

**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 copying 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 voucher 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 one-year 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 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.

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.

Motivational 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 FSS 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 area.

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 termination 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 Guidelines.

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, non-profit 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 (DOT). 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 IHAs.

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 process.

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' needs.

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 Act.

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 "self-sufficiency." 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 self-sufficiency, 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.

If 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 size.

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 rights 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 non-disabled 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 non-disabled 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 program.

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 case-by-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 able 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 ascertain 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 FSS 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 self-sufficient 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.

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.

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 head 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 FSS-related 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 contract.

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 owner.

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 1991 and 1992 incentive 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.

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 housing 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 year.

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 HA).

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 "[n]othing 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 matter.

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 pre-employment 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 five-year 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 remaining 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 statute, 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 accompanying 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.