

November 20, 2020

Regulations Division
Office of General Counsel
U.S. Department of Housing and Urban Development
451 7th St SW, Room 10276
Washington, DC 20410-0500
Submitted electronically through regulations.gov

Re: Comments regarding FR-6114-P-01, Streamlining and Implementation of Economic Growth, Regulatory Relief, and Consumer Protection Act Changes to **Family Self-Sufficiency Program**, Docket ID HUD-2020-0063

The following comments are submitted by the 34 undersigned organizations, all of which are committed to expanding the scope and impact of the Family Self-Sufficiency (FSS) program so that it can support a broader share of families living in federally subsidized housing to build savings and reach their goals. The group of undersigned organizations includes FSS service providers in both public housing authority and multifamily FSS programs, national and regional organizations of public housing authorities and of multifamily owners, individual multifamily owners, and a broad range of other national organizations with an interest in and commitment to the FSS program. Having worked together over the past several years to support the passage of the legislation that has set in motion this rulemaking process, the undersigned organizations are grateful for HUD's thoughtful efforts to draft this rule and for the opportunity to submit the following comments.

Positive Changes HUD Should Keep

There are several important changes to the program that are included in the proposed rule that we strongly support and urge HUD to retain in the final version of the rule.

Allowing Any Adult in the Household to Participate

We are pleased to see the effective implementation of the statutory provision requiring that any adult member of the household be able to execute the Contract of Participation (CoP) (§ 984.303(a)) as well as the provision that the PHA or owner and the FSS family may mutually agree to modify the CoP in regards to the head of the FSS family during the contract term (§ 984.303(f)). These changes will make it easier for more eligible households to participate and persist in the program.

Modification of Welfare Independence Policy

We strongly support HUD's decision to revise the requirement that participating households be independent from welfare assistance for twelve months prior to the expiration of the CoP (§ 984.303(b)(2)). While we have comments on how to further expand upon this change in a later section of this document, we do wish to express here our support for this change. The existing requirement that households be independent from welfare assistance for a specific length of time has no positive effect on a participant's progress and instead serves only as an additional barrier for participants to overcome in order to successfully graduate from the program.

Prohibition of Adding Other Mandatory Goals

We strongly support the proposed change in § 984.303 (b)(2) that prohibits the PHA or owner from modifying or adding additional required activities that must be completed by every participant. One of the fundamental strengths of the FSS program is its flexibility: each participant is able to set and make progress toward the particular goals that matter to them and make sense in their particular situation. If a PHA or owner is able to require other mandatory goals beyond the parameters of the terms and conditions prescribed by HUD, it would serve only to curtail participation and participant success in the program.

Deletion of FMR Provision¹

In response to Question 8, we support the removal of the provision that automatically completes the FSS contract when 30 percent of the family's adjusted monthly incomes equals or exceeds the Fair Market Rent. This change will conform to current rent and eligibility policies under the Housing Choice Voucher program and does not directly impact eligibility for public or multifamily assisted housing.

Allowing Use of non-HUD CoP Forms

We note that § 984.303 (b)(1) has been amended from the current regulations to remove the requirement that a CoP "shall be in the form prescribed by HUD" and interpret this change to mean that PHAs and owners would have the discretion to use a CoP in the form of their choosing. We support this change as it would enable programs to streamline the CoP, revise it to use more plain and straightforward language, support easier execution of the CoP, and make it available in other languages besides English.

¹ § 984.303(g)

Portability Changes

We are pleased that the proposed rule includes several provisions clarifying the FSS responsibilities between PHAs for families that move with continued HCV assistance from the jurisdiction of one PHA to another PHA under portability (§ 984.306). However, we are concerned with the proposed rule's language that requires an FSS family to leave the FSS program if that family ports to a PHA that does not have an FSS program (§ 984.306(c)). If the family and the initial PHA agree that it is feasible for the family to port and remain enrolled in the initial PHA's FSS program, then the family should be allowed to do so, so long as the receiving PHA is billing the initial PHA and the FSS family is not absorbed into the receiving PHA's HCV program. The proposed rule allows families to continue to participate in the initial agency's FSS program if an FSS family ports to a PHA that operates an FSS program, so long as the initial and receiving PHA agree to this arrangement. As such, families porting to PHAs without FSS programs should be afforded this opportunity as well when the initial PHA and family believe it is feasible for the family to remain in the program. We urge HUD to make this change in the final rule.

Additional Details Needed on FSS Funding Formula

We urge HUD to fully implement new subsection 42 U.S.C. 1437u(i), created at Sec. 306(a)(11) of the Economic Growth Act, which provides that "the Secretary shall establish a formula by which annual funds shall be awarded..." by incorporating such a formula in the final FSS rule and addressing how HUD will approach the discretionary authorities provided in this section of the Act. Congress made the establishment of a formula for allocation of renewal funding mandatory, not discretionary as HUD implies in the proposed rule, while leaving HUD some discretion over how to allocate funds (if available) for additional coordinators to new and existing FSS programs. We address issues over which HUD retains discretion. In particular:

1. While the Act provides clear thresholds for "base" and "additional" awards of FSS coordinator funding based on the number of participants enrolled, it also provides that the Secretary's determination of whether an eligible entity meets these thresholds should also incorporate "other criteria determined by the Secretary". We encourage HUD to specify in the final rule the other criteria which may be considered in determining eligibility for base or additional awards, which should include such factors as the planned enrollment level for a new or growing program, or the historic enrollment level for an existing program which may be experiencing a temporary dip in enrollment.

2. The Act gives the Secretary the discretion to determine the policy concerning awards for eligible entities serving fewer than 25 participants (the threshold for a “base award”), and suggests that such a policy could include prorating the award amount or allowing such entities to combine programs. We endorse both of these options for both PHAs and multifamily owners and encourage HUD to provide in the final rule a flexible approach to funding smaller programs, including both of the statute’s suggested flexibilities (pro-ration or combining programs).

3. HUD’s final FSS rule should clarify certain aspects of how the two-tier allocation priorities defined in the statute at subsection (i)(3), “Renewals and Allocation”, will be applied to the annual funding formula. In particular, HUD should clarify that the first priority (subsection (i)(3)(A)(i): “renewal of the full cost of all coordinators in the previous year at each eligible entity with an existing FSS program that meets applicable performance standards set by the Secretary”) encompasses only the renewal of the full costs of the same number of full-time and part-time coordinators as were funded by FSS awards in the prior year, with appropriate adjustments for local staffing costs and for year-to-year cost-of-living increases; and that the second priority (subsection (i)(3)(A)(ii): “New or incremental coordinator funding authorized under this section”) encompasses all other funding requests, whether for new coordinators, incremental increases from part-time to full-time coordinators, or for existing coordinators not previously funded with FSS award funding. Such a clarification furthers the intent of Congress to allow funding to cover coordinators at programs that were not previously funded, for new as well as existing FSS programs, while giving first priority to renewal of prior year grants. In real terms, were Congress to increase FSS funding to \$105 million, as has been approved by the House of Representatives in its FY21 budget bill, only \$80,000,000, which is the amount Congress allocated for FSS funding in FY20, plus incremental increases to account for COLA increases, etc., would be used for this “first priority.” There is no sound reason to assume that Congress had intended to cover the unfunded portion of a service coordinator at the expense of supporting new programs.

4. The final FSS rule should address HUD’s intended approach to determining awards of “new or incremental coordinator funding” under the second priority, which will require a competitive selection process (unlike the allocation of renewal funding). We urge HUD in the final rule to define general principles which will govern the allocation of new or incremental coordinator funding. In particular, we recommend that HUD commit in the rule to implement competitive processes that provide fair and reasonable access to funding for both programs operated by PHAs and programs operated by PBRA owners;

and a reasonable balance between incremental awards for existing programs and new awards for previously unfunded programs.

5. The final rule should address HUD's implementation of new subsection (i)(6), which authorizes the Secretary to reserve up to 5 percent of FSS funding for use as "incentives for innovation and high performance". In the final rule, we encourage HUD to clarify how this authority will interact with the funding priorities provided at subsection (i)(3). We recommend that funding awards under this section be made only to the extent there is funding remaining after renewal needs for programs meeting applicable performance standards ("first priority" awards described at subsection (i)(3)(A)(i)) are fully addressed (see discussion of performance standards elsewhere in these comments); and that the authorized incentives for innovation and high performance be incorporated within a competitive funding process for allocation of funding to "second priority" requests for new or incremental coordinator funding. We note "incentive" funding under this section, unlike all other funding authorized in subsection (i), is not specifically restricted to use for FSS coordinators, but is more flexibly defined as "to provide support or to reward" FSS programs; and we urge HUD to provide in the final rule that it may employ this authority to provide support to innovative or high-performing FSS programs for costs other than coordinator costs, which could include the costs of IT systems, participant incentives, or other costs.

Refine Rule to Confirm Eligibility of Independent PBRA FSS Programs

The extension of FSS eligibility to residents of PBRA-assisted properties, and the extension of eligibility for FSS coordinator funding to independently operated PBRA FSS programs, are important elements of the Act's FSS provisions which should be fully realized in HUD's final FSS rule. We urge HUD to revise certain aspects of the proposed rule to ensure it supports the successful operation of independent PBRA FSS programs. In particular:

Section 887.105(3) of the proposed rule requires that a PBRA FSS program have an Action Plan approved by HUD, as described in § 984.201; but 984.201(b) of the proposed rule appears to provide authority for development of an Action Plan only to PHAs. HUD should revise the proposed rule to clarify that Owners, too, are authorized to develop Action Plans for their PBRA FSS programs.

The proposed rule's definition of a Family Self Sufficiency (FSS) Program, provided in § 984.103, refers to "a program established by a PHA or owner within its jurisdiction". The phrase "within its jurisdiction" is confusing and potentially problematic here, because it

has no applicability to owners, and could be read to indicate that a PBRA owner is somehow within the jurisdiction of the local PHA. We would recommend that the phrase “within its jurisdiction” be deleted from this definition.

Section 984.302(c) of the proposed rule describes how FSS funds may be used: “FSS funds may be used by PHAs or owners for costs associated with families who are enrolled in an FSS program under this part, including through a Cooperative Agreement in accordance with § 984.106.” As currently drafted, this section is somewhat ambiguous, and so we urge HUD to revise this section so that it explicitly conveys PBRA owners’ eligibility to access FSS funds for independently operated FSS programs, consistent with the language and intent of the statute. HUD could achieve that clarification either by deleting the phrase “including through a Cooperative Agreement in accordance with § 984.106”; or by adding at the end of the section a new phrase “or through an independently operated PHA or PBRA FSS program.”

Additional Recommendations

Performance Standards

HUD proposes to amend § 984.102 to state that “the department will evaluate the performance of a local FSS program using a scoring system that measures criteria such as graduation from the program, increased earned income and program participation, as provided by HUD through a Federal Register notice.” HUD does not state if the public will have the opportunity to comment on the performance criteria or whether performance will be connected to funding, despite statutory language that conditions renewal of coordinator awards funded in the previous year and awards for additional coordinators on meeting “performance standards set by the Secretary.”² HUD should ensure that any performance standards and any future changes to those standards are subject to public comment before they become effective.

Recertification Requirements

The proposed rule amends § 984.305(b) to allow a PHA or owner to set a policy to either conduct a new income recertification or to use the family’s last income reexamination when determining the family’s baseline annual earned income for calculating escrow, without regard to what a family may prefer. HUD should include language requiring PHAs or owners to conduct a re-examination if the family requests it based on a loss of income since the last

² 42 U.S.C. § 1437u(i)(2) (as inserted by Pub. L. No. 115-174, § 306)

reexamination, and should make clear that a new or recent interim rent adjustment may be relied on to determine baseline earned income.

Cash Welfare

As stated above, we support the change in § 984.303(b)(2) that participating households be independent from welfare assistance prior to the expiration of the CoP only at the time of graduation. In response to question 5, we oppose PHAs or owners being allowed the discretion to set a specified time period during which households must be independent from cash welfare. Households may need to receive cash welfare assistance for a number of reasons, and rules that require independence from cash welfare for any specified period before graduation serve only to delay or jeopardize graduation unnecessarily. It also creates an added administrative burden for participants and for the PHA or owner to demonstrate and verify that the requirement has been met.

We would, however, strongly recommend changing this rule so that it applies only to the head of the FSS family rather than the entire household, for two reasons. First, the requirement that the entire household be independent from cash welfare creates an unnecessary barrier to graduation that does not take into account the reality of how households function, including the importance of extended family networks, or the realities that might affect why a household member is receiving cash welfare. Take, for example, an FSS participant in Massachusetts who was about to graduate from the program and had met all requirements for graduation. She had built considerable savings in her escrow account and was on track to achieving her goals. The participant's daughter, who was receiving cash welfare, had recently given birth and needed to move in with the participant, her mother, for additional support. The participant was forced to choose between providing safe, reliable housing for her daughter and newborn grandchild, or graduating from the FSS program, because her daughter was receiving cash welfare.

Second, in keeping with the change to allow any adult member of the household to be the head of the FSS family and sign the CoP, in § 984.303(a), it is important to note that the head of the FSS family, if they are not the Head of Household, may not have decision-making power over who gets on the lease and lives in the household, including those who may be receiving cash welfare. Requiring all members of the household to be independent of cash welfare would mean that the head of the FSS family's ability to graduate would be subject to household circumstances that are likely beyond their control.

Forfeited Escrow³

Regarding question 14, HUD should modify the proposed definition of “FSS family in good standing,” which would exclude families “in current eviction proceedings” from benefiting from forfeited escrow funds. The phrase is not defined and is inherently unclear. It could unfairly exclude families who will be able to resolve their cases by raising adequate defenses or negotiate a settlement or are facing eviction without cause. In any of these cases, a family’s good standing in the FSS program would not be affected. In addition, it would be unduly burdensome to PHAs and owners to have to determine whether pending eviction proceedings are likely to affect a family’s standing in the FSS program. HUD should eliminate “current eviction proceedings” in the “FSS family in good standing” definition.

In §984.305(f) of the proposed rule, HUD gives itself authority to include or exclude other specific uses for forfeited escrow funds. The final rule should clarify if such changes would be done on a case by case basis or through generally applicable public guidance. HUD should include as safe harbor allowances: educational programs and workshops for participants, and down payment assistance for families who graduate and choose to exit subsidized housing.

Interim Disbursements

Interim disbursements from the FSS escrow account can be a powerful tool for participants to make progress toward their goals in the program. In times of economic hardship - such as the loss in income that many FSS participants have experienced during the COVID-19 pandemic - interim disbursements can also help participants to avoid losing the progress they have made toward their goals. As such, we strongly encourage HUD to provide additional guidance and technical assistance on the importance of interim disbursements as a tool to support families in making progress in the program. Additionally, we strongly urge HUD to require that participants be entitled to a formal grievance process if their request for an interim disbursement is denied, using the procedures the PHA or owner typically uses for resident appeals.

Option to Pause Participation

FSS Practitioners signed onto these comments have heard feedback from FSS participants that it would be helpful to have the option to “pause” their participation in the FSS program, citing reasons that are similar to why a participant might request an extension of their participation. Participants can encounter challenging situations, such as a health or family crisis, during their time in the program that can make it difficult to actively participate in the program. Under current rules, these types of challenges contribute to increased terminations. Qualitative

³ § 984.305(f)

research has found that participants who encounter challenges like these while in the program may conclude that they must withdraw from the program, or have their participation terminated for failing to meet requirements for appointment attendance, etc. Additionally, these challenges reduce the period of time in which a participant can build escrow while enrolled in the program, in ways that the flexibility to extend participation under current rules may not remedy. Being able to “pause” participation - meaning that expectations for participating in services and accumulation of escrow would be suspended, and that the contract end date would be extended by the same period of time that the participant pauses their participation - would help to strengthen program participation and graduation rates, and support participants to maximize their escrow accumulation.

Concerns with Revised Definitions⁴

Definition of Eligible Families

The definition of “eligible families” limits the Section 8 portion of eligibility to families participating in the program under section 8(o). A HUD Q&A clarifies that families receiving rental assistance through the Family Unification Program, other special purpose vouchers or Tenant Protection Vouchers would still be eligible to participate in FSS;⁵ however, the preamble explicitly states that the proposed definition excludes families using voucher assistance for homeownership, an unnecessary exclusion not required by statute. Families utilizing the HCV homeownership program still pay income-based rent and could benefit from the additional savings available through the FSS program. HUD does not explain why it prevents individuals using vouchers for homeownership from participating in FSS and should reconsider this exclusion. HUD should replace “section 8(o)” in the proposed definition with “Housing Choice Voucher program participants, including families with project-based vouchers and homeownership vouchers.” HUD would then also need to eliminate the proposed definition of “Section 8(o)” and make parallel changes in the definition of “FSS family” and elsewhere in the new regulations.

Definition of FSS Program

HUD should consider several changes to the definition of FSS program to provide greater clarity and ensure participants are fully able to access all available services. Because owners do not have a “jurisdiction” limiting their service area, and the term could raise unnecessary questions

⁴ § 984.103

⁵ https://www.hud.gov/sites/dfiles/PIH/documents/QA_on_FSS_Proposed%20Rule_-clean.pdf

regarding serving families using vouchers to move under portability who continue to participate in the initial PHA's FSS program , HUD should remove the words "within its jurisdiction."

The proposed rule also changes the word "provision" of supportive services to "coordination" in response to a similar adjustment in the statutory language. The preamble explains this change to mean that PHAs and owners "must only coordinate the availability of supportive services but not directly deliver" any services to families. However, if a PHA or owner directly provides a service, such a child care center or health clinic, FSS participants should still be able to benefit. Other definitions for "supportive services" and "individual training and services plan" do not repeat this potentially problematic language. The change in statutory language was made to provide greater clarity that a PHA or owner's only *obligation* is to coordinate services, and HUD's regulations should reflect that intent.

Respectfully submitted,

American Association of Service Coordinators

The Caleb Group

Center on Budget and Policy Priorities

Codman Square Neighborhood Development Corporation

Compass Working Capital

Council of Large Public Housing Authorities

Reid Cramer, Ph.D., Senior Fellow, New America

Dorchester Bay Economic Development Corporation

Enterprise Community Partners

Housing Assistance Council

Housing Partnership Network

Local Initiatives Support Corporation

Low Income Investment Fund

Madison Park Development Corporation

Massachusetts Association of Community Development Corporations

National Affordable Housing Management Association

National Association of Housing and Redevelopment Officials

National Association of Local Housing Finance Agencies

National Housing & Rehabilitation Association

National Housing Conference

National Housing Trust

National Low Income Housing Coalition

National Leased Housing Association
National NeighborWorks® Association
New York State Homes and Community Renewal
Ohio Capital Corporation for Housing
Omni Development Corporation
Piedmont Housing Alliance
Public Housing Authorities Directors Association
Preservation of Affordable Housing
Stewards of Affordable Housing for the Future
Urban Edge
Wingate Companies
WinnCompanies