1974 Act in subsequent years will depend upon language in the appropriations acts for succeeding FY years. Notwithstanding the exemption from section 213(d), the Department chose to administratively allocate the available funds in a manner consistent with the "fair share" requirements at 24 CFR part 791. The Department expects to continue this policy in future Federal fiscal years.

Comment. Thirty commenters expressed concern that targeting future allocations of units to the FSS program discriminates against the elderly and the

disabled by drastically reducing the number of units available to these groups.

Response. The 1992 Act amendment to the FSS statute indicates that the Congress was concerned that as a local FSS program increases in size, one result may be a decrease or delay in assistance to families who are unable or unwilling to participate in the FSS program. (A local FSS program will continue to grow in size as long as the HA continues to receive new units.) In response to this concern, the 1992 Act amendment to the FSS statute provides that families who elect not to participate in the FSS Program shall not have their assistance delayed solely on the basis of this election, and the HA shall assure that nonparticipating families will retain their tights to public housing or section 8 assistance. To ensure that these statutory requirements are met, the Department has revised the FSS participant selection procedures to limit selection to families who are currently participants in the section 8 certificate or voucher programs or who are currently public or Indian housing residents.

The number of new units or new certificates or vouchers reserved for the FSS program in FY 1991 and FY 1992 and in subsequent years merely determines the size of the local FSS program (i.e., the number of FSS slots). New units or new certificates or vouchers are not required to be earmarked for the FSS participants. There is no requirement that FSS families receive certain certificates or vouchers or live in specific units, or that specific units must be designated as FSS units.

For example, assume a PHA operating a section 8 FSS program, for the first time, receives 30 new efficiency rental certificates in FY 1993. The PHA's minimum program size is 30 FSS slots. Upon receipt of the new rental certificates, the PHA would issue these new certificates to the 30 families at the top of the efficiency waiting list, without regard to whether these families are interested in participating in the FSS program. Thus, if families at the top of the waiting list included a substantial number of elderly individuals or others who simply were not interested in participating in the FSS program. assistance to these families would not be delayed or refused because of their election to not participate in the FSS program.

The Department notes that HAs should not assume that all elderly or disabled individuals will be unable or unwilling to participate in the FSS program. Additionally, if a family

consists of elderly and non-elderly members, or of disabled and nondisabled members, there is no requirement that the elderly or disabled individual be designated the head of the FSS family, and be required to assume the obligation to seek and maintain employment. A non-elderly or nondisabled member of the family may be designated the head of the family.

If an HA, in any given Federal fiscal year, finds that the population it serves (its current section 8 participants or current public/Indian housing residents) contains a high percentage of individuals who are unable or unwilling to participate in the FSS program, such that it cannot fill all FSS slots, the HA may request authorization from HUD to operate a smaller program than operated in previous years. If an HA finds that local circumstances make it infeasible to operate an FSS program of any size. then the HA may request that the Department grant it an exception from operation of an FSS program.

Comment. One commenter requested that the FSS rule identify the HUD office which will decide whether an HA should receive an exception from implementation of an FSS program.

Response. The HUD Field Office will make the exception decision in accordance with instructions from HUD Headquarters. The FSS rule incorporates this information.

Comment. Five commenters requested that the FSS rule incorporate a mechanism by which an HA could administratively challenge HUD's refusal to grant the HA an exemption.

Response. The Department declines to adopt a special administrative procedure for the FSS program. However, the HUD Regional Offices will consider any request by an HA to reconsider the Field Office's decision denying the HA's request for an exception from operating an FSS program.

Comment. Several commenters requested that the FSS rule expand the statute's list of circumstances that would justify granting an exception from operating an FSS program. One of the commenters suggested that other acceptable circumstances would include the following: the clientele lacks interest in the program; and the clientele lacks the capacity to participate in the

Response. As discussed earlier in this preamble, the Department has expanded the list of local circumstances under which an HA may be excepted from operation of an FSS program to include lack of interest in the FSS program on the part of eligible families. Beyond the inclusion of this circumstance, the

Department declines to specify additional circumstances other than those set forth in the FSS statute. In addition to the circumstances set forth in the FSS statute, the statute provides a "catch-all" provision which permits consideration of additional local circumstances which may render operation of an FSS program infeasible. The FSS rule is consistent with the FSS statute by providing that the circumstances under which an exception may be granted include, but are not limited to, those enumerated in the FSS statute. Any further expansion of the list in the rule would not make the list inclusive or exhaustive of all local circumstances that may result in the inability of a HA to operate an FSS program. The Department believes that additional local circumstances that may preclude operation of an FSS program are appropriately addressed on a caseby-case basis.

Comment. Two commenters stated that although the statute and conference language clearly provide for exceptions to operation of an FSS program, HUD, at the FSS workshops, has stated that exceptions would rarely be granted. Two other commenters stated that the FSS guidelines contained a "threatening" implication that if an HA was excepted from operation of an FSS program, the HA would be treated

adversely by HUD.

Response. The Department did not intend through the FSS Guidelines, or through the FSS workshops held throughout the country, to imply that it would ignore the statutory provision concerning exceptions, or that it would treat adversely an HA that is excepted from operating an FSS program. The Department, however, is fully supportive of the FSS program, and is committed to making it a successful program. The Department believes that the FSS statute, which provides for mandatory implementation of the FSS program by PHAs in FY 1993, reflects the Congress's belief that the majority of PHAs would be able to operate an FSS program. The Department also believes that the majority of PHAs can operate an FSS program, even if the program initially, or, at times, consists of a small number of families. The Department believes that it will be the exception, and not the rule, that a PHA is unable to operate an FSS program. The Department certainly will explore with those PHAs, which may have limited resources and limited clientele interest. the possibility of operating a smaller program, or of combining its FSS program with the program of another PHA for the purpose of consolidating available supportive services and

administrative resources. However, where it is determined that it is not feasible for a PHA to operate an FSS program because of local circumstances, the Department will grant an exception in accordance with the FSS statute, and the PHA will not be treated adversely by the Department.

As further assurances that the Department has no intention of treating adversely any PHA who is unable. because of local circumstances, to implement an FSS program, the FSS rule incorporates the new statutory language, added by the 1992 Act amendment to the FSS statute. This language provides that the Secretary may not refuse to provide assistance or decrease the amount of assistance that would otherwise be provided to a PHA because the PHA has submitted a certification that it is unable to carry out an FSS program because of local circumstances.

Comment. Seven commenters stated that employment of a full-time service coordinator was critical to the success of the local FSS program, and HUD should provide funding for this position.

Response. The Department agrees with the commenters that, in all likelihood, a full-time service coordinator will better serve the program than a part-time coordinator. However, no funds were appropriated by the Congress in FY 1991, FY 1992 or FY 1993 for the employment of a service coordinator. Unless the Congress appropriates funds, the administrative costs of the program, including the employment of an additional staff, must come from the existing administrative fees in the section 8 program. Section 8 HAs can use section 8 operating reserves (i.e., excess administrative fees) to fund the service coordinator's salary if it is considered a "housing purpose" under State, local or tribal laws. Alternatively, the HA or the PCC may be eble to secure funding from non-Federal sources to assist with the costs of program administration and operation.

The HUD Appropriations Act for FY 1993 for public housing operating subsidy includes funding for reasonable and eligible administrative costs related to the operation of an FSS program in low rent public housing.

Section V. Program Coordinating Committee (PCC)

Comment. One commenter stated that the FSS rule should require HAs to escertain whether or not there are existing councils within a community, such as councils established to support JOBS activities or private industry councils, which are available to serve as the PCC for the FSS program. The

commenter stated that only where such a committee is not in existence and available to serve as the PCC should a separate committee be established. Another commenter stated that HUD should permit a local HA consortium to have one coordinating committee composed of representatives from the HAs and social service leaders.

Response. The Department declines the first commenter's suggestion to require HAs to determine whether there are existing councils within a community that are available to serve as the PCC for an FSS program. However, both commenters' suggestions are options available to HAs. An HA, in consultation with the chief executive officer of the unit of local government, may decide to use an existing entity as the coordinating committee if (1) the membership of that entity is drawn from one or more of the same or similar organizations listed in the applicable section of the FSS rule concerning the PCC, and (2) the existing entity includes or will include HA and resident representatives, as discussed earlier in this preamble. Additionally, more than one HA may share the same PCC.

Comment. One commenter asked what the role of the PCC will be once a local FSS program is in operation.

Response. The PCC helps the HA with development of the Action Plan, establishment of FSS program policies, and obtaining administrative and supportive services funding and service commitments. The PCC also assists the HA with overseeing the overall implementation of the FSS program. Once the FSS program is underway, the role of the PCC depends upon the progress of the FSS program and the continuing service needs of the FSS program. The PCC may continue to generate private-sector support, including obtaining job commitments, and to generate additional funding and supportive services commitments.

Comment. One commenter asked whether there are certain individuals who are required to be part of the PCC, and whether the PCC must be composed of a minimum number of members.

Response. As discussed earlier, under Section IV of this preamble, the FSS rule provides that the PCC must include an HA representative and also a section 8 participant or public/Indian housing resident representative. Apart from requiring that these two groups be represented on the PCC, no other membership requirements are imposed on the PCC. However, the FSS rule recommends, as did the FSS Guidelines, other individuals who the Department believes would be valuable members of the PCC. These individuals, generally,

are those from organizations that are in a position to offer specific kinds of assistance or services that will be needed, especially jobs, in the operation of an FSS program. Experience with the Project Self-Sufficiency and Operation Bootstraps programs demonstrated the value of having a representative from the chief executive's office who has direct personal access to the chief executive officer.

Comment. One commenter stated the FSS rule should explicitly provide that the proposed Action Plan be made available to the PCC for a reasonable period of time for review and comment before submission to HUD.

Response. The Department declines to incorporate the commenter's suggestion as part of the FSS rule's requirements. However, an HA may certainly request its PCC to review the Action Plan before submission to HUD.

Section VI. Contract of Participation

(A) General

Comment. Two commenters requested that the FSS rule provide HAs with the discretion to include additional terms in the contract of participation, as the HA may determine is necessary to meet local needs, subject to the condition that these additional terms remain consistent

with the FSS program.

Response. The Department declines to adopt the commenters' suggestion. To assure basic uniformity and consistency in operation of local FSS programs, all participating HAs and all FSS families must adhere to certain program requirements and policies, regardless of location of the FSS program. These requirements and policies are set forth in the FSS regulations and in the contract of participation. It is important that the contract of participation remain a standardized document, because all FSS families are required by the FSS statute to enter into a contract of participation. It will be this document that will serve as the family's guide to its basic obligations under the program. The Department notes, however, that each HA has considerable discretion in addressing the needs and circumstances of its clientele through the individual training and services plans, which the HA, or its designee, prepares for the participating family members.

Comment. Three commenters recommended that the social service agency be required to execute the FSS contract of participation, or at the least,

be a party to the contract.

Response. The FSS statute requires the HA to enter into a contract of participation with the participating family. The statute provides no

authority for the Department to require the social service agency to enter into the contract in lieu of the HA or in addition to the HA. However, the HA may delegate to the social service agency the responsibility to prepare and execute the individual training and services plan,

Comment. Four commenters complained that the FSJ contract was not clearly written. The commenters stated that it is essential that the families entering into the contract of participation fully understand their rights and responsibilities under the contract. Another commenter stated that HUD should prepare an official Spanish version of the contract to avoid variations in the contract that may arise if each individual HA is allowed to translate the contract of participation into Spanish.

Response. The Department agrees that it is important that FSS families fully understand their rights and responsibilities under the contract of participation. The Department is in the process of revising the contract of participation and will make every effort to explain its provisions simply and clearly. The Department also will prepare an official Spanish version of

the contract.

Comment. One commenter requested that the FSS rule draw a distinction between the FSS contract of participation and the individual training

and services plan.

Response. Although the contract of participation incorporates the individual training and services plans, the Department agrees with the commenter that this term should be explained in the FSS rule. As noted earlier in this preamble, the FSS rule includes a definition of "individual training and services plans.

Comment. Several commenters expressed concern about the FSS family's responsibilities under the program if the head of the family is a different individual than the leaseholder. The commenters requested that the FSS rule require the head of the family to be the same person as the leaseholder. Twelve commenters expressed concern about the responsibilities of members of the FSS family, other than the head of family.

Response. As discussed earlier in this preamble, the FSS rule clarifies that the head of the FSS family is the adult member of the FSS family who is the head of household for purposes of determining income eligibility and rent. For reasons addressed earlier in this preamble, the Department believes that this definition best serves the interest of families desiring the participate in the

FSS program, and prevents unnecessary lease modifications, because it does not require the head of the FSS family to be the leaseholder.

With respect to the responsibilities of the various members of the FSS family, the Department emphasizes that the FSS rule, consistent with the FSS statute, requires only the head of the family to seek and maintain suitable employment during the term of the contract of participation. Although the contract of participation, through incorporation of the individual training and services plans, may require other family members to attend job training and counseling sessions, and to interview for jobs, the contract cannot be considered breached, on the basis of employment, if these family members fulfill their individual training and services plans, but never become employed or lose jobs obtained during their participation in the FSS program. For the contract to be considered breached on the basis of employment, the head of the FSS family must fail to seek and maintain suitable employment.

(B) Obligations

Comment. Two commenters stated that the FSS rule should mandate specific educational and employment obligations for the FSS family so that all HAs operate in conformity with the regulations.

Response. The Department declines to adopt the commenters' suggestion. Because the educational background, skills and working experience of FSS families may vary considerably, there are no specific educational and employment obligations that may be applicable to all FSS family members. and thus, appropriate for codification in a rule, or incorporation in the contract of participation. A family's educational and employment obligations under the FSS program only can be determined after the HA or its representative has assessed the educational background, skills and working experience of the individual members and determined which activities or services are appropriate for those members to become economically independent (e.g., further education or job training, or job application).

Comment. Twelve commenters stated that the requirement that self-sufficiency be obtained in five years is unreasonable. The commenters stated that in the current depressed economy, it is unrealistic to expect that at the end of the five year period, the FSS family will no longer require any housing assistance. One commenter stated that the FSS rule should address the

situation of a family that becomes selfsufficient in less than five years.

Response. This issue was addressed in an earlier comment concerning the possible difficulty of FSS families living in high cost areas to become self-sufficient in five years. As noted in that response, the five year term is established by the FSS statute, but the statute also provides for an extension of the contract upon a finding of good cause. The FSS rule permits, as did the FSS Guidelines, the contract of participation to be extended up to an additional two years.

Comment. One commenter stated that the FSS rule or the FSS contract should provide a grievance process for FSS families who believe that they have fulfilled their obligations under the FSS program but the HA disagrees.

Response. The Department declines to adopt a special grievance procedure for the FSS program. FSS families may utilize the grievance and hearing procedures currently provided under the regulations for the section 8 rental certificate and voucher programs, and regulations for the public and Indian housing programs. (See 24 CFR 882.216, 887.405, 905.340, and part 966.)

Comment. One commenter stated that while the FSS Guidelines provide for succession in the matter of distribution of the FSS account funds, there is no similar provision with respect to the FSS family's obligations under the contract if the head of the family leaves the family, dies or suffers a severe disability.

disability.

Response. The FSS rule provides that the HA and the FSS family may mutually agree to modify the contract of participation to designate a new head of the family.

(C) Extension

Comment. Several commenters stated that the FSS rule should not limit the term of the contract extension to two years. The commenters stated that the extension should be determined by each HA after reviewing the individual situation of the family requesting the extension.

Response. For uniformity in the operation of FSS programs, and to establish a maximum time frame during which FSS account funds may be accumulated, the Department believes that it is important that there be a limitation on the period to which the contract may be extended. The Department believes that an extension up to an additional two years constitutes a reasonable extension period.

Comment. Three commenters requested that the FSS rule address in

further detail "good cause" reasons for extending the FSS contract. The commenters stated that the examples of good cause for extension, as set forth in the FSS guidelines, is excessively limited.

Response. The FSS Guidelines and the FSS rule define "good cause" to mean "circumstances beyond the control of the FSS family, such as serious illness or involuntary loss of employment." The Department believes that this definition provides HAs with adequate guidance and flexibility in determining when the contract of participation should be extended, and thus, additional examples of "good cause" circumstances are unnecessary.

Comment. One commenter stated that in the event of short-term occurrences, which interfere with a family's completion of its contract, the family should be allowed to interrupt compliance with the contract for an agreed upon period.

agreed upon period.

Response. The Department declines to include a provision in the FSS rule which addresses "short-term" occurrences that interfere with a family's ability to complete its contract of participation. In the event a situation occurs that prevents the FSS family from compliance with its contract, the family should contact the HA to inquire about renegotiation of the contract of participation, including the individual training and services plans.

D. Employment

Comment. Thirteen commenters objected to the mandatory work requirement imposed on the head of the FSS family on the basis that employment may be feasible only after the head of the family has received further education or job training. The commenters requested that the HA be given the flexibility and discretion to determine whether employment is an appropriate contract requirement.

Response. The employment obligation imposed on the head of the family is a statutory obligation. However, the Department has not interpreted this obligation to mean that the head of the family must be employed at the commencement of the contract term and remain employed throughout the contract period. The FSS rule provides (as did the FSS Guidelines) that the head of the FSS family shall be required under the contract of participation to seek and maintain suitable employment during the term of contract and any extension thereof. Although this provision does not give HAs the discretion to determine whether obtaining employment is an appropriate contract requirement, this provision

does provide the HA with considerable discretion in determining when (during the term of the contract) imposition of the employment requirement is appropriate. For example, an HA could approve an arrangement where the head of the FSS family attends school full time for four years, and seeks and obtains employment in the fifth year of the contract term.

Comment. One commenter stated that the FSS rule should establish a definite time frame in which the head of the FSS family must obtain employment. Another commenter requested that the FSS rule specify the minimum time period that the head of the family must remain employed to be in compliance with the contract of participation.

Response. As noted in the response to the preceding comment, the Department expects the head of the family to obtain and maintain employment at some point during the contract term. However, the decision concerning when it is appropriate for the head of the family to obtain employment is a decision left to the HA. The Department declines to specify a minimum period of time in which the head of the family must be employed to be considered in compliance with the contract of participation. Whether the head of the family has "maintained" employment in accordance with the terms of the contract is to be determined by the HA.

Comment. One commenter stated that the FSS Guidelines were unclear concerning which members of the FSS family have an employment obligation under the FSS program, and requested that the FSS rule clarify this issue. Another commenter stated that the FSS guidelines were unclear concerning whether a person other than the head of the family may be designated as the person to seek and maintain employment.

Response. As discussed in a response to an earlier comment, only the head of the family is obligated to seek and maintain suitable employment under the FSS program. Other members of the FSS family may enter into individual training and service plans which require them to enter educational programs, attend job training sessions and interview for jobs. However, the contract of participation cannot be considered breached on the basis of employment if the family members other than the designated head of the family fulfill their individual training and services plans, but never become employed.

With respect to the issue raised by the second commenter, under the FSS program, the head of the participating family must seek and maintain

employment. However, if the titular head of the family is unable to work, the FSS family should designate another adult member as the bead of the family.

(E) Counseling

Comment. One commenter stated that counseling provided under the FSS program should include overall family guidance, and not be limited to counseling for rental and homeownership opportunities or money

management.

Response. The counseling provision of the FSS guidelines incorporates the language of the FSS statute. The statute provides that the public housing agency may provide counseling for the family with respect to affordable rental and homeownership opportunities in the private housing market and money management counseling. However, the FSS rule has been revised to clarify that the HA may provide counseling in any area the HA determines to be appropriate for the FSS family and the objectives of the FSS program.

(F) Transitional Assistance

Comment. One commenter stated that the FSS rule should incorporate a transition component, a component which provides assistance to families who have fulfilled the terms of their contract, but continue to need some form of assistance, such as rent reductions, food stamps, medical or other assistance.

Response. The FSS rule incorporates the "transitional assistance" provision that was contained in the FSS Guidelines. This provision permits an HA to continue to offer a former FSS family that is employed and that has completed its contract, appropriate FSS supportive services that may assist the family in remaining self-sufficient. The transitional assistance contemplated by the FSS program is continuation of FSSrelated services, not continuation of welfare or public subsidy assistance.

The transitional assistance component is intended to be applied prudently so that scarce resources are not diverted from current FSS families. Alternatively, the HA may design the individual training and services plans so that the FSS family will receive "transitional assistance" while still participating in the FSS program. Under this approach, the HA would allow the family a pre-determined time, within the term of the contract, to receive transitional assistance after employment has been obtained.

G. Modification

Comment. One commenter requested that the FSS rule provide a procedure by

which the FSS family and the HA may resolve a dispute concerning whether a contract modification is necessary.

Response. As noted in a response to an earlier comment, the FSS family may utilize the procedures for addressing grievances currently available under the regulations for the section 8 rental certificate and voucher programs, and the regulations for the public and Indian housing programs. (See 24 CFR 882.216, 887.405, 905.340, and part 966.)

(H) Termination

Comment. One commenter requested that the FSS rule specify the conditions under which an HA and the participating family may agree to terminate the contract. Another commenter requested that the FSS rule clarify what happens to the FSS account if the contract of participation is terminated by mutual consent.

Response. The circumstances under which an HA and an FSS family may agree to terminate the contract of participation may vary greatly. To specify the conditions that qualify for termination of the contract by mutual consent of the parties may exclude many valid situations, and would deprive the HA of the discretion of determining whether specific circumstances make termination of the contract by mutual consent appropriate. The Department believes that it is important that this determination be left to the HA, and therefore, declines to adopt the commenter's suggestion.

With respect to the FSS account issue, the FSS account funds will be forfeited if the FSS contract is terminated by

mutual consent.

Comment. Three commenters stated that all family members participating in a section 8 FSS program should not be penalized because one family member fails to comply with the contract terms. Twenty-seven commenters stated that the termination of section 8 assistance is arbitrary and unfair; that the failure to achieve self-sufficiency should not be a basis for taking away housing assistance. The commenters stated that if termination of housing assistance remains available to HAs operating a section 8 FSS program, then this option also should be available to HAs operating public and Indian housing FSS programs.

Response. The FSS statute states that the contract of participation shall provide that the HA may terminate or withhold assistance under section 8 if the section 8 FSS family fails to comply with the requirements under the

contract.

With respect to the public/Indian housing FSS programs, the Department may not extend this option to these programs because the FSS statute restricts the option to terminate housing assistance for failure to comply with the terms of the FSS contract to the section

8 program.

Comment. One commenter stated that the FSS rule should clarify that the termination of the FSS contract is, in and of itself, insufficient grounds for termination of housing assistance. The commenter recommended that the FSS rule provide that failure to comply with the requirements of the FSS contract will be grounds for termination of housing assistance unless "the failure to perform is for reasons that are beyond the tenant's control, or the family was a participant in the voucher program before signing a contract of participation

in the FSS program."

Response. The Department declines to adopt the commenters suggestion. First, a family's participation in the section 8 program before becoming a participant in the section 8 FSS program has no bearing on the HA's ability to terminate section 8 assistance on the basis of the family's failure to comply with the terms of the FSS contract. Second, as has been stated earlier in this preamble, termination of section 8 housing assistance is not mandated by the FSS statute or by the FSS rule. The HA has the discretion to determine whether termination of housing assistance is appropriate for an FSS family who fails to comply with the terms of the FSS contract. The HA may decide that terminating the family's participation in the FSS program and the family's inability to receive its FSS account funds will be appropriate remedy for breach of the FSS contract, without terminating section 8 assistance. Additionally, depending upon the specific contract terms violated, the HA may determine the appropriate resolution is renegotiating the contract of participation with the family.

Comment. Four commenters stated that FSS rule should clarify that termination of the FSS contract because the FSS family has completed or fulfilled the FSS contract terms is not grounds for termination of housing

assistance.

Response. The FSS rule clarifies that termination of the contract for purposes other than failure to comply with the requirements of the contract is not grounds for termination of section 8 assistance.

Comment. Three IHA commenters stated that the FSS program should provide a mechanism to allow participants on reservations to either transfer or convert their existing units to the Mutual Help program or to access

other assisted housing that may be available on the reservation with no loss of their FSS account.

Response. Because of the change in the FSS statute concerning the conditions under which the FSS family may withdraw its FSS account funds at the conclusion of the contract term, as discussed earlier in this preamble, FSS families may use their FSS account funds to obtain homeownership under one of HUD's homeownership programs, including the HOPE programs, unless prohibited by the statute or regulations governing the particular

homeownership program.

Comment. One commenter asked whether a family participating in a section 8 FSS program would revert to regular section 8 assistance if the family's housing assistance was terminated under the section 8 FSS program. Another commenter asked whether a family is still considered to hold an FSS certificate or voucher if the participating family is unable to achieve economic self-sufficiency at the end of the contract term, and any extension thereof, but retains section 8 assistance. Another commenter suggested that in lieu of terminating housing assistance, the FSS rule permit the HA to charge market rent for the FSS unit if the family fails to fulfill its terms under the

Response. In response to the first comment, a section 8 FSS family would not revert to "regular" section 8 assistance in the event that the family fails to comply with the terms of the FSS contract and the family's section 8 assistance is terminated. In response to the second comment, if the FSS family is unable to become self-sufficient at the end of the term of the contract of participation, including any extension thereof, the family will retain its current section 8 rental certificate or rental voucher, and will be reclassified as a non-FSS family. With respect to the third comment, in the public/Indian housing program, there is no statutory authority to adopt the commenter's suggestion. however, in the section 8 program, termination of the family's housing assistance will require the family to pay the market rent to the

Comment. Two commenters stated that the FSS rule should provide section 8 FSS families with a procedure to grieve or appeal an HA's decision to terminate housing assistance.

Response. As noted earlier in this preamble, section 8 FSS families are entitled to request a hearing in accordance with the procedures set forth in the section 8 regulations, which provide for informal review and

hearings in the section 8 programs. (See 24 CFR 882.216, 887.405) This is consistent with the 1992 Act amendment to the FSS statute which requires that the HA may terminate or withhold assistance under section 8 if the HA determines, through the procedures established in accordance with section 6(k) of the 1937 Act, that such action is necessary.

Comment. Several commenters expressed concern that an HA may be subject to legal liability if there is a failure to deliver to the family the supportive services described in the individual training and services plans.

Response. The contract of participation does not provide for the HA to be held responsible for any failure on the part of the social service agencies to deliver services agreed to be delivered under the contract. The contract of participation states that the resources and supportive services to be provided are "subject to availability." In the event there is a failure on the part of a social service agency to deliver the services agreed to be provided, the HA must adhere to the following course of action:

First, the HA must make a good faith effort to obtain these services from another agency. The PCC should assist

the HA in this effort.

Second, if these services are unavailable from another agency, the HA must reassess the family member's needs and determine whether other available services would achieve the

same purpose.

Third, if other available services would not achieve the same purpose, the HA must determine whether the unavailable services are integral to the FSS family's advancement or progress toward self-sufficiency. If the unavailable services are determined not to be integral to the FSS family's advancement toward self-sufficiency, the HA shall revise the individual training and services plan to delete these services, and modify the contract of participation to remove any obligation on the part of the FSS family to accept the unavailable services. If the unavailable services are determined to be integral to the family's advancement toward self-sufficiency (which may be the case if the affected member is the head of the FSS family), the HA shall declare the contract of participation null and void.

The third course of action recognizes that not all services to be provided to all family members participating in the FSS program are as important as some services to be provided to certain family members. For example, because the head of the FSS family bears the greatest

responsibility under the FSS program (the responsibility to participate in the FSS program and to seek and maintain employment), the educational or job training needs of this individual and the services to be provided to meet these needs, will be considered more important than the services to be provided to meet other family members' needs. However, regardless of whether the lost services affect the head of the family or another family member, the first course of action to be followed by the HA is to make a good faith effort to obtain the same or comparable services from another agency.

In the event that the contract of participation is declared null and void, and the FSS family is a participant in a section 8 FSS program, the family's release from participation in the FSS program because of an absence of necessary supportive services is not grounds for termination of section 8 housing assistance. If a family's participation in an FSS program is brought to a close because of an absence of necessary services, the family would be reclassified as a non-FSS family. This reclassification occurs regardless of the FSS program in which the family was selected to participate, i.e., section 8 or public/Indian housing FSS program.

Section VII. Selection of FSS Participants

Comment. A majority of commenters submitted comments on the selection of FSS participants. Thirty-five commenters stated that the selection process should permit the use of motivational criteria. The commenters stated that although motivation should not be the sole basis of selection, elimination of any consideration of this factor would increase the program's failure rate. Another 67 commenters requested that the FSS rule permit selection preference for individuals already participating in employment and training programs. An additional 10 commenters suggested that the Department permit a selection preference for at least a percentage of its FSS slots.

Response. As a result of these comments, the Department reassessed its approach to the selection process, and agreed with the commenters that some degree of motivational screening and selection preference should be permitted. The type of selection preference permitted and the motivational screening factors allowed were discussed earlier in this preamble under section IV, and again, under the "General Comments" section of this section V.

Comment. Ten commenters stated that the FSS rule should permit HAs to develop the selection criteria for the FSS program, and that if this were permitted, the selection criteria would more appropriately reflect local needs, economic conditions, and available resources in the community.

Response. The FSS rule establishes, as did the FSS Guidelines, basic policies and requirements to be applied to the selection process—policies and requirements which the Department believes are important to maintain uniformity in the operation of the FSS program, and to assure that the selection process is not discriminatory of certain groups. However, the FSS rule provides, as did the FSS Guidelines, in the provision governing the Action Plan, considerable discretion for the HA to establish its selection system within the boundaries established by this rule.

Section VIII. Action Plan

Comment. One commenter noted that the preamble to the FSS Guidelines requires a PHA, which operates a public housing FSS program, to submit its Action Plan to representatives of public housing residents, but where the PHA operates a section 8 FSS program, no similar requirement is imposed. The commenter stated that many section 8 residents are represented by organizations, and where such organizations exist, PHAs should be required to consult with these groups.

Response. The Department agrees with the commenter, and the FSS rule requires that the PCC must include a section 8 participant or public housing or Indian housing resident. Under the FSS statute, an HA is required to consult with the PCC in developing the Action Plan. Accordingly, by requiring resident representation on the PCC, the Department ensures resident involvement in the development of the Action Plan.

Comment. One commenter, requested that the FSS rule clarify the meaning of "consultation with the chief executive officer of the unit of local government." The commenter asked whether the chief executive officer could veto suggested members of the PCC or reject the Action Plan.

Response. The term "consultation" is used in its standard dictionary sense. The HA has the final decision-making authority with respect to the Action Plan and the membership of the PCC.

Comment. One commenter asked that the period of time within which Action Plans must be submitted to HUD for approval be extended from 90 days to 180 days. A second commenter stated that the FSS rule should establish a time limit within which HUD must approve an Action Plan. A third commenter stated that the Department's approval of the Action Plan is excessive and unnecessary.

Response. The Department declines to adopt the first two commenters' suggestions. The Department believes that 90 days presents a reasonable time period within which an HA may have an Action Plan ready for submission to HUD. The FSS rule provides that the HUD Field Office may extend this deadline for good cause.

With respect to HUD's review of Action Plans, the FSS rule provides, as did the FSS Guidelines, for HAs to submit their initial Action Plans within 90 days of notification of approval by HUD of the HA's first application for units under the FSS FY $\bar{1}991$ and 1992incentive award competition, or of notification of approval by HUD of the HA's award of new units starting in FY 1993. Because notification of all award recipients will occur at approximately the same date, in accordance with HUD Reform Act requirements, this means that the Action Plans will be submitted to HUD for review at approximately the same time (as opposed to a staggered submission). Thus, it is difficult for the Department to commit itself to a specific time period within which the Action Plan will be approved. The Department, however, will make every effort to review and approve these plans within 60 days.

With respect to the issue raised by the third commenter, the Department disagrees with the commenter. The Department believes that the Department's review of the Action Plan is necessary to assure that an HA's proposal for implementation of a local FSS program is in conformance with the policies and regulations governing the FSS program.

FSS program. Comment. Five commenters noted that the provisions governing the Action Plan encourage HAs to coordinate supportive services and activities with JTPA programs, the JOBS program, and other public and private programs. The commenters complained that their inability to give selection preference to specific groups and establish local selection criteria would make coordination with these programs difficult, if not impossible. One commenter requested that the FSS rule provide more information on how the coordination effort would work.

Response. As discussed under the "General Comments" section of this preamble, the FSS rule provides HAs with the option of giving a selection preference for up to 50 percent of their FSS slots. The Department believes that

the selection preference option provided by the FSS rule should alleviate the commenters concern about their ability to successfully coordinate supportive services with other public and private

programs.

With respect to the issue of how the coordination effort would work, in the fall of 1991, the Department held a series of workshops nationwide which provided additional information on how HAs may obtain the cooperation of local service agencies in delivering supportive services to the program. Future workshops, and the FSS guidebook, which HUD is preparing for the FSS program, also will address this issue in further detail. Information concerning the coordination effort is more appropriate for a guidebook than a rule. (For further information on this issue, please see the contact person for supportive service issues, provided at the beginning of this document.)

Comment. One commenter stated that the twelve months allotted by the FSS Guidelines to start-up the local FSS program (with the twelve-month count beginning from the date of notification of approval of the incentive award application) is extremely restrictive.

Response. The Department does not believe that twelve months is an unreasonable start-up time. As the FSS Guidelines and the FSS rule explain, implementation of a local FSS program within 12 months of HUD's notification of approval of an application for new units means that activity such as outreach, participant selection and enrollment must have begun. Full enrollment and full service delivery to the total number of families required to be served need not occur within 12 months, but the FSS rule requires that full enrollment and full service delivery to the total number of families to be served must occur no later than two years from the date of notification of approval of the application for new units. The FSS rule also provides that this period may be extended by the HUD Field Office after considering the efforts of the HA to deliver these services, the availability of service resources, and other local circumstances which may affect the ability of the HA to meet the delivery of services deadline.

Comment. One commenter asked how HUD will determine if a housing authority's FSS program is successful, and what action, if any, HUD will take if the HAs program is unsuccessful.

Response. The Department will measure the success of a local FSS program in multiple ways, including, among other things, one or more FSS family members obtaining a job for the

first time or obtaining better paying jobs, families becoming independent of welfare benefits, family members obtaining a high school diploma or higher education degree, and families becoming independent of welfare assistance or HUD housing assistance (section 8, public or Indian housing assistance). An unsuccessful program may be found to be a program that includes a high percentage of FSS families withdrawing from the program. or a high percentage of FSS families who do not obtain jobs, do not obtain better paying jobs, or remain on welfare and HUD housing assistance.

Section IX. Use of Available Housing Assistance

No comments were received on this section.

Section X. Section 8 Residency Requirement

Comment. Twenty-four commenters objected to portability in the FSS program on the basis that it would increase what the commenters described as the already significant administrative burdens imposed by the FSS program. Three commenters stated that portability would adversely affect funding for small non-metropolitan HAs, because FSS families would relocate to a metropolitan area where job opportunities may be more readily available. One commenter stated that portability should not be required for joint jurisdictions. Four commenters stated that portability should be permitted only upon approval by the HA. Two commenters stated that portability should be permitted only if required by the head of family's employment, e.g. the employer moves to another location, or the employer requires the head of the family to transfer to a division in another location. Another commenter stated that the FSS rule, at a minimum, should restrict the number of moves a family can make during the term of the family's FSS contract.

Response. The Department declines to eliminate portability in the section 8 FSS program. Although the Department is sympathetic to the commenters' concern that portability in the section 8 FSS program may increase the HA's administrative burden, portability is a basic component of the section 8 rental certificate and voucher programs.

Comment. Several commenters raised a number of questions concerning how portability will work under the FSS program, and the specific responsibilities of the initial HA and the receiving HA to the FSS family and to the FSS account. The commenters asked

the following questions: Whether the FSS family must reside within the jurisdiction of the initial HA before portability may be exercised, and if so, if there is any minimum residency requirement; which agency is responsible for monitoring the contract of participation of the FSS family their relocates to another jurisdiction; will the contract of the relocating FSS family continue to count against the initial HA's minimum program size; and which agency is responsible for maintaining the FSS account? One commenter stated that the requirement under the FSS program that the applicant reside, at least initially, in the jurisdiction of the HA administering a local section 8 FSS program represents a change from the current section 8 certificate and voucher programs, and the commenter questioned the basis for this change. Three commenters stated that the initial HA should have no obligation for maintaining the FSS account of the FSS family who has moved. Another commenter stated that the final rule should clarify whether the relocating FSS family enters into a new contract with the receiving bousing authority.

Response. In response to these comments, the FSS rule revises the section 8 residency requirement provision of the FSS guidelines, and the Department believes that the revised language clarifies the responsibilities and obligations of the initial HA, and the receiving HA under the FSS program. However, the following also responds to the questions raised by the

commenters.

Minimum period of residency. A family who wishes to participate in a section 8 FSS program must live in the jurisdiction of the initial HA for one

vear.

Obligations of the initial and receiving HA. There will be only one FSS account for an FSS family that has exercised portability. The FSS account will be maintained by the initial HA until the family is "absorbed" by the receiving HA, i.e., until the receiving HA stops billing the initial HA for assistance and instead uses funds available under the receiving HA's ACC. There could be one or two contract of participation for families exercising portability as explained below.

Where the relocating family becomes a participant in the FSS program of the receiving HA. Of the FSS family who relocates to another jurisdiction (relocating family) wishes to participate in the FSS program of the receiving HA, an the receiving HA allows the family to participate in its FSS program, the receiving HA will enter into a new

contract of participation with the family for the term remaining on the contract with the initial HA (e.g., if the family participated in the initial HA's FSS program for 3 years, the receiving HA's contract will be for 2 years).

Where the relocating family remains in the FSS program of the initial HA. If the relocating family remains a participant in the initial HA's FSS program, there will be only one contract of participation—the contract of participation with the initial HA.

Disposition of forfeited FSS account funds. If the term of the contract of participation, including any extension thereof, expires and the family is still receiving welfare assistance, or if the family is terminated from the receiving HA's FSS program because the family did not fulfill its obligations under the contract of participation, the account will revert to the ACC project reserve account of the HA who is using funds under its ACC to provide section 8 assistance.

Monitoring the family's progress. The HA, which is responsible for monitoring the family's progress under the contract, is the agency that operates the FSS program in which the family is participating, and that has entered into a contract of participation with the family. If the relocating family remains in the FSS program of the initial HA then that agency continues to be responsible for interacting with and monitoring the progress of the family.

Comment. One commenter stated that the FSS rule should provide that a section 8 FSS family relocating to another HA's jurisdiction, which does not operate an FSS program, or whose FSS program does not offer the services needed by the family, does not necessarily forfeit section 8 housing assistance. The commenter stated that there may be circumstances when an FSS family must move into a new jurisdiction in order to be closer to a hospital providing particular treatment for a family member, and the new jurisdiction may not provide the FSS services needed by the family. Two commenter stated that the FSS rule should permit the initial HA to terminate not only the family's FSS participation under the initial HA's FSS program, but section 8 housing assistance.

Response. The statute and these implementing regulations provide that families not meeting their obligations under the FSS contract of participation may, at the sole option of the HA, be terminated from the FSS program and the section 8 program. The Department intends that FSS families are not to be penalized in exercising their right to

portability, solely because they cannot participate in the FSS program in their new location. A family's housing assistance should not be terminated in this situation. However, if a family is subject to termination in the FSS program because of failure to meet a contract obligation, the family should not be allowed to use a portability move to avoid the consequences of such failure; in this instance, the PHA may exercise its authority to terminate rental assistance.

Comment. Four commenters stated that the FSS rule should provide that section 8 owners may incorporate additional provisions in the lease of section 8 families participating in the FSS program upon their enrollment in the program. The commenters recommended that one of the provisions would be that in the case of conflict between the lease and the FSS contract, the lease prevails. Another commenter stated that the lease should clarify that the lease and grievance provisions that currently apply, may not be waived or suspended for FSS participants.

Response. The FSS contract of participation contains a provision that in the case of conflict between the provisions of the contract of participation and the applicable lease, the provisions of the lease prevail. The Department declines to include this provision in the FSS rule. This is a contract provision, and therefore, is appropriately contained in the contract of participation. With respect to the last comment, as noted earlier in this preamble, the grievance and informal hearing procedures that are applicable to section 8 program participants and public/Indian housing program participants automatically apply to FSS participants.

Section XI. PHA/IHA Incentive Award Allocation

Comment. One commenter stated that the NAHA directed that at least 10 percent of all new units in FY 1991 and FY 1992 be set aside for the FSS program. The commenter stated that HUD exceeded the 10 percent requirement, and provided for 50 percent of new units in FY 1991 and FY 1992 to be reserved for the FSS program.

Response. The 10 percent requirement set forth in the NAHA was the minimum percentage of units that could be reserved for the FSS program. The Department had the option to increase this percentage at its discretion. Considering the response from HAs to the FY 1991 and FY 1992 FSS incentive award completions, the Department believes that it made the correct

decision to increase the percentage of units reserved for the FSS program.

Comment. Two commenters asked what the consequences would be if they were awarded 50 units for the FSS program, but could only recruit 25 families.

Response. In accordance with instructions from Headquarters, each HUD Field Office may authorize an HA to operate a smaller size program if the Field Office determines that the HA is unable to operate an FSS program equal to the number of new units awarded. However, the Department expects the HA to make a good faith effort to encourage family participation in the program.

Section XII. Allowable PHA/IHA Fees and Costs

Comment. The majority of the commenters complained that the allowable section 8 administrative fees would not cover the costs of administering the FSS program. Several of the commenters stated that units received under the FSS program should not be subject to the blended rate calculations. Nineteen commenters offered suggestions on how additional fees could be raised to assist HAs with covering the administrative costs of the program. These comments included deducting a percentage of the family's FSS account, retaining a percentage of the interest on FSS accounts, and retaining forfeited FSS account amounts.

Response. The Department understands the commenter's concern about the costs of implementation and operation of the program. However, the FSS statute and appropriations acts establish the allowable FSS administrative costs and fees. Similarly, the FSS statute provides for the establishment of an FSS account, and provides for funds (the amount of which is determined as discussed in following Section XIII of this preamble) to be placed in an interest-bearing account by the HA on behalf of the FSS family. The Department expects that its own coordinative efforts with other Federal agencies, and the coordinative efforts of HAs will result in financial support from other sources that will help HAs meet the administrative costs of the FSS program.

Comment. One commenter stated that the FSS rule should clarify that the amount allocated for preliminary expenses (preliminary fee) applies to each new FSS participant. Another commenter stated that the time frame allowed to use preliminary fees should be increased from 90 days to a one year period, at least for the first five-year FSS

program that is implemented by each HA. Another commenter stated that to further assist HAs, preliminary fees should be available for all FSS participants whether they are selected from the waiting list or are current tenants.

Response. The preliminary fee applies to each new unit, not to each FSS participant. HAs receive the preliminary fees for all new units. They receive these fees whether or not they are using the new units for the FSS program, or are using existing units for the FSS program. (Again, the new units only determine the minimum size of an HA's FSS program.) There is no 90 day limitation on the use of preliminary fees.

Section XIII. Family Self-Sufficiency Accounts

(A) Establishment of Account

Comment. One commenter asked whether the amounts placed in the FSS account constituted a double subsidy to the family.

Response. The FSS amount is not funded from appropriations by the Congress. As provided by the FSS statute, the amount placed in the FSS account represents a portion of the family's rent.

In the public and Indian housing FSS programs, FSS families are charged rent by the HA in accordance with the procedures utilized by the HA in its non-FSS programs, and the HA credits the applicable portion of the tenant's rent to the FSS account. For purposes of reporting the total monthly rent roll in the calculation of operating subsidy eligibility under the PFS, an HA will be allowed to exclude the amount credited to the FSS account. While the FSS accounts are funded through appropriation, the exclusion of increases in family income will have an impact on operating subsidy requirements.

In the section 8 programs, FSS families will pay rent to the owners in accordance with the procedures utilized by the HA in its non-FSS section 8 programs, and the HA's housing assistance payment to the owner will be calculated in accordance with these normal procedures. The HA will use housing assistance funds paid by HUD for the FSS deposits.

Comment. Five commenters stated that HAs should not be involved in the escrowing money for tenants. Other commenters expressed concern that the FSS account would present a significant accounting burden.

Response. The FSS statute directs the HA to establish an "escrow savings"

account on behalf of each participating family. The Department notes that the escrowing of funds by an HA is not unique to the FSS program. HAs hold a variety of funds in trust, such as security deposits, homeownership reserve accounts, and homeownership equity accounts. The HA's accounting system include procedures for keeping track of such funds (e.g., establishing individual family sub-accounts in the accounting records, investment of funds in HUD-approved investments, crediting of interest earned to participating families, and the terms of withdrawal). HAs may contract with another organization to undertake this work; however, the overall responsibility for establishment and administration of the FSS accounts remains with the HA.

Comment. Fifteen commenters requested that the Department reexamine this component of the FSS program, which they stated was not an incentive to self-sufficiency. An additional three commenters stated that the FSS account would not teach participants how to save money. Other commenters proposed alternative mechanisms to the FSS account, which they believed create an incentive to obtain self-sufficiency. Four commenters stated that the FSS rule should provide for the option of establishing a separate FSS account for each participating family or a community account for all participating families. Twenty-two commenters stated that the FSS account provisions in the FSS Guidelines were unclear, did not address the tax consequences of the FSS account, and failed to provide adequate guidance concerning disposition of the FSS account funds in the event of death of the head of the family, or in the event of separation or divorce. Six commenters stated that the confusion surrounding the FSS account results in part from the use of certain terms, which require clarification.

Response. The FSS account is a statutorily required component of the FSS program. The FSS statute provides for the establishment of an "escrow savings" account, and provides the basis for determining the escrow amount. Accordingly, the Department has no authority to eliminate this component of the FSS program. However, the 1992 Act amendment to the FSS program requires that HAs shall establish a plan to offer incentives to families to participate in the FSS program. The plan must include the establishment of an escrow savings account, as provided in the FSS statute, and may include other incentives designed by the HA

At the time of publication of the FSS Guidelines, the Department had not

received a ruling from the IRS of the tax consequences, if any, on the FSS account. The IRS recently issued an opinion to the Department on this subject, and the content of this opinion is incorporated in this response.

With respect to the other concerns expressed by the commenters on the FSS account, the Department has reviewed the escrow account provision of the FSS Guidelines, and has made certain revisions to this section in the FSS rule. The Department believes that the revised language clarifies the issues raised by the commenters. The following, however, also responds to the questions raised by the commenters.

Type of FSS account. There was no requirement under the FSS Guidelines that the HA maintain a separate FSS account for each FSS family. Under the FSS Guidelines, HAs were given the option to combine the funds being held for all FSS families into a single depository account in a financial institution, or maintain a separate depository account in a financial institution for each family. The FSS rule removes this option and requires HAs to combine the funds being held for all FSS families into a single depository account. This change was made in response to the ruling by the IRS, as discussed later in this response (see discussion under "Tax Consequences of FSS account"), which indicates that FSS funds may be subject to Federal income tax if the HA establishes a separate account for each participant.

Investment of FSS account funds. The FSS rule provides that the HA must deposit the FSS account funds in one or more of the HUD approved investments listed in Handbook 7475.1 REV. This handbook can be obtained from the HUD Field Office. The total of the FSS account funds will be supported in the HA accounting records by a subsidiary ledger showing the account balance applicable to each FSS family. Investment income shall be credited periodically, but no less than annually, to each participating family's FSS account.

The investment income for the combined FSS funds for the period will be prorated and credited to each family's FSS account based on the balance in each account at the end of the period for which the investment income is prorated. In cases where the tenant has a public housing account receivable balance representing one or more unpaid monthly payments, or the section 8 family does not pay the rent to the owner or other amounts due under the lease, the balance in the family's FSS account shall be reduced by that amount prior to prorating the

income. (This is the same basis outlined in Low-Rent Housing Accounting Handbook HM 7510.1, Chapter 16, Section 6, Appendix 1 and Chapter 18, Section 6, Appendix 1, for proration of investment income earned on homebuyer reserve funds held by the

Calculation of the FSS account credit. During the term of the contract of participation, HAs calculate the FSS account contribution amounts for each FSS family using HUD's FSS account credit worksheet, which was distributed to HAs by Notice PIH 91-47, issued on November 12, 1991. The worksheet will be reissued to reflect the changes to the FSS account contained in the final rule. The amount of the FSS account credit varies depending on the income of the family, and is based only on increases of earned income since the date of execution of the contract of participation.

Whenever the HA conducts an annual reexamination or an interim redetermination of income for an FSS family during the term of the contract of participation, the HA must compute the monthly FSS account credit using the credit worksheet. (The annual reexamination or interim redetermination of income will be conducted in accordance with the regulations governing the section 8 programs and public/Indian housing programs. See 24 CFR 882.212, 887.355, 887.357, 905.315, 960.209.) If the family had one or more interim redeterminations of income in the twelve months since the last annual

reexamination, then the monthly amount shown on line 12 or 13 of the credit worksheet will vary during the year. Otherwise, the monthly amount will be the same for the entire 12 month period.

Tax consequences of FSS account.
The Department requested an opinion from the IRS on the possible tax consequences of FSS accounts established under the FSS program. In an opinion issued May 8, 1992, the Office of Chief Counsel of the IRS responded to the Department's inquiry on the tax consequences of FSS account.

The IRS stated that the FSS account arrangement provided by the FSS guidelines is not considered a trust under the Internal Revenue Code, and that HAs are not required to report the interest earned on the accounts. On this issue, the May 8, 1992 opinion letter specifically provided as follows:

[A]n escrow arrangement of the kind described in the [FSS] program guidelines will not be considered a trust under section 641(a) of the [Internal Revenue] Code and section 301.7701–4(a) of the regulations [on procedure and administration], and the PHAs/IHAs are not required to report the interest earned in the FSS Accounts as income subject to taxation under section 641(a) of the Code. Because the FSS Accounts are not trusts, the accounts are not grantor trusts.

However, section 468B(g) of the Code states that 'injothing in any provision of law shall be construed as providing that an escrow account, settlement fund, or similar fund is not subject to current income tax. The Secretary shall prescribe regulations providing for the taxation of any such account or fund whether as a grantor trust or otherwise.' Section 468B(g) applies to funds established on or after August 16, 1986.

On February 14, 1992, the [Internal Revenue] Service issued proposed regulations under section 468B(g) of the Code. These proposed regulations, however, do not address escrow accounts of a type similar to the FSS Accounts. Therefore, we cannot provide a definitive answer at this time as to whether the FSS Accounts may be subject to potential liability under section 468B(b) of the Code.

The IRS also stated that the funds in the FSS account fund are not included in the gross income of the FSS families because these funds qualify as welfare benefits. Therefore, FSS families will not have to pay taxes on the FSS account balances, even when families receive a cash payment. On this issue, the May 8, 1992 opinion letter stated, in relevant part, as follows:

Welfare benefits are not included in a taxpayer's gross income. * * * When considering whether a program's disbursements fall within the welfare benefits exclusion, four factors must be examined: (1) the source of the funds for the program; (2) the circumstances of the beneficiaries of the program; (3) whether the payments are compensation for services; and (4) the intent of Congress in establishing the program.

If the PHAs and IHAs do not establish a separate account for each participant (i.e., assuming the participants have no present interest in the funds held in escrow), and if the benefits are needs based, the disbursements (including the interest) are welfare benefits and are not includible in the gross income of the recipients.

Finally, the IRS advised that a filing of Form 1099 was not required for the FSS account funds. The May 8, 1992 opinion letter stated as follows:

Under section 6041 of the Code, payors of fixed or determinable gains, profits, and income aggregating \$600 or more are required to file Forms 1099 with the Internal Revenue Service.

Distributions that are not includible in the gross income of the FSS program participants, as discussed above, are not required to be reported on Forms 1099. This conclusion also applies to the accumulated interest in the FSS Accounts unless a portion

of the distribution is specifically allocated to interest.

In view of the language of the IRS opinion—"if the PHAs and IHAs do not establish a separate account for each participant"—the FSS rule, as noted above, requires the HA to deposit the FSS funds for each participating family into a single depository account. The information provided by the IRS on the tax status of the FSS account is not part of the FSS rule, but is being incorporated in the FSS handbooks and guidebooks.

Disposition of FSS account funds upon termination from FSS program. In the event a family is terminated from the FSS program or is still receiving welfare assistance by the date of expiration of the term of the contract or participation, including any extension thereof, the disposition of the FSS account would be as follows.

In the section 8 FSS program, the FSS account funds will be treated as additional program receipts for payment of program expenses under the HA budget and will be credited to the HA's ACC project reserve account.

In the public and Indian housing program, the FSS accounts funds will be credited to the HA's operating reserves and counted as other income in the calculation of PFS operating subsidy eligibility for the next budget year.

Disposition of FSS account in the event of break-up of the family. It is impossible within the context of the rule to address all the various circumstances which may arise, and which may bring into issue ownership of the FSS account. The FSS Guidelines addressed FSS account succession rights if the head of the FSS family ceased living in the assisted housing unit, and the FSS rule incorporates this provision. However, the rule cannot address every circumstance that may trigger succession rights. The Department's program handbooks will provide further guidance on specific circumstances involving this issue, and the HA may contact the HUD Field Offices for additional guidance on this

Comment. One commenter expressed concern that creditors may make claims on the FSS accounts which would result in HAs incurring legal costs to determine entitlement to the funds. The commenter asked whether in such situations the HA could deduct legal fees from funds in the FSS account.

Response. The HA may not deduct legal fees from funds in the FSS account to cover any administrative costs, including legal costs, involved in the operation of the FSS program. The FSS

statute provides for the FSS account to be established for the FSS family, and use of the FSS account funds is limited by the FSS statute for the benefit of the FSS family, as such time as the family fulfills its obligations under the contract of participation, and is no longer a recipient of welfare assistance.

Comment. Five commenters asked whether the FSS account would be counted as income or an asset affecting the family's eligibility for other assistance or programs.

Response. The answer to this question depends upon the specific benefit program at issue, and the laws governing that program.

With respect to the AFDC and Medicaid programs, which are administered by HHS, the Department requested that HHS issue guidance to State officials clarifying how FSS accounts would affect benefits under these two programs. In a letter dated April 27, 1992, the Secretary of HHS replied in relevant part as follows:

In the spirit of our Memorandum of Understanding, we are issuing written clarification to both State welfare and Medicaid agencies advising that the money in an FSS family's escrow account would not be considered to be available income or resources under AFDC and Medicaid regulations so long as the family lacks the legal ability to use the money for its support and maintenance.

For programs other than AFDC and Medicaid, the laws governing the specific benefit program at issue must be examined to determine whether the FSS account is classified as income for purposes of this program. Where HUD determines the effect of the FSS account funds on other benefit programs, HUD Headquarters will advise its Field Offices, and these offices, in turn, will advise participating HAs.

Comment. A few commenters expressed concern about possible conflict with State laws with respect to the establishment and administration of the FSS accounts.

Response. The FSS account under the FSS program is not the type of "escrow account" for which States generally impose rigid requirements with respect to the structure of the account and the disbursement of funds. However, each HA should consult its legal counsel for further guidance on the this issue.

(B) Amount of FSS Credit

Comment. Two commenters stated that the FSS statute does not require the family to be a contributor to the FSS account. The commenters stated that, under the FSS Guidelines, the family appears to pay into the FSS account 30 percent of their newly increased

income. The commenters stated that this is contrary to the FSS statute which prohibits consideration of increases in earned income in calculating what a tenant is supposed to pay for rent. The commenters stated that the statute simply establishes the FSS account, it does not say that the tenant must be the contributor.

Response. The FSS statute provides:

For each participating family whose monthly adjusted income is less than 50 percent of the area median income, the difference between 30 percent of the adjusted income of the participating family shall be placed in an interest-bearing escrow account established by the public housing agency on behalf of the participating family. For families with incomes between 50 and 80 percent of the area median income, the Secretary shall provide for escrow of the difference between 30 percent of the family income and the amount paid by the family for rent as determined by the Secretary under paragraph (1) (paragraph (d)(1) of Section 554].

The method for determination of the FSS account credit as set forth in the FSS Guidelines and the FFS rule is consistent with the language of the FSS statute. The amount of the FSS family's increased earned income that is going to the HA is not rental income; it is the FSS account credit. The FSS account is similar to a savings account, and, as such, is a central component of the FSS program. Having a portion of the FSS family's increased earned income placed in the FSS account is an incentive to the family for becoming self-sufficient. Under the FSS program, the family gains a reward (the FSS account funds) for fulfilling the obligations under the contract of participation, and becoming independent of welfare assistance. Holding the FSS family's rent at its preemployment level, while funding the FSS account from elsewhere, would not demonstrate the value of work and saving for the future. In addition, the Congress did not provide, nor did it indicate in the FSS authorizing statute that it would provide, an additional source of funds for the FSS accounts.

Comment. Several commenters criticized the computation of the FSS account as set forth in the FSS Guidelines, and requested that this method be simplified in the rule. The commenters stated that the Guidelines provide a much more cumbersome method for computing the FSS account credit amount than the statute requires.

Response. In the FSS rule, the Department has revised and clarified the method of computation of the FSS account credit amount.

Comment. One commenter stated that while the FSS Guidelines address the

calculation of escrow credit, they do not address the calculation of tenant rent.

Response. Contributions toward the rents for FSS participants are calculated in the same way as contributions toward rents for non-FSS participants. As family income increases, family contributions toward rents will increase in accordance with the applicable provisions of 24 CFR parts 813, 887, 905, and 913.

Comment. One commenter stated that the Department needs to provide a mechanism for HAs to collect the monies to be placed in the section 8 families' FSS accounts. Six commenters expressed concern about what action to take if the FSS family refuses to pay the FSS account credit amount.

Response. The HA does not collect the FSS account funds from the tenant. In the public/Indian housing FSS programs, the HA collects the rent and credits a portion of the rent to the FSS account. In the section 8 FSS program, the PHA will use the housing assistance funds paid by HUD for the FSS account credit. If the FSS family does not pay the full tenant rent or other amounts due under the lease, and the HA decides not to terminate the family from the FSS program, the FSS account balance would be reduced by the amount of any unpaid tenant rents or other amounts due under the lease.

(C) Investment of Funds in FSS Accounts

No comments were received on this subsection.

- (D) Disposition of FSS Accounts
- (1) (Withdrawal) -

Comment. One commenter stated that the FSS rule should clarify that if a family fulfills its obligations under the contract of participation, the disbursement of FSS funds to the family is not discretionary on the part of the HA. The commenter expressed concern about the language in the FSS Guidelines which provides that the FSS account "may be paid" to the head of the participating family. Another commenter stated that the rule should clarify that FSS account funds may be disbursed before expiration of the fiveyear contract if all obligations under the contract have been met. Two commenters stated that the rule should permit tenants and HAs to draw on funds in the FSS accounts in emergency situations. Seven commenters stated that the rule should provide for the FSS account funds to be made available to families who fulfill the terms of the FSS contract, but still require some form of housing assistance.

Response. The FSS rule clarifies that the HA must pay the FSS account funds to the FSS family, minus any accounts owed to the HA (e.g., for any unpaid rent, tenant damage or section 8 vacancy loss) when (1) the family has fulfilled its obligations under the contract of participation, and (2) the family is no longer a recipient of welfare.

With respect to the issues of withdrawal of FSS account funds in emergency situation and disbursement of the funds of families who fulfilled the terms of the contract but still require housing assistance, the FSS statute, as amended by the 1992 Act, permits the HA to make certain amounts in the FSS account available to the participating family before full performance of the family's obligations under the contract if (1) the family has complied with and completed interim goals set forth in the contract, and (2) the need for early withdrawal of a portion of the FSS account funds is for purposes consistent with the contract. Expenditure of a portion of the FSS account funds for purposes consistent with the contract would include expenditures for higher education (e.g., college, graduate school), job training or business development.

Comment. One commenter stated that the FSS rule should clarify that no escrow credit will be given for any period in which the FSS family has failed to comply with the obligations under the FSS contract, the lease or the certificate/voucher. The commenter stated that no retroactive rent charges stemming from failure to report or inaccurate reporting of income should be paid to the FSS account.

Response. Under HUD's section 8 and public/Indian housing programs, failure to report all income constitutes fraud. The commission of fraud is grounds for termination from the section 8 programs, the public and Indian housing programs, and the FSS program. If the HA does not wish to terminate the section 8 subsidy, or evict the family from public or Indian housing, the HA may terminate the family from the FSS program. An HA's policies with respect to these issues should be included in the FSS Action Plan or in the section 8 administrative plan. In any event, the HA must not credit the family's FSS account with any portion of the back rent.

Comment. Eight commenters stated that the FSS rule should establish stipulations on the use of FSS account funds. The commenters stated that the FSS account funds should be targeted for education, homeownership downpayments or home improvement projects.

Response. The FSS statute does not provide the Department with the discretion to impose stipulations on the family's use of its FSS account funds, except with the respect to the section 8 homeownership program referenced earlier in this preamble.

(2) (Succession)

Comment. One commenter stated that the succession provision in the FSS Guidelines assigns too liberal a right to the FSS family by allowing remaining family members to continue occupancy in the unit, and to assume entitlement to the FSS account if the head of the family leaves. The commenter recommended that this provision be strengthened to require that the remaining family members must meet the criteria established by the HA for romaining family members under its admission and occupancy policy.

Response. The Department disagrees with the commenter that the succession provision is too liberal. This section provides that the members of the family who remain in the assisted unit after the initial head of the family has departed, and after consultation with the HA, shall have the right to designate another family member to receive the FSS account funds. If the HA determines that the other members of the family who executed individual training and services plans did not meet their obligations under these plans (which are part of the contract of participation), or that the newly designated head of the family is unwilling to become employed or otherwise meet its obligations under the contract, the HA may terminate the family's participation in the FSS program, and under the section 8 FSS program, the HA may terminate the family's section 8 housing assistance. In such cases, the FSS account would be forfeited upon termination from the FSS program.

(3) (Forfeiture)

Comment. Two commenters asked that the FSS rule provide additional guidance on the utilization and disposition of forfeited FSS account funds. One commenter expressed concern about legal challenges to complete forfeiture of the funds. Another commenter suggested that a mechanism should be established to have the forfeited FSS account funds go directly to HUD, rather than the HA, to avoid any appearance of conflict of interest on the part of the HA.

Response. The disposition of forfeited FSS account funds was addressed in an earlier response concerning disposition of FSS account funds upon termination from the FSS program. The Department

does not believe that it is necessary for the FSS account funds to go directly to HUD upon forfeiture. Although some families may challenge the forfeiture of the FSS account funds, the Department points out that the FSS statute provides for the conditions under which the FSS account funds may be disbursed to the family, and conversely, forfeited, if the family fails to meet these conditions.

(E) Waiting Period

Comment. One commenter objected to the two year waiting period which may be imposed upon a former participating family who wishes to reapply for housing assistance. Another commenter questioned HUD's authority for permitting imposition of a waiting period. Another commenter suggested that the waiting period be extended from two to five years to stimulate more prudent use of the FSS account funds.

Response. The FSS Guidelines provided the two year waiting period as an option, not a requirement, available to HAs under the FSS program. The Department's authority to incorporate this provision in the FSS Guidelines arises from the rulemaking authority provided by the FSS statue, and the general rulemaking authority provided HUD under section 7(d) of the Department of Housing and Urban Development Act (42 U.S.C. 3535(d)). Notwithstanding the fact that the two year waiting period was established as an option available to PHAs and the Department has authority to provide for this option, the Department has decided to remove this option from the FSS program since receipt of the FSS accounts funds is no longer triggered by the FSS family leaving assisted housing.

Section XIV. Effect of Increases in Family Income

Comment. One commenter expressed concern that the increase in earned income of the family during its participation in the FSS program may count against the family in other benefit or service programs, and result in the participant's ineligibility for these programs.

Response. The Department recognizes that this, unfortunately, may be the case in certain programs. However, whether the increase in earned income affects the FSS family's eligibility for other benefit or service programs depends upon the statutes and regulations governing the particular program at issue. As discussed earlier in the preamble, the Secretary of HHS has advised the FSS account will not be considered to be available income or resources under the AFDC and Medicaid programs so long as the FSS

family lacks the legal ability to use the money for its support and maintenance. Additional information brought to the attention of HUD concerning other Federal, State or local benefit programs, will be made available to participating HAs.

Section XV. On-Site Facilities

Comment. One commenter stated that the FSS rule should mandate that certain FSS program related activities be conducted on-site, such as education, job training and child-care activities.

Response. To require FSS supportive services to be conducted on-site would exceed the Department's authority provided under the FSS statute.

Section XVI. Reports

Comment. Four commenters stated that the reporting requirements imposed by the FSS Guidelines are excessively burdensome. Another commenter stated that the reporting requirements should include a description of the effectiveness of the program. One commenter stated that the reporting requirement needs to describe more precisely the information that is required. Another commenter stated that HUD should encourage HAs to keep track of actual costs associated with the program. One commenter stated that HUD should provide a simple report form for HAs to submit.

Response. The FSS statute requires each HA to submit the report on the FSS program. The report imposed by Section XVI of the Guidelines, and also imposed by a comparable section in FSS rule. requires a description of the effectiveness of the program. The Department is developing forms for annual FSS reporting. These forms with eccompanying instructions will be distributed to HAs after they are

finalized.

Comments on HUD Proposal

Proposal. In the preamble to the FSS Guidelines, under the discussion of the contract of participation (56 FR 49594). the Department advised that it was considering including a provision in the FSS contract of participation, which would provide the relocation of families from one unit to another under certain circumstances. The proposal provided that if a FSS family is living in a public/ Indian housing unit or a project-based certificate unit reserved for the FSS program, the HA or the owner of the project-based certificate unit, may require the FSS family to move to another assisted unit to make the unit available for another FSS family. The Department stated that such a move may be appropriate if the FSS family who is

required to relocate to another unit is no longer in need of on-site FSS supportive services, or has failed to fulfill its obligations under the FSS contract. The proposal also would provide for the relocation of non-FSS families for the purpose of making the unit available for an FSS family. The Department specifically requested comments on this proposal, and advised that implementation of the proposal would require an amendment to the section 8 and the public/Indian housing regulations.

Comments. Nine commenters submitted comments on the proposal. Two commenters stated that they supported the proposal. The remaining commenters, however, were concerned that the proposal, if implemented, would trigger lawsuits, or at a minimum, would appear punitive to those families who chose not to participate in the FSS Program. Their comments include the following:

'This proposal appears to override the rights to which residents are entitled through their leases, in both section 8 and public housing units. The guidelines appear to suggest that PHAs/ IHAs and private owners may ignore residents' leasehold interests in a particular unit in order to pursue programmatic goals adopted after agreement to the current resident's lease. Also the guidelines make no mention of appropriate actions through lease and grievance proceedings already in place for some of these residents, or to the requirements of state and/or local

landlord-tenant law." 'While we understand the desire to build in as many incentives as possible for those families participating in FSS, it is not an acceptable practice to move already established families from their housing in order to make room for others. This would be extremely disruptive and punitive to those families, who for whatever reasons, choose not to participate, resulting in bad feelings toward the program and those participating in it.'

Response. Although very few commenters submitted comments on this proposal, the Department has decided not to adopt this proposal as part of the FSS program, at this time.

V. Other Matters

Impact on the Economy

This rule does not constitute a major rule as that term is defined in section 1(b) of the Executive Order on Federal Regulations issued by the President on February 17, 1981. An analysis of the rule indicates that it would not have (1) an annual effect on the economy of \$100

million or more; (2) cause a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies or geographic regions; or (3) have a significant adverse effect on competition, employment, investment, productivity, innovation, or the ability of the United States-based enterprises in domestic or export markets.

Impact on Small Entities

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this rule before publication and by approving it certifie: that the rule will not have a significant impact on a substantial number of smal entities. The rule governs the procedures under which PHAs (an IHA: that elect to participate in the FSS program) use public housing development assistance and section 8 rental assistance, together with public and private resources, to provide an assistance package of housing and supportive services, designed to enable participating families to achieve selfsufficiency. While this rule requires that, commencing in FY 1993, all PHAs receiving new rental units, or new renta certificates and vouchers, must operate a FSS program, this requirement is not based in regulation, but in statute. The rule provides, in accordance with statutory authority, that PHAs may be excepted from operating an FSS program, or may be permitted to operate a small FSS program, if local circumstances make it infeasible for the PHA operate an FSS program, if local circumstances make it infeasible for the PHA operate an FSS program of minimum size, or any size FSS program The FSS statute, however, provides no exemption from operation of an FSS program solely on the basis that a PHA is a small PHA. The FSS statutory requirements, as implemented by this rule, apply to all PHAs regardless of

Environmental Impact

With respect to this rule, a Finding of No Significant Impact has been made in accordance with HUD regulations at 24 CFR part 50, which implement section 102(2)(c) of the National Environmental Policy Act of 1969 (NEPA). The rule does not concern the development of public or Indian housing projects or units to be assisted under the section 8 rental certificate or voucher programs o other activities with the potential for significant physical impacts. The rule concerns requirements for the provision of supportive services, which, under 24 CFR 50.20(o) and 50.19, have been categorically excluded from NEPA

review or compliance under the environmental laws listed in 24 CFR 50.4 due to lack of physical impact. This Finding of No Significant Impact is available for public inspection between 7:30 a.m. and 5:30 p.m. weekdays in the Office of the Rules Docket Clerk, Office of the General Counsel, Department of Housing and Urban Development, room 10276, 451 Seventh Street SW., Washington, DC 20410.

Executive Order 12606, The Family

The General Counsel, as the Designated Official under Executive Order 12606, The Family, has determined that the rule may have a significant impact on the maintenance and general well-being of some families. The objective of the Family Self-Sufficiency program is assist lowincome families move from economic dependency to economic independence. The objective of this rule is to provide the regulatory guidance that PHAs may require to successfully achieve the objectives of this program. Since the impact on the family is considered beneficial, no further review under the order is necessary.

Executive Order 12612, Federalism

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, Federalism, has determined that this rule would not have substantial, direct effects on States, on their political subdivisions, or on their relationship with the Federal government, or on the distribution of power and responsibilities among the various levels of government. The rule is limited to implementing the procedures under which PHAs and IHAs will operate local Family Self-Sufficiency programs. The Family Self-Sufficiency program is an assistance program, the objective of which is to aid families in obtaining economic independence by providing these families with affordable housing and supportive services which will help them reach this goal.

Regulatory Agenda

This rule was listed as sequence number 1569 in the Department's Semiannual Agenda of Regulations, published on April 26, 1993 (58 FR 24382, 24435) under Executive Order 12291 and the Regulatory Flexibility Act.

List of Subjects

24 CFR Part 905

Grant programs—Indians, Low and moderate income housing, Aged, Grant programs—housing and community development, Handicapped, Indians,

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

24 CFR Part 952

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

24 CFR Part 984

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

Accordingly, title 24 of the code of Federal regulations is amended by adding a new subpart R to part 905, and by adding new parts 962 and 984 to read as follows:

PART 905—INDIAN HOUSING PROGRAMS

1. The authority citation for 24 CFR part 905 is revised to read as follows:
Authority: 42 U.S.C. 1437u, 1437aa, 1437bb, 1437cc, 1437ee; 25 U.S.C. 450e(b); 42 U.S.C. 3535(d).

2. A new subpart R is added to part 905 to read as follows:

Subpart R-Indian Housing Family Seif-Sufficiency Program

General

905.3001 Purpose and applicability. 905.3002 Program objectives. 905.3003 Definitions. 905.3004 Basic requirements of the FSS program.

Program Development and Approval Procedures

905.3011 Action Plan.
905.3012 Program Coordinating Committee.
905.3013 FSS family selection procedures.
905.3014 On-site facilities.

Program Operation

905.3020 Program implementation. 905.3021 Administrative fees. 905.3022 Contract of participation. 905.3024 Total tenant payment and increases in family income.

905.3025 FSS account.

Reporting

905.3030 Reporting.

Subpart R—Indian Housing Family Self-Sufficiency Program

General

§ 905.3001 Purpose, scope, and applicability.

(a) Purpose. (1) The purpose of the Family Self-Sufficiency (FSS) program is to promote the development of local strategies to coordinate the use of public and Indian housing assistance and housing assistance under the section 8

rental certificate and rental voucher programs with public and private resources, to enable families eligible to receive assistance under these programs to achieve economic independence and self-sufficiency.

(2) The purpose of this subpart is to implement the policies and procedures applicable to operation of a local FSS program under HUD's Indian housing

program.

(b) Applicability. This subpart applies to Indian housing authorities that elect to operate a local FSS program, and where such an election is made, to Indian housing assisted under the U.S. Housing Act of 1937, and developed or operated by an IHA in an Indian area, as defined in 24 CFR 905.102. This subpart does not apply to the Mutual Help Homeownership Program or the Turnkey III Program. Indian housing authorities that elect to participate in the FSS program are not subject to minimum program size requirements. Additionally, Indian housing authorities that received Indian housing units under the FSS incentive award competitions are not subject to the minimum program size requirements.

§ 905.3002 Program objectives.

The objective of the FSS program is to reduce the dependency of low-income families on welfare assistance and on section 8, public or Indian housing assistance or any Federal, State, or local rent or homeownership subsidies. Under the FSS program, low-income families are provided opportunities for education, job training, counseling, and other forms of social service assistance, while living in assisted housing, so that they may obtain the education, employment, and business and social skills necessary to achieve selfsufficiency, as this term is defined in § 905.3003 of this subpart. The Department will measure the success of a local FSS program not only by the number of families who achieve selfsufficiency, but also by the number of FSS families who, as a result of participation in the program, have family members who obtain their first job, or who obtain higher paying jobs; no longer need benefits received under one or more welfare programs; obtain a high school diploma or higher education degree; or accomplish similar goals that will assist the family in obtaining economic independence.

§ 905.3003 Definitions.

As used in this subpart:
Act means the United States Housing
Act of 1937 (42 U.S.C. 1437–1440).
Action Plan. See § 905.3011 of this
subpart.

APPENDIX B Page B - 27 Certification means a written assertion based on supporting evidence, provided by the FSS family or the IHA, as may be required under this subpart, and which:

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

certification;

(2) Shall be made available for inspection by HUD, the IHA, and the

public, as appropriate; and
(3) Shall be deemed to be accurate for purposes of this subpart, unless the Secretary or the IHA, 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. Examples of the CEO of a unit of general local government are: the elected mayor of a municipality; the elected county executive of a county; the chairperson of a county commission or board in a county that has no elected county executive; or the official designated pursuant to law by the governing body of a unit of general local government (e.g., city manager). The CEO for an Indian tribe is the tribal governing official.

Contract of participation means a contract in a form approved by HUD, entered into between a participating family and an IHA operating an FSS program that sets forth the terms and conditions governing participation in the FSS program. The contract of participation includes all individual training and services plans entered into between the IHA and all members of the family who will participate in the FSS program, and which plans are attached to the contract as exhibits. For additional detail, see § 905.3022 of this

subpart.

Earned income means income or earnings included in annual income from wages, tips, salaries, other employee compensation, and self-employment. (See 24 CFR 905.320(b).) Earned income does not include any pension or annuity, transfer payments, any cash or in-kind benefits, or funds deposited in or accrued interest on the FSS escrow account established by an IHA on behalf of a participating family.

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

Eligible families mean current residents of Indian housing.

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

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

FSS account means the FSS escrow account authorized by section 23 of the Act, and as provided by \$905.3025 of

this subpart.

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

FSS family or participating family means a family that resides in Indian housing, and that elects to participate in the FSS program, and whose designated head of the family has signed the contract of participation.

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

forth in this § 905.3003.

FSS slots refer to the total number of Indian housing units that comprise the minimum size of an IHA's Indian housing FSS program.

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

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

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

HUD of Department means the Department of Housing and Urban Development Field Offices, unless HUD Headquarters is specified.

Indian housing authority or IHA. See definition in 24 CFR 905.102.

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

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

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

(3) The agreed upon completion dates for the services and activities. Each individual training and service plan must be signed by the IHA and the

participating family member, and is attached to, and incorporated as part of the contract of participation. An individual training and services plan must be prepared for the head of the FSS family.

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

402(a)(19)).

JTPA means the Job Training Partnership Act (29 U.S.C. 1579(a)). Low-income family. See definition in

24 CFR 905.102.

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

Program Coordinating Committee or PCC is the committee described in § 905.3012 of this subpart.

Public housing agency or PHA. See definition in 24 CFR 913.102.

Secretary means the Secretary of Housing and Urban Development.

Self-sufficiency means that an FSS family is no longer receiving section 8. public or Indian housing assistance, or any Federal, State, or local rent or homeownership subsidies or welfare assistance. Achievement of self-sufficiency, although an FSS program objective, is not a condition for receipt of the FSS account funds. (See § 905.3025 of this subpart.)

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

include:

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

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

(3) Education—remedial education; education for completion of secondary

or post secondary schooling;

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

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

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

(7) Counseling—counseling in the

areas of:

(i) The responsibilities of homeownership:

(ii) Opportunities available for affordable rental and homeownership in the private housing market; and

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

Unit size or size of unit refers to the number of bedrooms in a dwelling unit. Very low-income family. See definition in 24 CFR 905.102.

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

§ 905.3004 Basic requirements of the FSS program.

(a) Compliance with program regulations. An FSS program established under this subpart shall be operated in conformity with the regulations of 24 CFR part 905.

(b) Compliance with Action Plan. An FSS program established under this subpart shall be operated in compliance with an Action Plan, as described in § 905.3011, and provide comprehensive supportive services as defined in § 905.3003.

(c) Compliance with equal opportunity requirements. An FSS program established under this subpart shall be operated in compliance with all applicable Indian housing regulations and all applicable civil rights authorities including: the Indian Civil Rights Act of 1968 (25 U.S.C. 1301-1303); Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d-2000d-4), the Fair Housing Act (42 U.S.C. 3601-3619); section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794); the Age Discrimination Act of 1975 (42 U.S.C. 6101–6107); Executive Order 11063 on Equal Opportunity in Housing, 27 FR 11527 (1962), as amended, 46 FR 1253 (1980); section 7(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C.

450(e)(B)); section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701u); and the regulations implementing these authorities. (The Indian Civil Rights Act applies to IHAs organized pursuant to tribal laws; and Title VI of the Civil Rights Act of 1964 and the Fair Housing Act applies to state authorized IHAs).

Program Development and Approval Procedures

§ 905.3011 Action plan.

(a) General. To participate in the FSS program, an IHA must have a HUD-approved Action Plan that complies with the requirements of this section.

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

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

(i) 90 days of notification by HUD of approval of the IHA's application for FY 1991 or FY 1992 incentive award units; or

(ii) If the IHA did not apply for FSS incentive award units, within 90 days of notification by HUD of approval of the IHA's first application, commencing in FY 1993, for new Indian housing units.

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

(d) Contents of Plan. The Action Plan shall describe the policies and procedures of the IHA for operation of a local FSS program, and shall contain, at a minimum, the following information:

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

(2) Estimate of participating families—an estimate 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 selfsufficiency program—if applicable, the number of eligible families, by program type, who are participating in Operation Bootstrap, Project Self-Sufficiency, or any other local self-sufficiency program who are expected to agree to execute an FSS contract of participation.

(4) FSS family selection procedures a statement indicating the procedures to be utilized to select families for participation in the FSS program, subject to the requirements governing the selection of FSS families, set forth

in § 905.3013.

(5) Incentives to encourage participation—a description of the incentives that the IHA intends to offer eligible families to encourage their participation in the FSS program (incentives plan). The incentives plan shall provide for the establishment of the FSS account in accordance with the requirements set forth in § 905.3025, and other incentives, if any, designed by the IHA. The incentives plan shall be part of the Action Plan.

(6) Outreach efforts—a description of:
(i) The IHA's efforts, including
notification and outreach efforts, to
recruit FSS participants from among

eligible families; and

(ii) The IHA's actions to be taken to assure that both minority and non-minority groups are informed about the FSS program, and how the IHA will make this information known (e.g., through door-to-door flyers, posters in any common rooms, advertisements in newspapers of general circulation, as well as any media targeted to minority groups).

(7) FSS activities and supportive services—a description of the activities and supportive services to be provided by both public and private resources to FSS families, and identification of the public and private resources, which are expected to provide the supportive

services.

(8) Method for identification of family support needs—a description of how the FSS program will identify the needs and deliver the services and activities according to the needs of the FSS families;

(9) Program termination; withholding of services; and grievance procedures—a description of the IHA's policies concerning: termination of participation in the FSS program, or withholding of supportive services on the basis of a family's failure to comply with the requirements of the contract of participation; and the grievance and hearing procedures available to FSS families.

(10) Assurances of non-interference with rights of non-participating

families—an assurance that a family's election to not participate in the FSS program will not affect the family's admission to Indian housing 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 § 905.3020(a)(1), including the schedule for filling FSS slots with eligible FSS families, as provided in

§ 905.3013;

(12) Certification of coordination—a certification that development of the services and activities under the FSS program has been coordinated with the JOBS Program: the programs provided under the JTPA; and any other relevant employment, child care, transportation, training, and education programs (e.g., Job Training for the Homeless Demonstration program) in the applicable area, and that implementation will continue to be coordinated, in order to avoid duplication of services and activities;

(13) Optional additional information—such other information that would help HUD determine the soundness of the IHA's proposed FSS

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

(f) Single action plan. IHAs implementing both a section 8 FSS program and an Indian housing FSS program may submit one Action Plan.

§ 905.3012 Program Coordinating Committee (PCC).

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

(b) Membership—(1) Required membership. The PCC must consist of representatives of the IHA and of

residents of Indian housing.

(2) Recommended membership. Membership on the PCC also should include representatives of the unit of general local government served by the IHA, local agencies (if any) responsible for carrying out JOBS training programs,

or programs under the JTPA, and other organizations, such as other State, local or tribal welfare and employment agencies, public and private education or training institutions, child care providers, nonprofit service providers. private business, and any other public and private service providers with resources to assist the FSS program.

(c) Alternative committee. The IHA may, in consultation with the chief executive officer of the unit of general local government served by the IHA, 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.

\$ 905,3013 FSS family selection procedures.

(a) Preference in the FSS selection process. An IHA has the option of giving a selection preference for up to 50 percent of its FSS slots to eligible families, as defined in § 905.3003, 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 IHA may limit the selection preference given to participants in and applicants for FSS related service programs to one or more eligible FSS related service programs. An IHA that chooses to exercise the selection preference option must include the following information in its Action Plan:

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

selection preference;

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

(3) The method of outreach to, and selection of, families with one or more members participating in the identified

programs.

(b) FSS selection without preference. For those FSS slots for which the IHA chooses not to exercise the selection preference provided in paragraph (a) of this section, the FSS slots must be filled with eligible families in accordance with an objective selection system, such as a lottery, the length of time living in subsidized housing, or the date the family expressed an interest in participating in the FSS program. The objective system to be used by the IHA must be described in the IHA's Action

(c) Motivation as a selection factor. (1) General. An IHA may screen families for

interest, and motivation to participate in the FSS program, provided that the factors utilized by the IHA are those which solely measure the family's interest, and motivation to participate in

the FSS program. (2) Permissible motivational screening factors. Permitted motivational factors include requiring attendance at FSS orientation sessions or preselection interviews, and assigning certain tasks which indicate the family's willingness to undertake the obligations which may be imposed by the FSS contract of participation (e.g., contacting job training or educational program referrals). However, any tasks assigned shall be those which may be readily accomplishable by the family, based on the family members' educational level, and disabilities, if any. Reasonable accommodations must be made for individuals with mobility, manual, sensory, speech impairments, mental or developmental disabilities.

(3) Prohibited motivational screening factors. Prohibited motivational screening factors include the family's educational level, educational or standardized motivational test results, previous job history or job performance, credit rating, marital status, number of children, or other factors, such as sensory or manual skills, and any factors which may result in discriminatory practices or treatment toward individuals with disabilities or minority or non-minority groups.

§ 905.3014 On-site facilities.

Each IHA may, subject to the approval of HUD, make available and utilize common areas or unoccupied units in Indian housing projects to provide supportive services under an FSS program.

Program Operation

§ 905.3020 Program Implementation.

(a) Program implementation deadline—(1) Program start-up. Except as provided in paragraph (a)(3) of this section, operation of a local FSS program must begin within 12 months of notification to the IHA of HUD's approval of the earlier of the IHA's application for: FY 1991 incentive award units; FY 1992 incentive award units; or new Indian housing units commencing with FY 1993. Operation means that activities such as outreach. participant selection, and enrollment have begun. Full delivery of the supportive services to be provided to the total number of families required to be served under the program need not occur within 12 months, but must occur by the deadline set forth in paragraph (a)(2) of this section.

(2) Full enrollment and delivery of services. Except as provided in paragraph (a)(3) of this section, the IHA must have completed enrollment of the total number of families required to be served under the FSS program (based on the minimum program size), and must have begun delivery of the supportive services within two years from the date of notification of approval of the application for new Indian housing

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

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

by § 905.3025.

§ 905.3021 Administrative fees.

The performance funding system (PFS), provided under section 9(a) of the Act, shall provide for the inclusion of reasonable and administrative costs incurred by IHAs in carrying out the minimum program size of the local FSS programs. These costs are subject to appropriations by the Congress.

§ 905.3022 Contract of participation.

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

of the FSS family.

(b) Form and content of contract—(1) General. The contract of participation, which incorporates the individual training and services plan, shall be in the form prescribed by HUD, and shall set forth the principal terms and conditions governing participation in the FSS program, including the rights and responsibilities of the FSS family and of the IHA, the services to be

provided to, and the activities to be completed by, the head of the FSS family, and each adult member of the family who elects to participate in the

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

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

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

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

employment opportunities.

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

(5) Consequences of noncompliance with contract. The contract of participation shall specify that if the FSS family fails to comply with the terms and conditions of the contract of

participation, the IHA may:

(i) Withhold the supportive services;

(ii) Terminate the family's participation in the FSS program.

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

participating family has committed itself under the contract of participation no later than 5 years after the effective

date of the contract.

(d) Contract extension. The IHA shall. in writing, extend the term of the contract of participation for a period not to exceed two years for any FSS family that requests, in writing, an extension of the contract, provided that the IHA finds that good cause exists for granting the extension. The family's written request for an extension must include a description of the need for the extension. As used in this paragraph (d), "good cause" means circumstances beyond the control of the FSS family, as determined by the IHA, such as a serious illness or involuntary loss of empleyment. Extension of the contract of participation will entitle the FSS family to continue to have amounts credited to the family's FSS account in accordance with § 905.3025.

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

another agency.

(2) Assessment of necessity of services. If the IHA is unable to obtain the services from another agency, the IHA 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 IHA 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 selfsufficiency, the IHA shall revise the individual training and services plan to delete these services, and modify the contract of participation to remove any obligation on the part of the FSS family to accept the unavailable services, in accordance with paragraph (f) of this

section; or

(ii) Determined to be integral to the FSS family's advancement toward selfsufficiency (which may be case if the affected family member is the head of the FSS family), the IHA shall declare the contract of participation null and

(f) Modification. The IHA and the FSS family may mutually agree to modify the contract of participation. The contract of participation may be modified in writing with respect to the individual training and services plan,

the contract term in accordance with paragraph (d) of this section, and designation of the head of the family.

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

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

extension thereof; or

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

(h) Termination of the contract. The contract of participation may be terminated before the expiration of the contract term, and any extension

thereof, by:

Mutual consent of the parties;

(2) The failure of the FSS family to meet its obligations under the contract of participation;

(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) By operation of law.

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

§ 905.3024 Total tenant payment and increases in family income.

(a) Calculation of total tenant payment. Total tenant payment for a family participating in the FSS program is determined in accordance with the regulations set forth in §§ 905.315 through 905.325.

(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 of purposes of eligibility of the FSS family for other benefits, or amount of benefits payable to the FSS family, under any other program administered by HUD, unless the income for the FSS family equals or exceeds 80 percent of the median income of the area (as determined by HUD, with adjustments for smaller and larger families).

§ 905.3025 FSS account.

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

approved investments.

(2) Accounting for FSS account funds. (i) Accounting records. The total of the FSS account funds will be supported in the IHA accounting records by a subsidiary ledger showing the balance applicable to each FSS family. During the term of the contract of participation, the IHA shall credit periodically, but not less than annually, to each family's FSS account, the amount of the FSS credit determined in accordance with paragraph (b) of this section.

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

credited.

(iii) Reduction of amounts due by FSS family. If the FSS family has not paid the family contribution towards rent, or other amounts if any, due under the Indian housing lease, the balance in the family's FSS account shall be reduced by that amount before prorating the interest income. If the FSS family has fraudulently under-reported income, the amount credited to the FSS account will be based on the income amounts originally reported by the FSS family.

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

include:

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

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

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

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

(v) The total in the account at the end

of the reporting period. (b) FSS credit-(1) Computation of amount. For purposes of determining the FSS credit, "family rent" is the total tenant payment as defined in 24 CFR part 905. The FSS credit shall be computed as follows:

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

(A) Thirty percent of the family's current monthly edjusted income less the family rent, which is obtained by disregarding any increase in earned income (as defined in § 905.3003) from the effective date of the contract of participation; or

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

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

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

credit.

(3) Cessation of FSS credit. The IHA shall not make any additional credits to the FSS family's FSS account when the FSS family has completed the contract of participation, as defined in § 905,3022(g), or when the contract of participation is terminated or otherwise

nullified. (c) Disbursement of FSS account funds.—(1) General. The amount in an FSS account, in excess of any amount owed to the IHA by the FSS family, as provided in paragraph (a)(3)(iii) of this section, shall be paid to the head of the FSS family when the contract of participation has been completed as provided in § 905.3022(g), and if, at the time of contract completion, the head of FSS family submits to the IHA a certification, as defined in § 905.3003, 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 IHA determines that the FSS family has fulfilled its obligations under the contract of participation before the expiration of the contract term, and the head of the FSS family submits a certification that, to the best of his or her knowledge, no member of the FSS family is a recipient of welfare assistance, the amount in the family's FSS account, in excess of any amount owed to the IHA by the FSS family as provided in paragraph

(a)(3)(iii) of this section, shall be paid to the head of the FSS family.

- (ii) If the IHA determines that the FSS family has fulfilled certain interim goals established in the contract of participation and needs a portion of the FSS account funds for purposes consistent with the contract of participation, such as completion of higher education (i.e., college, graduate school), or job training, or to meet startup expenses involved in creation of a small business, the IHA may, at the IHA's sole option, disburse a portion of the funds from the family's FSS account to assist the family meet those expenses.
- (3) Verification of family certification. Before disbursement of the FSS account funds to the family, the IHA may verify that the FSS family is no longer a recipient of welfare assistance by requesting copies of any documents which may indicate whether the family is receiving any welfare assistance, and contacting welfare agencies.
- (d) Succession to FSS account. If the head of the FSS family ceases to reside with other family members in the Indian housing unit, the remaining members of the FSS family, after consultation with the IHA, shall have the right to designate another family member to receive the funds in accordance with paragraph (c)(1) or (2) of this section.
- (e) Use of FSS account funds for homeownership. 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 contract of participation is terminated, as provided in § 905.3022(e) or § 905.3022(h); or
- (ii) The contract of participation is completed by the family, as provided in § 905.3022(g), but the FSS family is receiving welfare assistance at the time of expiration of the term of the contract of participation, including any extension thereof.
- (2) Treatment of forfeited FSS account funds. FSS account funds forfeited by the FSS family will be credited to the IHA's operating reserves and counted as other income in the calculation of the PFS operating subsidy eligibility for the next budget year.

Reporting

§ 905.3030 Reporting.

Each IHA that carries out an FSS program under this subpart shall submit to HUD, in the form prescribed by HUD, a report regarding its FSS program. The report shall include the following information:

 A description of the activities carried out under the program;

(2) A description of the effectiveness of the program in assisting families to achieve economic independence and self-sufficiency;

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

(4) Any recommendations by the IHA 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.

3. A new part 962 is added to 24 CFR to read as follows:

PART 962—PUBLIC HOUSING FAMILY SELF-SUFFICIENCY PROGRAM

Subpart A-General

962.101 Purpose, scope, and applicability.

962.102 Program objectives.

962.103 Definitions.

962.104 Basic requirements of the FSS program.

962.105 Minimum program size.

Subpart B—Program Development and Approval Procedures

962.201 Action Plan.

962.202 Program Coordinating Committee.

962.203 FSS family selection procedures.

962.204 On-site facilities.

Subpart C-Program Operation

962.301 Program implementation.

962,302 Administrative fees.

962.303 Contract of participation.

962.304 Total tenant payment and increases

in family income.

962.305 FSS account.

Subpart D-Reporting

962,401 Reporting.

Authority: 42 U.S.C. 1473f, 1437u; 42 U.S.C. 3535(d).

Subpart A-General

§ 962.101 Purpose, scope, and applicability.

(a) Purpose. (1) The purpose of the Family Self-Sufficiency (FSS) program is to promote the development of local strategies to coordinate the use of public and Indian housing assistance and housing assistance under the section 8 rental certificate and rental voucher programs with public and private resources, to enable families eligible to

receive assistance under these programs to achieve economic independence and self-sufficiency.

(2) The purpose of this part is to implement the policies and procedures applicable to operation of a local FSS program under HUD's public housing program.

(b) Scope. Beginning in FY 1993, each PHA that receives funding for additional public housing units must operate a public housing FSS program, unless the PHA receives an exception from the program as provided in § 962.105. Additionally, each PHA that received funding for public housing units under the FY 1991 and FY 1992 FSS incentive eward competitions, must operate a public housing PSS program.

(c) Applicability. This part applies to public housing assisted under the U.S. Housing Act of 1937. This part does not apply to Indian housing. The regulations governing Indian housing FSS programs are set forth in 24 CFR part 905, subpart R.

§ 962.102 Program objectives.

The objective of the FSS program is to reduce the dependency of low-income families on welfare assistance and on section 8, public or Indian housing assistance, or any Federal, State, or local rent or homeownership subsidies. Under the FSS program, low-income families are provided opportunities for education, job training, counseling, and other forms of social service assistance, while living in assisted housing, so that they may obtain the education, employment, and business and social skills necessary to achieve selfsufficiency, as defined in § 962.103 of this subpart. The Department will measure the success of a local FSS program not only by the number of families who achieve self-sufficiency, but also by the number of FSS families who, as a result of participation in the program, have family members who obtain their first job, or who obtain higher paying jobs; no longer need benefits received under one or more welfare programs; obtain a high school diploma or higher education degree; or accomplish similar goals that will assist the family in obtaining economic independence.

§ 962.103 Definitions.

As used in this part:

Act means the United States Housing Act of 1937 (42 U.S.C. 1437-1440).

Action Plan. See § 962.201 of this subpart.

Certification means a written assertion based on supporting evidence, provided by the FSS family or the PHA.

as may be required under this subpart,

and which: (1) Shall be maintained by the PHA in the case of the family's certification, or by HUD in the case of the PHA's certification:

(2) Shall be made available for inspection by HUD, the PHA, and the

public, as appropriate; and

(3) Shall be deemed to be accurate for purposes of this subpart, unless the Secretary or the PHA, 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. Examples of the CEO of a unit of general local government are: the elected mayor of a municipality; the elected county executive of a county; the chairperson of a county commission or board in a county that has no elected county executive; or the official designated pursuant to law by the governing body of a unit of general local government (e.g., city manager). The CEO for an Indian tribe is the tribal governing official.

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

§ 962.303 of this subpart.

Earned income means income or earnings included in annual income from wages, tips, salaries, other employee compensation, and selfemployment. (See 24 CFR 913.106(b) (1), (2) and (8).) Earned income does not include any pension or annuity, transfer payments, any cash or in-kind benefits, or funds deposited in or accrued interest on the FSS escrow account established by a PHA on behalf of a participating family.

Effective date of contract of participation means the first day of the month following the month in which

the FSS family and the PHA entered into the contract of participation. Eligible families mean current residents of public housing. Eligible families also include current residents of public housing who are participants

in local public housing self-sufficiency

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

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

FSS account means the FSS escrow account authorized by section 23 of the U.S. Housing Act of 1937, and as provided by § 962.305 of this subpart.

FSS credit means the amount credited by the PHA to the participating family's

FSS account.

FSS family or participating family means a family that resides in public housing, and that elects to participate in the FSS program, and whose designated head of the family has signed the contract of participation.

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

forth in this § 962.103.

FSS slots refer to the total number of public housing units that comprise the minimum size of a PHA's public housing FSS program.

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

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

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

HUD or Department means the Department of Housing and Urban Development Field Offices, unless HUD

Headquarters is specified.

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

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

(2) The activities to be completed by

that family member; and

(3) The agreed upon completion dates for the services and activities. Each individual training and services plan must be signed by the PHA and the participating family member, and is

attached to, and incorporated as part of the contract of participation. An individual training and services plan must be prepared for the head of the FSS family.

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

402(a)(19)).

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

Low-income family. See definition in

24 CFR 913,102.

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

Program Coordinating Committee or PCC is the committee described in § 962,202 of this subpart.

Public housing means housing assisted under the U.S. Housing Act of 1937, excluding housing assisted under section 8 of the Act.

Public housing agency or PHA. See

definition in 24 CFR 913.102. Secretary means the Secretary of Housing and Urban Development.

Self-sufficiency means that an FSS family is no longer receiving section 8, public or Indian housing assistance, or any Federal, State, or local rent or homeownership subsidies or welfare assistance. Achievement of selfsufficiency, although an FSS program objective, is not a condition for receipt of the FSS account funds. (See § 962.305 of this subpart.)

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

include:

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

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

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

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

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

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

(7) Counseling—counseling in the

areas of:

(i) The responsibilities of homeownership:

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

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

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

Very low-income family. See

Very low-income family. See definition in 24 CFR 913.102.

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

§ 962.104 Basic requirements of the FSS program.

(a) Compliance with program regulations: An FSS program established under this part shall be operated in conformity with the regulations of this part, and the applicable public housing regulations, including the regulations in 24 CFR parts 913, 960, and 966.

(b) Compliance with Action Plan. An FSS program established under this part shall be operated in compliance with an Action Plan, as described in § 962.201, and provide comprehensive supportive services as defined in § 962.103.

(c) Compliance with equal opportunity requirements. An FSS program established under this part shall be operated in compliance with title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d); the Fair Housing Act (42 U.S.C. 3601–3619); section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794); the Age Discrimination Act of 1975 (42 U.S.C. 6101–6107); Executive Order 11063 on Equal Opportunity in Housing, 27 FR 11527 (1962), as amended, 46 FR 1253 (1980); section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701u); and the

regulations implementing these authorities.

§962.105 Minimum program size.

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

(1) Determining minimum program size. The minimum size of a public housing FSS program is equal to:

housing FSS program is equal to:
(i) The total number of public housing units reserved in FY 1993, and each subsequent FY; plus (if applicable)

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

competitions.

(2) Applicable units. In determining minimum program size, all new public housing rental units reserved will be counted

(b) Maintaining minimum program size. As the contracts of participation for public housing FSS families are completed or terminated, replacement FSS families must be selected to maintain the minimum program size. A replacement family must be selected in accordance with the FSS family selection procedures set forth in § 962.203.

(c) Exception to program operation.
(1) Upon approval by HUD, a PHA will not be required to establish and carry out a public housing FSS program if the PHA provides to HUD a certification, as defined in § 962.103, that the establishment and operation of an FSS program is not feasible because of local circumstances, which may include, but are not limited to:

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

(ii) Lack of funding for reasonable administrative costs;

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

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

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

(d) Reduction in program size. Upon approval by HUD, a PHA may be permitted to operate a public housing FSS program that is smaller than the minimum program size if the PHA

provides to HUD a certification, as defined in § 962.103, that the operation of an FSS program of the minimum program size is not feasible because of local circumstances, which may include, but are not limited to:

(1) Decrease in or lack of accessible supportive services, including decrease in the availability of programs under

JTPA or JOBS;

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

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

(4) Decrease in or lack of interest in participating in the FSS program on the

part of eligible families.

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

Subpart B—Program Development and Approval Procedures

§ 962.201 Action Plan.

(a) General. To participate in the FSS program, a PHA must have a HUD-approved Action Plan that complies with the requirements of this section.

(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.

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

(i) 90 days of notification by HUD of approval of the PHA's application for FY 1991 or FY 1992 incentive award

units; o

(ii) If the PHA did not apply for FSS incentive award units, within 90 days of notification by HUD of approval of the PHA's first application, commencing in FY 1993, for new public housing units.

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

(d) Contents of Plan. The Action Plan shall describe the policies and

procedures of the PHA for operation of a local FSS program, and shall contain, at a minimum, the following information:

(1) Family demographics—a description of the number, size, characteristics, and other demographics (including racial and ethnic data), and the supportive service needs of the families expected to participate in the

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

(3) Eligible families from other selfsufficiency program—if applicable, the number of families, by program type, who are participating in Operation Bootstrap, Project Self-Sufficiency, or any other local self-sufficiency program who are expected to agree to execute an

FSS contract of participation.

(4) FSS family selection procedures—
a statement indicating the procedures to
be utilized to select families for
participation in the FSS program,
subject to the requirements governing
the selection of FSS families, set forth
in § 962.203. This statement must
include a description of how the PHA's
selection procedures ensure that
families will be selected without regard
to race, color, religion, sex, handicap.

familial status, or national origin.
(5) Incentives to encourage
participation—a description of the
incentives that the PHA's intends to
offer eligible families to encourage their
participation in the FSS program
(incentives plan). The incentives plan
shall provide for the establishment of
the FSS account in accordance with the
requirements set forth in § 962.305, and
other incentives, if any, designed by the
PHA. The incentives plan shall be part
of the Action Plan.

(6) Outreach efforts—a description of:
(i) The PHA's efforts, including
notification and outreach efforts to

notification and outreach efforts, to recruit FSS participants from among

eligible families; and
(ii) The PHA's actions to be taken to
assure that both minority and nonminority groups are informed about the
FSS program, and how the PHA will
make this information known [e.g.,
through door-to-door flyers, posters in
common rooms, advertisements in
newspapers of general circulation, as
well as any media targeted to minority
groups.).

(7) FSS activities and supportive services—a description of the activities and supportive services to be provided

by both public and private resources to FSS families, and identification of the public and private resources, which are expected to provide the supportive services.

(8) Method for identification of family support needs—a description of how the FSS program will identify the needs and deliver the services and activities according to the needs of the FSS families.

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

(10) Assurances of non-interference with rights of non-participating families—an assurance that a family's election to not participate in the FSS program will not affect the family's admission to public housing 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 § 962.301(a)(1), including the schedule for filling FSS slots with eligible FSS families, as provided in § 962.301;

(12) Certification of coordination—a certification that development of the services and activities under the FSS program has been coordinated with the JOBS Program; the programs provided under the JTPA; and any other relevant employment, child care, transportation, training, and education programs (e.g., Job Training for the Homeless Demonstration program) in the applicable area, and that implementation will continue to be coordinated, in order to avoid duplication of services and activities;

(13) Optional additional information—such other information that would help HUD determine the soundness of the PHA's proposed FSS

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

(f) Single action plan. PHAs implementing both a section 8 FSS program and a public or Indian housing

FSS program may submit one Action Plan.

§ 962.202 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 implementing the program.

(b) Membership—(1) Required membership. The PCC must consist of representatives of the PHA, and the residents of public housing. The public housing resident representatives shall be solicited from one or more of the following groups:

(i) An area-wide or city-wide resident

council, if one exists;

(ii) If the PHA will be transferring FSS participants to vacant units in a specific public housing development, the resident council or resident management corporation, if one exists, of the public housing development where the FSS program is to be carried out:

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

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

resources to assist the FSS program.

(c) Alternative committee. The FHA may, in consultation with the chief executive officer of the unit of general local government served by the PHA, 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.

§ 962.203 FSS family selection procedures.

(a) Preference in the FSS selection process. A PHA has the option of giving

a selection preference for up to 50 percent of its FSS slots to eligible families, as defined in § 962.103, who have one or more family members currently enrolled in an FSS related service program 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 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) FSS selection without preference. For those FSS slots for which the PHA chooses not to exercise the selection preference provided in paragraph (a) of this section, the FSS slots must be filled with eligible families in accordance with an objective selection system, such as a lottery, the length of time living in subsidized housing, or the date the family expressed an interest in participating in the FSS program. The objective system to be used by the PHA must be described in the PHA's Action Plan.
- (c) 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 contract of participation (e.g., contacting job training or educational program referrals). However, any tasks assigned shall be those which may be readily accomplishable by the family, based on the family members' educational level. and disabilities, if any. Reasonable accommodations must be made for individuals with mobility, manual, sensory, speech impairments, mental or developmental disabilities.

(3) Prohibited motivational screening factors. Prohibited motivational screening factors include the family's educational level, educational or standardized motivational test results, previous job history or job performance, credit rating, marital status, number of children, or other factors, such as sensory or manual skills, and any factors which may result in discriminatory practices or treatment toward individuals with disabilities or minority or non-minority groups.

§ 962.204 On-site facilities.

Each PHA may, subject to the approval of HUD, make available and utilize common areas or unoccupied units in public housing projects to provide supportive services under an FSS program.

Subpart C—Program Operation

§ 962.301 Program Implementation.

(a) Program implementation deadline—(1) Program start-up. Except as provided in paragraph (a)(3) of this section, operation of a local FSS program must begin within 12 months of notification to the PHA of HUD's approval of the earlier of the PHA's application for: FY 1991 incentive award units; FY 1992 incentive award units; or new public housing units, commencing with FY 1993. Operation means that activities such as outreach, participant selection, and enrollment have begun. Full delivery of the supportive services to be provided to the total number of families required to be served under the program need not occur within 12 months, but must occur by the deadline set forth in paragraph (a)(2) of this section.

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

(3) Extension of program deadlines for good cause. HUD may extend this deadline set forth in either paragraph (a)(1) paragraph (a)(2) of this section if the PHA requests an extension, and the HUD Field Office determines that, despite best efforts on the part of the PHA, the development of new public housing units will not occur within the deadlines set forth in this paragraph (a), the commitment by public or private resources to deliver supportive services

has been withdrawn, the delivery of such services has been delayed, or other local circumstances which the HUD Field Office determines warrants an extension of the deadlines set forth in this paragraph (a).

(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 the FSS program, including the FSS account, as provided by § 962.302

§ 962.302 Administrative fees.

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

§ 962.303 Contract of participation.

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

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

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

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participation, including any extension

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

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

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

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

opportunities within the jurisdiction served by the PHA.

(5) Consequences of noncompliance with contract. The contract of participation shall specify that if the FSS family fails to comply with the terms and conditions of the contract of participation, which includes compliance with the public housing lease, the PHA may:

(i) Withhold the supportive services;

(ii) Terminate the family's participation in the FSS program.

(c) Contract term. The contract of participation shall provide that each FSS family will be required to fulfill those obligations to which the participating family has committed itself under the contract of participation no later than 5 years after the effective date of the contract.

(d) Contract extension. The PHA shall, in writing, extend the term of the contract of participation for a period not to exceed two years for any FSS family that requests, in writing, an extension of the contract, provided that the PHA finds that good cause exists for granting the extension. The family's written request for an extension must include a description of the need for the extension. As used in this paragraph (d), "good cause" means circumstances beyond the control of the FSS family, as determined by the PHA, such as a serious illness or involuntary loss of

employment. Extension of the contract of participation will entitle the FSS family to continue to have amounts credited to the family's FSS account in accordance with § 962.304.

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

from another agency

(2) Assessment of necessity of services. If the PHA is unable to obtain the services from another agency, the PHA 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 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 selfsufficiency, the PHA shall revise the individual training and services plan to delete these services, and modify the contract of participation to remove any obligation on the part of the FSS family to accept the unavailable services, in accordance with paragraph (f) of this

(ii) Determined to be integral to the FSS family's advancement toward selfsufficiency (which may be the case if the affected family member is the head of the FSS family), the PHA shall declare the contract of participation null

and void.

(f) Modification. The PHA and the FSS family may mutually agree to modify the contract of participation. The contract of participation may be modified in writing with respect to the individual training and services plans. the contract term in accordance with paragraph (d) of this section, and designation of the head of the family.

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

the following occurs:

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

(2) 30 percent of the monthly adjusted income of the FSS family equals or exceeds the published existing housing fair merket rent for the size of the unit for which the FSS family qualifies based

on the PHA's occupancy standards. The contract of participation will be considered completed and the family's participation in the FSS program concluded on this basis even though the contract term, including any extension thereof, has not expired, and the family members who have individual training and services plans, have not completed all the activities set forth in their plans.

(h) Termination of the contract. The contract of participation may be terminated before the expiration of the contract term, and any extension

thereof, by:

(1) Mutual consent of the parties; (2) The failure of the FSS family to meet its obligations under the contract of participation;

(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) By operation of law.

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

§ 962.304 Total tenant payment and increases in family income.

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

(b) Increases in FSS family income. Any increase in the earned income of an FSS family during its participation in an FSS program may not be considered as income or a resource for purposes of eligibility of the FSS family for other benefits, or amount of benefits payable to the FSS family, under any other program administered by HUD, unless the income of the FSS family equals or exceeds 80 percent of the median income of the area (as determined by HUD, with adjustments for smaller and larger families).

§ 962.305 FSS account

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

(2) Accounting for FSS account funds. (i) Accounting records. The total of the

combined FSS account funds will be supported in the PHA accounting records by a subsidiary ledger showing the balance applicable to each FSS family. During the term of the contract of participation, the PHA shall credit periodically, but not less than annually, to each family's FSS account, the amount of the FSS credit determined in accordance with paragraph (b) of this

(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 emounts, if any, due under the public housing lease, the balance in the family's FSS account shall be reduced by that amount before prorating the interest income. If the FSS family has fraudulently under-reported income, the amount credited to the FSS account will be based on the income amounts originally reported by the FSS family.

(3) Reporting on FSS account. Each PHA 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

(i) The balance at the beginning of the

reporting period;

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

(iii) Any deductions made from the account for amounts due the PHA before

interest is distributed:

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

(v) The total in the account at the end

of the reporting period.

(b) FSS credit—(1) Computation of amount. For purposes of determining the FSS credit. "family rent" is the total tenant payment as defined in 24 CFR part 913. The FSS credit shall be computed as follows:

(i) For FSS families who are very lowincome families, the FSS shall be the

amount which is the lesser of:

(A) Thirty percent of current monthly adjusted income less the family rent, which is obtained by disregarding any increases in earned income (as defined in § 962.103) from the effective date of the contract of participation; or

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

(ii) For FSS families who are lowincome families but not very low-

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

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

credit.

(3) Cessation of FSS credit. The PHA shall not make any additional credits to the FSS family's FSS account when the FSS family has completed the contract of participation, as defined in § 962.303(g), or when the contract of participation is terminated or otherwise nullified.

(c) Disbursement of FSS account funds—(1) General. The amount in an FSS account, in excess of any amount owed to the PHA by the FSS family, as provided in paragraph (a)(3)(iii) of this section, shall be paid to the head of the FSS family when the contract of participation has been completed as provided in § 962.303(g), and if, at the time of contract completion, the head of FSS family submits to the PHA a certification, as defined in § 962.103. 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 determines that the FSS family has fulfilled its obligations under the contract of participation before the expiration of the contract term, and the head of the FSS family submits a certification that, to the best of his or her knowledge, no member of the FSS family is a recipient of welfare assistance, the amount in the family's FSS account, in excess of any amount owed to the PHA by the FSS family as provided in paragraph (a)(3)(iii) of this section, shall be paid to

the head of the FSS family.

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

(3) Verification of family certification. Before disbursement of the FSS account funds to the family, the PHA may verify that the FSS family is no longer a recipient of welfare assistance by requesting copies of any documents which may indicate whether the family

is receiving any welfare assistance, and contacting welfare agencies.

(d) Succession to FSS account. If the head of the FSS family ceases to reside with other family members in the public housing unit, the remaining members of the FSS family, after consultation with the PHA, shall have the right to designate another family member to receive the funds in accordance with paragraph (c) (1) or (2) of this section.

(e) Use of FSS account funds for homeownership. 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.

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

(i) The contract of participation is terminated, as provided in § 962.303(e)

or § 962.303(h); or

(ii) The contract of participation is completed by the family, as provided in § 962.303(g), but the FSS family is receiving welfare assistance at the time of expiration of the term of the contract of participation, including any extension thereof.

(2) Treatment of forfeited FSS account funds. FSS account funds forfeited by the FSS family will be credited to the PHA's operating reserves and counted as other income in the calculation of the PFS operating subsidy eligibility for the

next budget year.

Subpart D-Reporting

§ 962.401 Reporting.

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

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

(2) A description of the effectiveness of the program in assisting families to achieve economic independence and self-sufficiency;

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

(4) Any recommendations by the PHA 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.

4. A new part 984 is added to 24 CFR

to read as follows:

PART 984—SECTION 8 FAMILY SELF-SUFFICIENCY PROGRAM

Subpart A-General

984.101 Purpose, scope, and applicability.

984.102 Program objectives.

984.103 Definitions.

984.104 Basic requirements of the FSS program.

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984.201 Action Plan.

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984.302 Administrative fees.

Contract of participation. 984.303

984.304 Family rent and increases in family income.

984.305 FSS account.

Section 8 residency and portability 984.306 requirements.

Subpart D-Reporting

984.401 Reporting.

Authority: 42 U.S.C. 1473f, 1437u; 42 U.S.C. 3535(d).

Subpart A-General

§ 984.101 Purpose, scope, and applicability.

(a) Purpose. (1) The purpose of the Family Self-Sufficiency (FSS) program is to promote the development of local strategies to coordinate the use of public and Indian housing assistance and housing assistance under the section 8 rental certificate and rental voucher programs with public and private resources, to enable families eligible to receive assistance under these programs to achieve economic independence and self-sufficiency.

(2) The purpose of this part is to implement the policies and procedures applicable to operation of a local FSS program under the rental voucher and rental certificate programs.

(b) Scope. Beginning in FY 1993, each PHA that receives funding for additional rental certificates or rental vouchers must operate a section 8 FSS program, unless the PHA receives an exception from the program as provided in § 984.105. Additionally, each PHA that received funding for section 8 rental certificates or rental vouchers under the combined FY 1991/1992 FSS incentive award competition, must operate a section 8 FSS program.

(c) Applicability—(1) General. This part applies to the section 8 rental certificate program and the section 8 rental voucher program authorized by section 8 of the U.S. Housing Act of

1937, and implemented at 24 CFR parts 882 and 887.

(2) Indian Housing Authorities. The operation of a section 8 FSS program is optional for Indian Housing Authorities (IHAs) that operate a certificate or voucher program. IHAs that elect to operate a section 8 FSS program are subject to the requirements of this part, except that § 984.105(c) of this subpart governing minimum program size shall not be applicable to IHAs. Additionally, IHAs that received section 8 units under the FSS incentive award competitions and are operating a section 8 FSS program are not subject to the minimum program size requirements.

§ 984.102 Program objectives.

The objective of the FSS program is to reduce the dependency of low-income families on welfare assistance and on section 8, public or Indian housing assistance or any Federal, State, or local rent or homeownership subsidies. Under the FSS program, low-income families are provided opportunities for education, job training, counseling, and other forms of social service assistance. while living in assisted housing, so that they may obtain the education, employment, and business and social skills necessary to achieve selfsufficiency, as defined in § 984.103 of this subpart. The Department will measure the success of a local FSS program not only by the number of families who achieve self-sufficiency, but also by the number of FSS families who, as a result of participation in the program, have family members who obtain their first job, or who obtain higher paying jobs; no longer need benefits received under one or more welfare programs; obtain a high school diploma or higher education degree; or accomplish similar goals that will assist the family in obtaining economic independence.

8984.103 Definitions.

As used in this part:

Act means the United States Housing Act of 1937 (42 U.S.C. 1437-1440). Action Plan. See § 984.201 of this

Assisted lease has the same meaning as set forth in 24 CFR 882.102 and 887.7.

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

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

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

(3) Shall be deemed to be accurate for purposes of this subpart, unless the Secretary or the PHA, 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. Examples of the CEO of a unit of general local government are: the elected mayor of a municipality; the elected county executive of a county; the chairperson of a county commission or board in a county that has no elected county executive; or the official designated pursuant to law by the governing body of a unit of general local government (e.g., city manager). The CEO for an Indian tribe is the tribal governing official.

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

§ 984.303 of this subpart.

Earned income means income or earnings included in annual income from wages, tips, salaries, other employee compensation, and selfemployment. (See 24 CFR 813.106(b)(1), (2) and (8).) Earned income does not include any pension or annuity, transfer payments, any cash or in-kind benefits. or funds deposited in or accrued interest on the FSS escrow account established by a PHA on behalf of a participating

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

Eligible families means current section 8 rental certificate or rental voucher program participants, including participants in the Project Self-Sufficiency or Operation Bootstrap or other local self-sufficiency programs.

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

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

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

FSS credit means the amount credited by the PHA to the participating family's

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

FSS related service program means any program, publicly or privately sponsored, that offers the kinds of supportive services described in the definition of "supportive services" set forth in this § 984.103 of this subpart.

FSS slots refer to the total number of rental certificates or rental vouchers that comprise the minimum size of a PHA's section 8 FSS program.

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

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

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

HUD or Department means the Department of Housing and Urban Development Field Offices, unless HUD Headquarters is specified.

Indian housing authority or IHA. See definition in 24 CFR 813.102.

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

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

(2) The activities to be completed by

that family member; and

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

individual training and services plan must be prepared for the head of the FSS family.

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

JTPA means the Job Training Partnership Act (29 U.S.C. 1579(a)). Low-income family. See definition in

24 CFR 813.102 Participating family. See definition for "FSS family" in this section.

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

Public housing agency or PHA. See definition in 24 CFR 882.102 and 887.7. As used in this part, PHA includes an Indian housing authority as defined in this section.

Secretary means the Secretary of Housing and Urban Development.

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

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

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

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

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

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

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

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

(7) Counseling—counseling in the areas of:

(i) The responsibilities of homeownership;

(ii) Opportunities available for affordable rental and homeownership in

the private housing market, including information on an individual's rights under the Fair Housing Act; and

(iii) Money management; and

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

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

Very low-income family. See definition in 24 CFR 813,102.

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

§ 984.104 Basic requirements of the FSS program.

(a) Compliance with program regulations. As FSS program established under this part shall be operated in conformity with the regulations of this part, and the rental certificate and rental voucher regulations, codified in 24 CFR parts 882 and 887, respectively.

(b) Compliance with Action Plan. An FSS program established under this part shall be operated in compliance with an Action Plan, as described in § 984.201, and provide comprehensive supportive services as defined in § 984.103.

(c) Compliance with equal opportunity requirements. An FSS program established under this part shall be operated in compliance with title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d); the Fair Housing Act (42 U.S.C. 3601-3619); section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794); the Age Discrimination Act of 1975 (42 U.S.C. 6101-6107); Executive Order 11063 on Equal Opportunity in Housing, 27 FR 11527 (1962), as amended, 46 FR 1253 (1980); section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701u), and the regulations implementing these authorities.

§ 984.105 Minimum program size.

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

(1) Determining minimum program size. The minimum size of a section 8

FSS program is equal to:

(i) The total number of rental certificates and rental vouchers reserved in FY 1993, and each subsequent FY; plus (if applicable)

(ii) The number of rental certificates and rental vouchers reserved under the combined FY 1991/1992 FSS incentive

award competition.

(2) Applicable certificates and vouchers. In determining minimum program size, all rental certificates and rental vouchers reserved will be counted, except those used to replace rental certificates or rental vouchers (renewals).

(b) Maintaining minimum program size. As the contracts of participation for section 8 FSS families are completed or terminated, replacement FSS families must be selected to maintain the minimum program size. A replacement family must be selected in accordance with the FSS family selection procedures set forth in § 984.203.

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

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

(ii) Lack of funding for reasonable administrative costs;

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

(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) Reduction in program size. Upon approval by HUD, a PHA may be permitted to operate a section 8 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 accessible supportive services, including decrease in the availability of programs under

JTPA or JOBS;

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

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

(4) Decrease in or lack of interest in participating in the FSS program on the

part of eligible families.

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

Subpart B-Program Development and **Approval Procedures**

§ 984.201 Action plan.

(a) General. (1) To participate in the FSS program, a PHA must have a HUDapproved Action Plan that complies with the requirements of this section. The Action Plan does not replace the administrative plan required by 24 CFR 882.204 and 887.61. As provided, in paragraph (a)(2) of this section, certain policies and procedures applicable to the FSS program must be incorporated in the PHA's administrative plan.

(2) Administrative plan. FSS policies for which the PHA has discretion to establish local procedures must be included in the PHA's administrative plan. These policies include, but are not

(i) The PHA's policies and procedures concerning the selection of FSS families for the section 8 FSS program, as provided in, and subject to the requirements of § 984.203. These policies should include a description of how the PHA's selection procedures ensure that families will be selected without regard to race, color, religion, sex, handicap, familial status, or national origin;

(ii) The PHA's policies concerning termination from the FSS program, or the withholding of FSS supportive services, or termination or withholding of section 8 assistance for failure by an FSS family to comply with the terms

and conditions of the contract of participation; and

(iii) The hearing procedures for FSS families.

(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.

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

(i) 90 days of notification by HUD of approval of the PHA's application for units under the combined FY 1991/1992 FSS incentive award competition; or

(ii) If the PHA did not apply for FSS incentive award units, within 90 days of notification by HUD of approval of the PHA's first application, commencing in FY 1993, for rental certificates or rental vouchers.

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

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

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

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

(3) Eligible families from other selfsufficiency program-if applicable, the number of families, by program type, who are participating in Operation Bootstrap, Project Self-Sufficiency, or any other local self-sufficiency program who are expected to agree to execute an FSS contract of participation.

(4) Incentives to encourage participation—a description of the incentives that the PHA's intends to offer eligible families to encourage their participation in the FSS program

(incentives plan). The incentives plan shall provide for the establishment of the FSS account in accordance with the requirements set forth in § 984.305, and other incentives, if any, designed by the PHA. The incentives plan shall be part of the Action Plan.

(5) Outreach efforts—a description of:

(i) The PHA's efforts, including notification and outreach efforts, to recruit FSS participants from among

eligible families; and

(ii) The PHA's actions to be taken to assure that both minority and nonminority groups are informed about the FSS program, and how the PHA will make this information known (e.g., through door-to-door flyers, advertisements in newspapers of general circulation, as well as any media targeted to minority groups.).

(6) FSS activities and supportive services—a description of the activities and supportive services to be provided by both public and private resources to FSS families, and identification of the public and private resources, which are expected to provide the supportive

services.

- (7) Method for identification of family support needs—a description of how the FSS program will identify the needs and deliver the services and activities according to the needs of the FSS
- (8) Assurances of non-interference with rights of non-participating families—an assurance that a family's election to not participate in the FSS program will not affect the family's admission to the section 8 program or the family's right to occupancy in accordance with its lease.

(9) 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;

(10) Certification of coordination—a certification that development of the services and activities under the FSS program has been coordinated with the JOBS Program; the programs provided under the JTPA; and any other relevant employment, child care, transportation, training, and education programs (e.g., Job Training for the Homeless Demonstration program) in the applicable area, and that implementation will continue to be coordinated, in order to avoid duplication of services and activities;

(11) Optional additional information—such other information that would help HUD determine the

soundness of the PHA's proposed FSS

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

(f) Single action plan. PHAs implementing both a section 8 FSS program and a public or Indian housing FSS program may submit one Action

§ 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 implementing the program.

(b) Membership—(1) Required membership. The PCC must consist of representatives of the PHA, and of residents assisted under the section 8 rental certificate or rental voucher program or under HUD's public or

Indian housing programs.

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

(c) Alternative committee. The PHA may, in consultation with the chief executive officer of the unit of general local government served by the PHA, 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 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 administrative plan:

(1) the percentage of FSS slots, not to exceed 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) FSS selection without preference. For those FSS slots for which the PHA chooses not to exercise the selection preference provided in paragraph (a) of this section, the FSS slots must be filled with eligible families in accordance with an objective selection system, such as a lottery, the length of time living in subsidized housing, or the date the family expressed an interest in participating in the FSS program. The objective system to be used by the PHA must be described in the PHA's administrative plan.

(c) 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 contract of participation (e.g., contacting job training or educational program referrals). However, any tasks assigned shall be those which may be readily accomplishable by the family, based on the family members' educational level. and disabilities, if any. Reasonable accommodations must be made for individuals with mobility, manual, sensory, speech impairments, mental or developmental disabilities.

(3) Prohibited motivational screening factors. Prohibited motivational screening factors include the family's

educational level, educational or standardized motivational test results, previous job history or job performance, credit rating, marital status, number of children, or other factors, such as sensory or manual skills, and any factors which may result in discriminatory practices or treatment toward individuals with disabilities or minority or non-minority groups.

§ 984.204 On-site facilities.

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

Subpart C—Program Operation § 984.301 Program Implementation.

- (a) Program implementation deadline—(1) Program start-up. Operation of a local FSS program must begin within 12 months of notification to the PHA of HUD's approval of the earlier of the PHA's application for rental certificates or rental vouchers under the combined FY 1991/1992 FSS incentive award competition, or under a subsequent FY competition. Operation means that activities such as outreach, participant selection, and enrollment have begun. Full delivery of the supportive services to be provided to the total number of families required to be served under the program need not occur within 12 months, but must occur by the deadline set forth in paragraph (a)(2) of this section.
- (2) Full enrollment and delivery of services. The PHA must have completed enrollment of the total number of families required to be served under the FSS program (based on the minimum program size), and must have begun delivery of the supportive services within two years from the date of notification of approval of the application for new certificates and vouchers.
- (3) Extension of program deadlines for good cause. HUD may extend the deadline set forth in either paragraph (a)(1) or paragraph (a)(2) of this section if the PHA requests an extension, and the HUD Field Office determines that, despite best efforts on the part of the PHA, the commitment by public or private resources to deliver supportive services had been withdrawn, the delivery of such services has been delayed, or other local circumstances which the HUD Field Office determines warrants an extension of the deadlines set forth in this paragraph (a).

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

§ 994.302 Administrative fees.

The administrative fees paid to PHAs for HUD-approved costs associated with operation of an FSS program are established by the Congress and subject to appropriations.

§ 984.303 Contract of participation.

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

of the FSS family.

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

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

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

(4) Employment obligation—(i) Head of family's obligation. The head of the FSS family shall be required under the contract of participation to seek and maintain suitable employment during

the term of the contract and any extension thereof. Although other members of the FSS family may seek and maintain employment during the term of the contract, only the head of the FSS family is required to seek and maintain suitable employment.

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

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

(5) Consequences of noncompliance with contract. The contract of participation shall specify that if the FSS family fails to comply with the terms and conditions of the contract of participation, which includes compliance with the assisted lease, the PHA may:

(i) Without the supportive services; (ii) Terminate the family's

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

(c) Contract term. The contract of participation shall provide that each FSS family will be required to fulfill those obligations to which the participating family has committed itself under the contract of participation no later than 5 years after the effective date of the contract.

(d) Contract extension. The PHA shall, in writing, extend the term of the contract of participation for a period not to exceed two years for any FSS family that requests, in writing, an extension of the contract, provided that the PHA finds that good cause exists for granting the extension. The family's written request for an extension must include a description of the need for the

extension. As used in this paragraph (d), "good cause" means circumstances beyond the control of the FSS family, as determined by the PHA, such as a serious illness or involuntary loss of employment. Extension of the contract of participation will entitle the FSS family to continue to have FSS 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 delivered under an FSS family member's individual training and services plan, the PHA shall make a good faith effort to obtain these services from another agency.

(2) Assessment of necessity of services. If the PHA is unable to obtain the services from another agency, the PHA 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 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 shall revise the individual training and services plan to delete these services, and modify the contract of participation to remove any obligation on the part of the FSS family to accept the unavailable services, in accordance with paragraph (f) of this section; or

(ii) Determined to be integral to the FSS family's advancement toward self-sufficiency (which may be the case if the affected family member is the head of the FSS family), the PHA shall declare the contract of participation null and void. Nullification of the contract of participation on the basis of unavailability of supportive services shall not be grounds for termination of section 8 assistance.

(f) Modification. The PHA and the FSS family may mutually agree to modify the contract of participation. The contract of participation may be modified in writing with respect to the individual training and services plans, the contract term in accordance with paragraph (d) of this section, and designation of the head of the family.

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

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

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

- (h) Termination of the contract. The contract of participation is automatically terminated if the family's section 8 assistance is terminated in accordance with HUD requirements. The contract of participation may be terminated before the expiration of the contract term, and any extension thereof, by:
 - (1) mutual consent of the parties;
- (2) the failure of the FSS family to meet its obligations under the contract of participation, including the failure to comply with the contract requirements because the family has moved outside the jurisdiction of the PHA;
- (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) by operation of law.
- (i) Option to terminate section 8 housing and supportive services assistance. The PHA may terminate or withhold section 8 housing assistance and supportive services if the PHA determines, in accordance with the hearing procedures provided in 24 CFR 882.216 and 887.405, that the FSS family has failed to comply with the requirements of the contract of participation as provided in paragraph (b)(5) of this section.
- (j) Transitional supportive service assistance. A PHA may continue to offer to a former FSS family who has completed its contract of participation and whose head of the family is employed, appropriate FSS supportive services in becoming self-sufficient (if the family still resides in assisted housing), or in remaining self-sufficient (if the family no longer resides in assisted housing).

§ 984.304 Family rent and increases in family income.

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

(b) Increases in FSS family income. Any increase in the earned income of an FSS family during its participation in an FSS program may not be considered as income or a resource for purposes of eligibility of the FSS family for other benefits, or amount of benefits payable to the FSS family, under any other program administered by HUD, unless the income of the FSS family equals or exceeds 80 percent of the median income of the area (as determined by HUD, with adjustments for smaller and larger families).

§ 984.305 FSS account.

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

(2) Accounting for FSS account funds—(i) Accounting records. The total of the combined FSS account funds will be supported in the PHA accounting records by a subsidiary ledger showing the balance applicable to each FSS family. During the term of the contract of participation, the PHA shall credit periodically, but not less than annually, to each family's FSS account, the amount of the FSS credit determined in accordance with paragraph (b) of this section.

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

(iii) Reduction of amounts due by FSS family. If the FSS family has not paid the family contribution toward rent, or other amounts, if any, due the owner under the assisted lease, as reported by the owner to the PHA, the balance in the family's FSS account shall be reduced by that amount before prorating the interest income. If the FSS family has

fraudulently under-reported income, the amount credited to the FSS account will be based on the income amounts originally reported by the FSS family.

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

(i) The balance at the beginning of the

reporting period;

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

(iii) Any deductions made from the account for amounts due the PHA before

interest is distributed;

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

(v) The total in the account at the end

of the reporting period.

(b) FSS credit—(1) Computation of amount. For purposes of determining the FSS credit, "family rent" for the rental certificate program is the total tenant payment as defined in 24 CFR part 813, and for the rental voucher program, "family rent" is 30 percent of adjusted monthly income. The FSS credit shall be computed as follows:

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

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

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

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

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

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

(c) Disbursement of FSS account funds—(1) General. The amount in an FSS account, in excess of any amount owed to the PHA by the FSS family, shall be paid to the head of the FSS

family when the contract of participation has been completed, as provided in § 984.303(g), and if, at the time of contract completion, the head of FSS family submits to the PHA 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 determines that the FSS family has fulfilled its obligations under the contract of participation before the expiration of the contract term, and the head of the FSS family submits a certification that, to the best of his or her knowledge, no member of the FSS family is a recipient of welfare assistance, the amount in the family's FSS account, in excess of any amount owed to the PHA by the FSS family shall be paid to the head of the

FSS family

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

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

contacting welfare agencies.
(d) Succession to FSS account. If the head of the FSS family ceases to reside with other family members in the assisted unit, the remaining members of the FSS family, after consultation with the PHA, shall have the right to designate another family member to receive the funds in accordance with paragraph (c)(1) or (2) of this section.

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

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

or § 984.303(h); or

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

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

§ 984,306 Section 8 residency and portability requirements.

(a) Relocating FSS family. For purposes of this section, the term relocating FSS family" refers to an FSS family that moves from the jurisdiction of a PHA at least 12 months after signing its contract of participation.

(b) Initial occupancy. A family participating in section 8 FSS program must lease an assisted unit, for a minimum period of 12 months after the effective date of the contract of participation, in the jurisdiction of the PHA which selected the family for the FSS program. Thereafter, the FSS family may move outside the jurisdiction of the initial PHA consistent with the regulations of 24 CFR parts 882 and 887.

(c) Portability: relocation but continued participation in the FSS program of the initial PHA—(1) General. A relocating FSS family may continue in the FSS program of the initial PHA if the family demonstrates to the satisfaction of the initial PHA that, notwithstanding the move, the relocating FSS family will be able to fulfill its responsibilities under the initial or modified contract of participation at its new place of residence. (For example, the FSS family may be able to commute to the supportive services specified in the contract of participation, or the family may move to obtain employment as specified in the contract.)

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

the initial PHA.

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

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

- (e) Single FSS account. Regardless of whether the relocating FSS family remains in the FSS program of the initial 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. When an FSS family will be absorbed by the receiving PHA, the initial PHA will transfer the family's FSS account to the receiving PHA.
- (f) FSS program termination; loss of FSS account; and termination of section 8 assistance. (1) If an FSS family that relocates to another jurisdiction, as provided under this section, is unable to fulfill its obligations under the contract of participation, or any modifications thereto, the PHA, which is party to the contract of participation, may:

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

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

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

Subpart D-Reporting

§ 984.401 Reporting.

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

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

- (b) A description of the effectiveness of the program in assisting families to achieve economic independence and self-sufficiency;
- (c) A description of the effectiveness of the program in coordinating resources of communities to assist families to achieve economic independence and self-sufficiency; and
- (d) Any recommendations by the PHA 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.

Dated: March 12, 1993.

Michael B. Janis,

General Deputy Assistant Secretary for Public and Indian Housing.

IFR Doc. 93-12326 Filed 5-26-93; 8:45 am!

BILLING CODE 4210-33-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Public and Indian Housing

24 CFR Parts 905, 962 and 984 [Docket No. R-94-1633; FR-2961-C-05] RIN 2577-AB15

Family Self-Sufficiency Program; Correction

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

ACTION: Interim rule; correction.

SUMMARY: On May 27, 1993 (58 FR 30858), the Department published in the Federal Register an interim rule that implemented the requirements and procedures that will govern local Family Self-Sufficiency programs beginning or continuing in Federal fiscal year 1993. The Department also published a final rule which adopted the interim rule as the final regulations for the Family Self-Sufficiency Program, and which final rule will be effective on May 27, 1994 (one year from the date of publication in accordance with the program's authorizing legislation). (The interim rule was effective 30 days from the date of publication and solicited public comment.)

The purpose of this document is to correct technical errors contained in the May 27, 1993 interim rule.

EFFECTIVE DATE: June 28, 1993.

FOR FURTHER INFORMATION CONTACT: For section 8 issues: Madeline Hastings, Director, Rental Assistance Division, room 4204. Telephone number (202) 708–2841.

For public housing management issues: Edward Whipple, Director, Occupancy Division, room 4206. Telephone number (202) 708–0744.

For Indian Housing issues: Dominic Nessi, Director, Office of Indian Housing, room 4140. Telephone number (202) 708–1015.

For supportive service issues: Paula Blunt, Supportive Services Coordinator, Office of Resident Initiatives, room 4112. Telephone number (202) 708–4214.

The address for each of these contacts is the Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410. The telephone numbers listed are not toll-free numbers. Hearing-impaired persons may contact these offices via TDD by calling (202) 708–9300 or 1–(800) 877–339.

SUPPLEMENTARY INFORMATION: On May 27, 1993 (58 FR 30858), the Department

published in the Federal Register an interim rule that implemented the requirements and procedures that will govern local Family Self-Sufficiency (FSS) programs beginning or continuing in Federal fiscal year (FY) 1993. The Department also published a final rule which adopted the interim rule as the final regulations for the Family Self-Sufficiency Program, and which final rule will be effective on May 27, 1994 (one year from the date of publication in accordance with the program's authorizing legislation). (The interim rule was effective 30 days from the date of publication and solicited public comment.)

The purpose of this document is to correct editorial errors contained in the May 27, 1993 interim rule. The following provides a summary of the corrections that are being made by this document.

Corrections 1 and 2. Section 106(j) of the Housing and Community Development Act of 1992 (Pub. L. 102-550, approved October 28, 1992) made operation of a local FSS program optional for Indian housing authorities (IHAs) for the Indian housing program. For the Indian housing program, the FSS rule provides that IHAs that elect to operate local FSS programs are not subject to minimum program size requirements as are housing agencies (HAs) other than IHAs. Note that the part 962 regulations, which are the regulations applicable to the public housing FSS program, contain a section concerning minimum program size requirements-24 CFR 962.105 (Minimum program size). (See table of sections at 58 FR 30889.) No comparable section, however, is contained in the Indian housing FSS regulations. (See table of sections at 58 FR 30883).

Two provisions in the Indian housing FSS regulations inadvertently make reference to minimum program size requirements—paragraph (a)(2) in § 905.3020 (Program implementation) and § 905.3021 (Administrative fees). (See 58 FR 30887, first column for both citations.) The last sentence of paragraph (a)(1) of § 905.3020 also uses the phrase "families required to be served" (emphasis added) which indicates that IHAs are subject to minimum program size requirements. Accordingly, the reference to minimum program size requirements in these two sections is incorrect, and is removed by this notice.

In addition, § 905.3021 (Administrative fees) also contains a missing word. This section provides that the performance funding system (PFS) shall provide for the inclusion of "reasonable and administrative costs." The correct phrase should be "reasonable and *eligible* administrative costs."

Corrections 3, 10 and 19. In each of the three FSS rules (the Indian housing FSS rule, the public housing FSS rule, and the section 8 FSS rule), the phrase, "without good cause," should have been inserted where the rule discusses termination of the FSS contract of participation on the basis of the family's failure to comply with the contract terms. Accordingly, this phrase is added to § 905.3022 (b)(5) and (h)(2), § 962.303 (b)(5) and (f)(2), and § 984.303 (b)(5) and (i). (See, respectively, 58 FR 30887 (second column), 30894 (first column), and 30900 (third column)).

In addition to inserting the phrase "without good cause" in § 984.303(b)(5), the word "without" in paragraph (b)(5)(i) of this section should be "withhold." (See 58 FR 30900).

Correction 4. In § 905.3024(b) (Total tenant payment and increases in family income), the second "or" should be "for." (See 58 FR 3088, second column.)

Corrections 5–8. In the definitions of "Action plan," "Certification," "FSS account," "Program Coordinating Committee," and "Self-sufficiency" in § 962.103 (Definitions), the word "subpart" in each definition should be "part." (See 58 FR 30889, third column, and 58 FR 30890, second and third columns.)

Correction 9. In § 962.302
(Administrative fees), the word
"eligible" should be inserted after the
words "reasonable and" in the fourth
line of this paragraph. (See 58 FR

Correction 11. In § 962.305 (FSS account), in paragraph (b)(1)(i), the second "FSS" should be followed by the word "credit." (See 58 FR 30895, first column.)

Correction 12. In § 962.305(c), the heading "Disbursement before expiration of contract term" should be italicized to clarify that this is the heading for this paragraph. (See 58 FR 30895, second column.)

Correction 13. In § 962.305(e), the phrase "unless such use is prohibited by the statute or regulations governing the particular homeownership program" was inadvertently omitted. (See 58 FR 30895, third column.) This phrase is included in the comparable section in the Indian housing FSS regulations. (See § 905.3024(e) at 58 FR 30889, first column.)

Corrections 14–17. In the definitions of "Action plan," "Certification," "FSS account," and "Self-sufficiency" in § 984.103 (Definitions), the word "subpart" in each definition should be "part." (See 58 FR 30896 middle

column, and 58 FR 30897, first and second columns.)

Correction 18. In the definition of "FSS related service program" in § 984.103, the phrase "of this subpart" is unnecessary and should be omitted. (See 58 FR 30897.)

This document will correct the above technical errors.

The Department does not intend to make any substantive amendments to the FSS program rules until the FSS final rule becomes effective on May 27, 1994. The Department has received 34 public comments on the May 27, 1993 FSS interim and final rules. The Department is reviewing these comments and may consider further amendments to the FSS final rule, after the rule becomes effective on May 27, 1994.

Accordingly, FR Doc. 93–12326, an interim rule published in the Federal Register on May 27, 1993 (58 FR 30858), is corrected to read as follows:

1. On pages 30886 and 30887, in § 905.3020, the last sentence of paragraph (a)(1), in the third column on page 30886, and paragraph (a)(2), in the first column on page 30887, are corrected to read as follows:

§ 905.3020 Program Implementation.

(a) * * *

(1) Program start-up. * * * Full delivery of the supportive services to be provided to the total number of families to be served under the program need not occur within 12 months, but must occur by the deadline set forth in paragraph (a)(2) of this section.

(2) Full enrollment and delivery of services. Except as provided in paragraph (a)(3) of this section, the IHA must have completed enrollment of the total number of families to be served under the FSS program, and must have begun delivery of the sur portive services within two years from the date of notification of approval of the application for new Indian housing units.

2. On page 30887, in the first column, § 905.3021 is corrected to read as follows:

§ 905.3021 Administrative fees.

The performance funding system (PFS), provided under section 9(a) of the Act, shall provide for the inclusion of reasonable and eligible administrative costs incurred by IHAs in carrying out local FSS programs. These costs are subject to appropriations by the Congress.

3. On pages 30887 and 30888, in § 905.3022, paragraph (b)(5), on page 30887 in the second column, and

paragraph (h)(2), on page 30888 in the first column, are corrected to read as follows:

§ 905.3022 Contract of participation.

* * * (b) * * *

(5) Consequences of noncompliance with contract. The contract of participation shall specify that if the FSS family fails to comply with the terms and condition of the contract of participation, without good cause, the IHA may:

(h) * * *

(2) The failure of the FSS family to meet its obligations under the contract of participation without good cause;

§ 905.3024 [Corrected]

4. On page 30888, in the second column, in § 905.3024(b), correct the word "or" the second time it appears to read "for."

§ 962.103 [Corrected]

5. On page 30889, in the third column, in § 962.103, in the definition of "Action Plan," correct the word "subpart" to read "part."

6. On page 30890, in the first column, in § 962.103, in the definition of "Certification," correct the word "subpart" to read "part."

7. On page 30890, in the third column, in § 962.103, in the definition of "Program Coordinating Committee," correct the word "subpart" to read "part."

8. On page 30890, in the third column, in § 962.103, in the definition of "Self-sufficiency," correct the word "subpart" to read "part."

§ 962.302 [Corrected]

9. On page 30893, in the third column, in § 962.302, add the word "eligible" after the words "reasonable and" in line 4.

10. On page 30894, in the first and third column, in § 962.303, correct paragraphs (b)(5) introductory text and paragraph (h)(2) to read as follows:

§ 962.303 Contract of participation.

(b) * * *

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

APPENDIX C Page C - 2 (h) * * *

(2) The failure of the FSS family to meet its obligations under the contract of participation without good cause;

§ 962.305 [Correction]

- 11. On page 30895, in the first column, in § 962.305, correct paragraph (b)(1)(i) introductory text by adding the word "credit" between the words "FSS" and "shall."
- 12. On page 30895, in the second column, in § 962.305, correct paragraph (c)(2) by italicizing the heading—"Disbursement before expiration of contract term."
- 13. On page 30895, in the third column, in § 962.305, correct paragraph (e) to read as follows:

§ 962.305 FSS account.

(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.

§ 984.103 [Corrected]

14. On page 30896, in the second column, in § 984.103, in the definition of "Action plan," correct the word "subpart" to read "part."

15. On page 30896, in the second column, in § 984.103, in the definition of "Certification," correct the word "subpart" to read "part."

16. On page 30897, in the first

16. On page 30897, in the first column, in § 984.103, in the definition of "FSS account," correct the word "subpart" to read "part."

17. On page 30897, in the first column, in § 984.103, in the definition of "FSS related service program," remove the phrase "of this subpart."

18. On page 30897, in the second column, in § 984.103, in the definition of "Self-sufficiency," correct the word "subpart" to read "part."

19. On pages 30900 and 30901, in

19. On pages 30900 and 30901, in § 984.303, correct paragraphs (b)(5) introductory text and (b)(5)(i) on page 30900 in the third column, and correct paragraph (i) on page 30901 in the second column, to read as follows:

§ 984.303 Contract of participation.

(b) * * *

(5) Consequences of noncompliance with contract. The contract of participation shall specify that if the

FSS family fails to comply, without good cause, with the terms and conditions of the contract of participation, which includes compliance with the assisted lease, the PHA may:

(i) Withhold the supportive services

(i) Option to terminate section 8 housing and supportive service assistance. The PHA may terminate or withhold section 8 housing assistance, the supportive services, and the FSS family's participation in the FSS program, if the PHA determines, in accordance with the hearing procedure provided in 24 CFR 882.216 and 887.405, that the FSS family has failed to comply without good cause with the requirements of the contract of participation as provided in paragraph (b)(5) of this section.

* * * * * * * Dated: February 7, 1994.

Myra L. Ransick,

Assistant General Counsel for Regulations. [FR Doc. 94-3457 Filed 2-15-94; 8:45 am] BILLING CODE 4216-33-P