

delegated to the Director, Bureau of Prisons in 28 CFR 0.96(q), 28 CFR Chapter V is amended as set forth below:

In Subchapter C, Part 544, Subpart H is revised.

Dated: May 11, 1982.

Norman A. Carlson,  
Director, Bureau of Prisons.

In Part 544, revise Subpart H to read as follows:

#### PART 544—EDUCATION

##### Subpart H—Adult Basic Education (ABE) Program

Sec.

544.70 Purpose and scope.

544.71 Applicability.

544.72 Procedures.

544.73 Federal Prison Industries (UNICOR) and Inmate Performance Pay (IPP) assignments.

544.74 Incentives.

544.75 Disciplinary action.

##### Subpart H—Adult Basic Education (ABE) Program

Authority: 5 U.S.C. 301; 18 U.S.C. 4001, 4042, 4081, 4082, 5006-5024, 5039; 28 U.S.C. 509, 510; 28 CFR 0.95-0.99.

##### § 544.70 Purpose and scope.

The Bureau of Prisons requires that an inmate confined in a federal institution who cannot read, write, or do mathematics at the 6.0 academic grade level be required to attend an adult basic education program (ABE) for a minimum of 90 calendar days. The Warden shall establish incentives to encourage an inmate to complete the ABE program.

##### § 544.71 Applicability.

(a) The provisions of this subpart on the adult basic education program apply to all inmates in federal institutions except:

- (1) Pre-trial inmates;
- (2) Inmates committed for purpose of study and observation under the provisions of 18 U.S.C. 4205(c);
- (3) Sentenced aliens with a deportation detainer;
- (4) Inmates already in UNICOR or Inmate Performance Pay (IPP) assignments in pay grades 1, 2, and 3 at the time of implementation of this rule who do not presently function at the 6.0 academic grade level;
- (5) Other inmates who, for good cause, the Warden may determine are exempt from the provisions of this rule.

(b) Staff shall document in the inmate's education file the specific reasons for not requiring the inmate to participate in the ABE program.

(c) Inmates who function below the 6.0 academic grade level and for whom treatment is mandated by statute (for example, Youth Corrections Act) shall be required to participate in the adult basic education program, as educational involvement is considered within the general scope of treatment.

##### § 544.72 Procedures.

(a) The Warden at each federal institution shall ensure that an inmate who is functioning below a 6.0 academic grade level in reading, writing, and mathematics is enrolled in the ABE program.

(b) The Warden or designee shall assign to an education staff member the responsibility to coordinate the institution's ABE program. The ABE coordinator shall meet initially with the inmate for the purpose of enrolling the inmate in the ABE program. Subsequently, the ABE coordinator shall interview each inmate involved in the ABE program at least once every 30 days to review and record the inmate's progress in this program. The ABE coordinator shall place documentation

of this interview in the inmate's education file.

(c) At the end of 90 calendar days, excluding sick time, furloughs, or other authorized absences from scheduled classes, the inmate's unit team shall meet with the inmate in respect to the inmate's continued involvement in the ABE program towards attainment of the 6.0 academic grade level. At this time, the inmate may elect not to continue in the ABE program, without disciplinary action occurring.

##### § 544.73 Federal Prison Industries (UNICOR) and Inmate Performance Pay (IPP) Assignments.

Inmates who wish to secure a UNICOR or IPP work assignment above the fourth grade of compensation must be able to demonstrate achievement of at least a 6.0 academic grade level. An inmate may be assigned to the fourth grade of compensation in the UNICOR or IPP WORK assignment contingent on the inmate's enrollment, and satisfactory participation, in the ABE program. Failure of an inmate to make adequate progress in the ABE program may be considered basis for removal of the inmate from the UNICOR or IPP assignment.

##### § 544.74 Incentives.

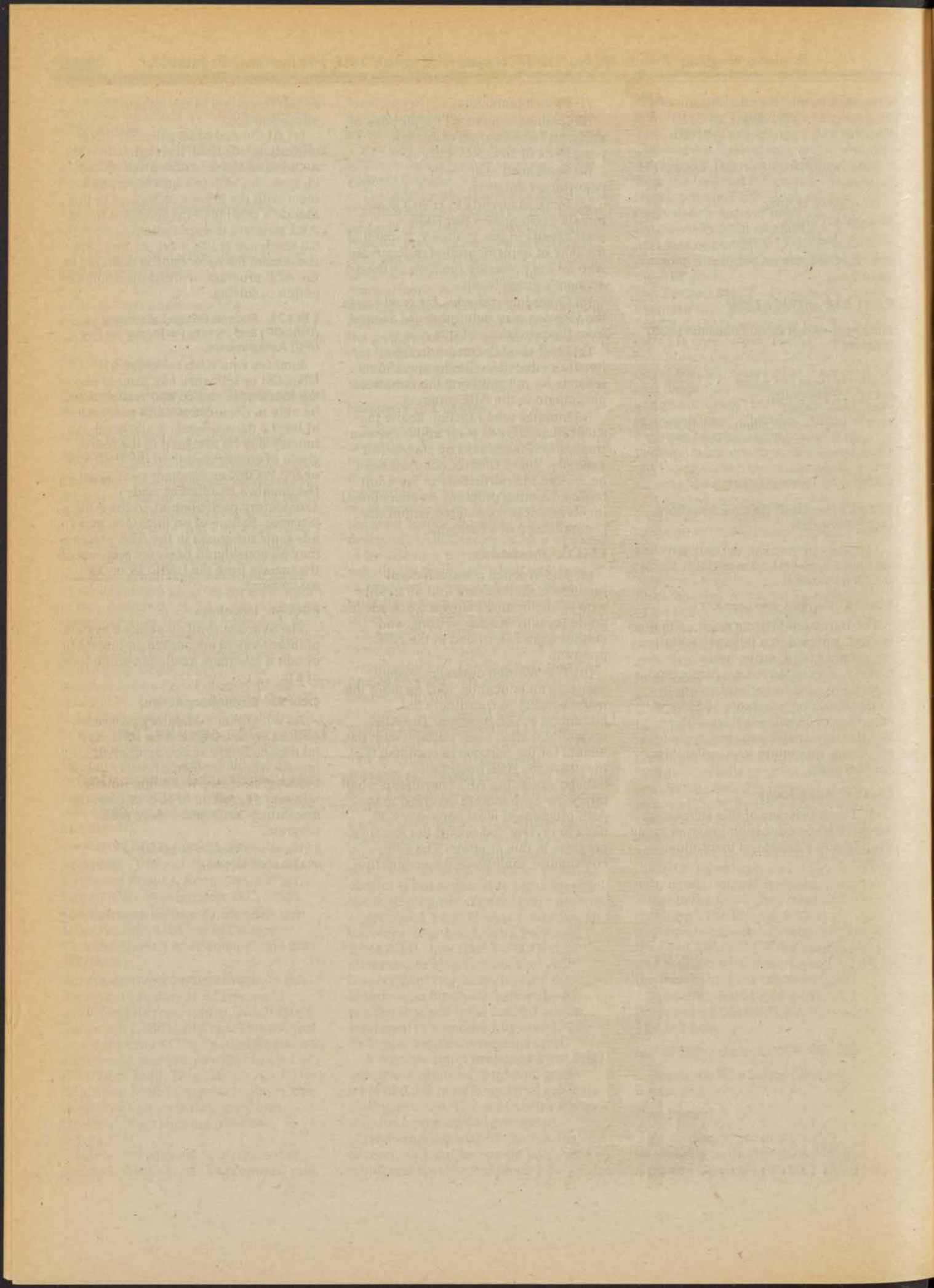
The Warden shall establish a system of incentives to encourage an inmate to obtain a minimum academic grade level of 6.0.

##### § 544.75 Disciplinary Action.

As with other mandatory programs, such as work assignments, staff may take disciplinary action against an inmate whose academic level is below the 6.0 grade level when that inmate refuses to enroll in, or to complete, the mandatory 90 calendar days ABE program.

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## Part IV

### Environmental Protection Agency

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Real Property Acquisition and Relocation  
Assistance; Proposed Rule

**ENVIRONMENTAL PROTECTION  
AGENCY**
**40 CFR Part 4**
**[OA-FRL-2054-1]**
**Real Property Acquisition and  
Relocation Assistance**
**AGENCY:** Environmental Protection Agency.

**ACTION:** Proposed rule with request for comments.

**SUMMARY:** This document proposes changes to EPA's regulation implementing the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (the Uniform Relocation Act). The proposed regulation assists regulation users, primarily State and local governments, by making the regulation clearer and by eliminating unnecessarily burdensome requirements. The changes, including a complete reorganization of the regulation, are designed to simplify the implementation of the Uniform Relocation Act, as well as reduce the cost of administration.

**DATE:** Comments must be received on or before July 6, 1982.

**ADDRESSES:** Comments should be addressed to: Central Docket Section (A-130), Attention: Docket No. G-80-2, Environmental Protection Agency, Washington, D.C. 20460. The public may inspect the comments received on the proposed rules at: Central Docket Section, Gallery 1 West Tower Lobby, Environmental Protection Agency, 401 M Street, SW., Washington, D.C. between 8 a.m. and 4 p.m., business days.

**FOR FURTHER INFORMATION CONTACT:** Marshall Schy, Grants Administration Division (PM-216), Environmental Protection Agency, Washington, D.C. 20460 [202] 755-2830.

**SUPPLEMENTARY INFORMATION:** In keeping with the President's mandate to reduce the burden of government regulation and to promote more efficient governmental operations, EPA is proposing changes in its regulation implementing the Uniform Relocation Act. The proposed regulation reflects EPA's experience with the Uniform Relocation Act and includes provisions based on comments received from State and local governments who have conducted programs under the Act's requirements. Some of these comments were in response to an Advance Notice of Proposed Rulemaking which EPA published in the *Federal Register* on September 15, 1980; others were conveyed to EPA by various EPA program participants.

In March of 1974 EPA published regulations at 40 CFR Part 4 implementing the Uniform Relocation Act. Those regulations were based on government-wide guidelines for implementing the Act, which have been found either in OMB Circular A-103 or GSA's Federal Management Circular (FMC) 74-8. Currently, those government-wide requirements are located at 41 CFR 101-6.1. These revisions are the first changes EPA has made to Part 4 since its 1974 publication.

The proposed regulation conforms to the current government-wide guidelines with one exception. EPA's regulation does not allow the use of schedules of replacement housing prices in computing replacement housing payments (see §§ 4.710 and 4.720 in the proposed regulation), while the guidelines permit the use of schedules. EPA believes that such schedules should not be used in its programs because:

- The development of schedules of replacement housing is a lengthy process. Given rapidly changing housing prices, schedules tend to be outdated by the time they are completed or soon thereafter.

- Since most EPA-assisted displacement is a one-time occurrence for the affected community, a schedule will have limited applicability. It is easier and more economical for the displacing agency to establish replacement housing prices by making comparisons with comparable housing units as needed.

EPA is making these changes for several reasons. First, as indicated, Executive Order 12291 mandates reductions in the burden of government regulation and the promotion of more efficient government operations. The proposed regulation includes no reporting requirements, prescribes no special forms for regulation users, and eliminates a detailed appendix listing recordkeeping requirements. It is considerably shorter than its predecessor and is organized in a more logical fashion for EPA program participants. These improvements, as well as others (such as changes in the treatment of multiple occupancy situations) will result in cost savings for EPA and State and local governments while maintaining the Act's protections for real property owners and displaced persons.

Secondly, legal decisions since the regulation's 1974 publication need to be integrated into its provisions. For example, our treatment of easements (§ 4.300) and appraisals (§ 4.302) was affected by a May 23, 1979 decision of the Comptroller General of the United States (#B-192863). Similarly, various

court decisions had an impact on the proposed regulation's requirements concerning advance acquisition of land (§ 4.300) and the scope of the Act's coverage (§ 4.300).

Since the proposed regulation is much less detailed than the existing one, State and local agencies, rather than EPA, increasingly will determine procedures for implementing its requirements. EPA currently provides guidance for regulation users in Parts 12 and 15 of the Grants Administration Manual and will issue changes to the Manual appropriate to the proposed regulation following its final adoption. However, the provisions of the Manual are discretionary; other procedures which accomplish the same purposes are acceptable.

EPA believes that revision of its Uniform Act regulations is necessary to implement Executive Order 12291 and to incorporate legal decisions subsequent to the regulations' publication. However, EPA fully supports and intends to participate in the process now underway under OMB leadership of updating the Uniform Act itself and of creating implementing regulations which reduce the duplication inherent in separate Uniform Act regulations for each Federal agency.

**Description of Major Changes**
*Reorganization*

EPA has reorganized the regulation. The new structure is more keeping with the way EPA and its assistance recipients use the regulation. A new general administrative requirements section, located near the beginning of the regulation, consolidates all basic administrative requirements such as State agency assurances of compliance, recordkeeping, and cost sharing. In addition, the proposed regulation reverses the existing order of material concerning the subject areas of relocation and acquisition. Acquisition material now will precede relocation for two reasons. First, acquisition, or at least the imminent prospect of acquisition, almost always precedes relocation in the sequence of project activities. Second, in EPA or EPA-assisted projects, acquiring real property interests is a far more frequent and costly occurrence than relocating occupants and, thus, has a correspondingly greater impact on EPA activities.

We reorganized the relocation requirements to make them easier for EPA and State and local governments to use and to help persons displaced by projects better understand the benefits available to them and the requirements which accompany those benefits. To

accomplish these purposes, we established a basic relocation requirements section at the beginning of the relocation material in Subpart C and grouped requirements for moving expense payments according to the type of person displaced rather than by the method of computing payments.

Following is a table which cross-references the section numbers of the current regulation with those of the proposed 40 CFR Part 4.

Current section and title	Proposed section
4.100 Purpose and policy.....	4.100
4.101 Applicability.....	4.101
4.102 Definitions.....	4.103
4.103 Displaced person; qualifications.....	4.102, 4.300
4.104 Appeals.....	4.470
4.105 Records.....	4.203
4.106 Application for benefits.....	4.440
4.107 Payment not to be considered income.....	4.450
4.200 Moving and related expenses: general.....	4.600
4.201 Payment of actual moving and related expenses.....	4.611, 4.621 4.622, 4.623
4.205 Payment of fixed moving expense allowance.....	4.612, 4.623
4.206 Computing average annual net income; businesses and farm operations.....	Deleted
4.210 Application for payment.....	4.440
4.301 Determinations or assurances required before displacement.....	4.201
4.302 Replacement housing unavailable.....	4.420
4.303 Decent, safe, and sanitary housing requirements.....	4.740
4.310 Replacement housing payment for homeowners.....	4.710
4.311 Computation of payment—180-day owners.....	4.710
4.320 Replacement housing payments for tenants and certain others.....	4.720
4.321 Computation of rental replacement housing payments.....	4.720, 4.721
4.322 Computation of replacement housing down payment—tenants and 90-day owners.....	4.722
4.330 Determination of cost of replacement dwelling.....	4.710, 4.721
4.331 Rules for considering land values.....	Deleted
4.332 Partial use of home for business or a farm operation.....	Deleted
4.333 Multiple occupants of a single dwelling.....	4.613, 4.730
4.334 Multifamily dwelling.....	Deleted
4.335 Application and payment.....	Deleted
4.336 Certificate of eligibility pending purchase of replacement dwelling.....	Deleted
4.337 Inspection of replacement dwelling required.....	4.700
4.400 Requirements for relocation assistance advisory programs.....	4.500, 4.510, 4.520
4.401 Extension of service.....	4.500
4.402 Displaced person declining to accept relocation services.....	Deleted
4.403 Information for displaced persons.....	4.410
4.404 Public information.....	4.201
4.405 Coordination of relocation activities.....	Deleted
4.406 Contracting for relocation services.....	4.202
4.500 State agency assurances.....	4.201
4.501 Monitoring.....	4.204
4.502 EPA share of costs.....	4.205
4.503 Use of EPA financial assistance.....	4.206
4.600 Applicability.....	4.300
4.601 Acquisition.....	4.301
4.602 Statement of just compensation.....	4.302
4.603 Equal interest in improvements to be acquired.....	4.301
4.604 Notice to occupants.....	4.510
4.605 Acquisition of improvements.....	4.304
4.606 Transfer of title expenses.....	4.305
4.607 Litigation expenses.....	4.306
4.608 Real property provided by State agency for EPA project.....	Deleted
Appendix A Records.....	Deleted

Current section and title	Proposed section
Appendix B Directory: Regional and Area Offices, Department of Housing and Urban Development.....	Deleted

### Simplification

EPA has simplified the regulation by eliminating unnecessary or duplicative provisions and by consolidating requirements which apply to more than one portion of the regulation. For example, EPA has eliminated Appendices A and B. Appendix A contained detailed recordkeeping requirements for State agencies. In the future, EPA will expect State and local governments implementing the Uniform Relocation Act to keep appropriate records based on the requirements of 40 CFR Part 30. Appendix B contained a list of addresses of Department of Housing and Urban Development offices. This list was necessary so that EPA and State agencies could contact those offices for information and coordination purposes. The proposed regulation eliminates the provisions which created the need for this list. Other provisions of the existing regulation which the Uniform Relocation Act does not mandate and which EPA has eliminated include recommendations for using central relocation agencies, a series of duplicative requirements concerning State or local agency third party contracts to carry out relocation responsibilities, and a list of nonallowable moving expenses and losses.

Provisions which EPA has consolidated include a long set of qualifications for displaced persons, detailed instructions for computing average annual net income for businesses and farms, and a number of scattered requirements relating to computing replacement housing payments.

### Regulation Development Process

Under Executive Order 12291, EPA is required to judge whether a regulation is "major" and, therefore, subject to the regulatory impact analysis requirements of the Order or whether it may follow other development procedures. We are proposing these changes to reduce the burden of regulation and to improve the efficiency of government operations. The changes will not have a substantial impact on the economy. Therefore, I have determined that this is not a major regulation and that it is not subject to the impact analysis requirements of Executive Order 12291. In addition, I have determined that:

- The publication of this regulation is not a major federal action significantly affecting the quality of the human environment; and

- The EPA programs to which the proposed regulation will apply and for which assistance recipients must comply with OMB Circular A-95 are those listed in 40 CFR Part 30, Appendix A.

EPA submitted this regulation to the Office of Management and Budget for review as required by Executive Order 12291.

### List of Subjects in 40 CFR Part 4

Relocation assistance, Real property acquisition.

Dated: May 14, 1982.

John E. Daniel,

Acting Administrator.

We are proposing to revise 40 CFR Part 4 to read as follows:

### PART 4—REGULATIONS FOR REAL PROPERTY ACQUISITION AND RELOCATION ASSISTANCE

#### Table of Sections

##### Subpart A—General

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4.101	Applicability.
4.102	Summary of this part.
4.103	Definitions.
4.200	General administrative requirements.
4.201	State agency assurances.
4.202	Contract services.
4.203	Records.
4.204	EPA review.
4.205	EPA share of costs.
4.206	Use of EPA financial assistance.

##### Subpart B—Acquisition

4.300	Applicability of acquisition requirements.
4.301	Basic acquisition policies.
4.302	Determination of just compensation.
4.303	Acquisition procedures.
4.304	Tenant interests.
4.305	Expenses incidental to acquisition.
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##### Subpart C—Relocation

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4.610	Residential payments.

- 4.611 Actual cost method for residential payments.  
 4.612 Formula method for residential payments.  
 4.613 Multiple occupancy and moving expense payment.  
 4.620 Non-residential payments.  
 4.621 Actual cost method for non-residential payments.  
 4.622 Search costs.  
 4.623 Formal method for non-residential payments.  
 4.630 Self-moves.  
 4.700 Replacement housing.  
 4.710 Replacement housing payment for homeowners.  
 4.720 Replacement housing payment for tenants and 90-day homeowners.  
 4.721 Rental assistance payment.  
 4.722 Downpayment assistance.  
 4.730 Multiple occupancy and replacement housing payments.  
 4.740 Standards for comparable housing.

Authority: Section 213 of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, Pub. L. 91-646 (84 Stat. 1894)

### Subpart A—General

#### § 4.100 Purpose and policy.

(a) This part implements the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (the Act). The Act provides for the uniform and fair treatment of persons displaced from their homes, businesses, or farms by federal and federally-assisted projects and establishes uniform and fair acquisition policies for federal and federally-assisted programs.

(b) In implementing the Act, the Environmental Protection Agency's (EPA) policy is to deal consistently and fairly with all persons whose property is taken or who are displaced from their homes, businesses, or farms by EPA or EPA-assisted projects.

#### § 4.101 Applicability.

This part applies to EPA projects and to EPA-assisted projects which cause the acquisition of real property or the displacement of persons because of acquisition after January 1, 1971.

#### § 4.102 Summary of this part.

The Act provides benefits and protections to persons affected by federal projects or federally-assisted projects carried out by State agencies; Part 4 implements the Act. Subpart A defines key terms and sets forth general administrative provisions. Subpart B contains requirements and procedures concerning the acquisition of real property. Subpart C contains requirements and procedures relating to displacement caused by acquisition. Subpart C describes eligibility requirements for relocation payments, how to compute those payments,

requirements for helping displaced persons to relocate, and standards for relocation housing.

#### § 4.103 Definitions.

Key terms used in this part are defined as follows:

*Ability to pay.* The largest amount a displaced person can afford to pay for housing. This amount includes various housing costs such as rent, mortgage payment, utilities, insurance, property taxes, and other reasonable, recurring housing expenses. For the purposes of this Part, the upper limit is 25 percent of gross income.

*Acquiring agency.* The governmental agency causing acquisition, either EPA or a State agency receiving EPA financial assistance.

*Acquisition.* Acquisition by EPA or a State agency of any interest in real property for a project undertaken by EPA or with EPA financial assistance.

*The Act.* The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, Pub. L. 91-646 (84 Stat. 1894) approved January 2, 1971.

*Average annual net income.* Average annual net earnings before taxes during the two years immediately before displacement, or, in the displacing agency's judgment, during a more representative period.

*Business.* A lawful activity, other than a farm operation, conducted solely or primarily:

- (a) For the purchase, sale, lease, or rental of personal and real property, or the manufacture, processing or marketing of products, commodities, or other personal property;
- (b) For the sale of services to the public;
- (c) By a nonprofit organization; or
- (d) By the erection and maintenance of an outdoor advertising display or displays, except that these businesses may receive benefits only under § 4.621.

*Displaced person.* (a) A person in occupancy on or before the date of receipt of notice of intent to acquire, initiation of negotiations, or acquisition who moves from real property or moves his personal property from real property because of:

- (1) The acquisition of this property; or
- (2) The written order of the acquiring agency to vacate this property for a project undertaken by EPA or with EPA financial assistance; or
- (3) The acquisition of other real property or the written order of the acquiring agency to vacate other real property on which such person conducts a business or farm operation, except that these persons may receive benefits only under §§ 4.500 and 4.621.

(b) A business which discontinues operations because of acquisition.

*Displacing agency.* The governmental agency causing displacement, either EPA or a State agency receiving EPA financial assistance.

*Dwelling.* Any residential unit that serves as a person's primary place of habitation. Dwellings include houses, apartments, condominiums, cooperatives, rooming units, mobile homes, and any other residential units.

*Economic rent.* The amount of rent, including utilities and other recurring housing costs, a displaced homeowner or tenant would have to pay for a comparable dwelling in an area similar to the neighborhood in which the acquired dwelling is located.

*Effective moving date.* The date of a displaced person's move or, for a displaced owner, the date on which he received the last payment of the acquisition price, if later than his move date.

*Family.* Two or more individuals living together as a household, either by mutual consent or related by blood, marriage, adoption, or legal guardianship.

*Farm operation.* Any activity conducted solely or primarily to produce agricultural products or commodities (including timber) for sale or home use, provided that this production customarily contributes significantly to the operator's support.

*Gross income.* The combined annual income from all sources of all members of a household. For families, the first \$1,000 of income earned by each family member (other than heads of households or their spouses) who is less than 19 years of age or who is less than 22 years of age and a full-time student, is not included in gross income.

*Initiation of negotiations.* The date on which the seller receives the acquiring agency's first written offer to purchase his property at a specified price.

*Mortgage.* A lien commonly given to secure an advance on, or the unpaid purchase price of, real property under the laws of the State in which real property is located, together with any credit instruments the lien secures.

*Notice of intent to acquire.* A written notice from the acquiring agency stating its intent to acquire specified real property for an EPA-assisted project.

*Owner.* Any person who holds any of the following interests in real property:

- (a) Fee title, life estate or a 99-year lease;
- (b) An interest in a housing cooperative which includes the right to occupy a dwelling unit;

(c) A contract to purchase any of the above interests or estates; or

(d) Any other interest which in the judgment of the State agency or EPA warrants consideration as ownership.

*Person.* Any individual, family, partnership, corporation, or association.

*State agency.* (a) Any department, agency or instrumentality of:

(1) A State or a political subdivision of a State; or

(2) Two or more States or two or more political subdivisions of a State or States.

(b) The National Capital Housing Authority and the District of Columbia Redevelopment Land Agency.

*Tenant.* A person who rents, leases, or otherwise temporarily possesses an interest in real property owned by another.

#### § 4.200 General administrative requirements.

The requirements in §§ 4.201 through 4.206 apply to the administration of the Act by EPA and by State agencies or their agents.

#### § 4.201 State agency assurances.

EPA may not execute any instrument providing federal financial assistance to a State agency without written assurances from the assistance recipient that:

(a) For projects resulting in the acquisition of real property:

(1) It will fully comply with the requirements of Subpart B of this Part; and

(2) It will adequately inform the public of the acquisition policies, requirements, and payments which will apply to the project.

(b) For projects resulting in the displacement of any person:

(1) It will adequately inform the public of the relocation payments and services which will be available as set forth in Subparts B and C of this Part;

(2) It will provide fair and reasonable relocation payments to displaced persons as required by Subpart C of this Part;

(3) It will provide a relocation assistance program for displaced persons offering services described in Subpart C of this Part; and

(4) It will assure that comparable replacement dwellings (as described in § 4.740) will be available to a displaced person for a reasonable period before that person is displaced.

#### § 4.202 Contract services.

In order to provide more efficient and effective relocation services, a displacing agency may enter into a written contract for such services with

another public agency or with a private contractor. The contractor must have an established capability to provide relocation services as required by the Act. The displacing agency remains responsible for insuring that relocation activities meet the requirements of the Act and EPA regulations if it uses a contractor.

#### § 4.203 Records.

Each displacing agency must maintain records which demonstrate that it conforms with the Act's requirements relating to real property acquisition, relocation assistance, and relocation payments.

#### § 4.204 EPA review.

EPA will review performance under this Part in order to insure that the State agency conforms with the assurances it provided.

#### § 4.205 EPA share of costs.

The percentage of allowable relocation and acquisition costs which EPA will pay for EPA-assisted projects is the same as the EPA share for the project as a whole. EPA may advance funds to State agencies for acquisition or relocation payments if the advance is necessary for expeditious completion of the project.

#### § 4.206 Use of EPA financial assistance.

EPA financial assistance may not be used for a payment under this Part if the displaced persons receives a separate payment from any Federal, State or local agency with substantially the same purpose and effect.

### Subpart B—Acquisition

#### § 4.300 Applicability of acquisition requirements.

The requirements in §§ 4.301 through 4.303 apply to all acquisitions of real property by EPA or by State agencies for projects undertaken by EPA or with EPA financial assistance. These requirements apply to the acquisition of easements and to acquisition made in anticipation of EPA financial assistance. These requirements apply if the real property interest is acquired using EPA funds alone, State agency funds alone, or a combination of EPA and State agency funds.

#### § 4.301 Basic acquisition policies.

In acquiring real property, the acquiring agency must:

(a) Make every reasonable effort to acquire real property promptly through negotiation;

(b) Avoid any actions to compel an owner to agree to a price for his property. Such actions include

advancing the time of condemnation or deferring negotiations, condemnation, or the deposit of funds with a court;

(c) Institute formal condemnation proceedings, if the power of eminent domain is to be used, and not intentionally make it necessary for an owner to institute legal action to prove that his property is being taken;

(d) Offer to acquire the entire property if acquiring only a portion would leave an uneconomic remnant (i.e., a property with little or no utility);

(e) Charge rent not to exceed that paid in the local market for comparable real property, if the displacing agency rents acquired real property to the former owner or tenant. In the case of a former residential tenant, rent may not exceed his ability to pay;

(f) Schedule project activities so that all persons required to move from real property because of the project will have at least 90 days written notice of the date by which they must move;

(g) Acquire at least an equal interest in all buildings, structures, or other improvements which are located on that property and which will be removed or adversely affected by the completed project; and

(h) Adequately inform the public of the acquisition policies, requirements, and payments which apply to the project.

#### § 4.302 Determination of just compensation.

Before the initiation of negotiations to acquire any real property interest, EPA or the State agency must comply with paragraphs (a) and (b) of this section.

(a) EPA or the State agency must obtain at least one appraisal of the fair market value of the property interest to be acquired and provide the owner (or his representative) the opportunity to accompany the appraiser while he inspects the property. Appraisals must conform to the current Uniform Appraisal Standards for Federal Land Acquisition, published by the Interagency Land Acquisition Conference. When land is acquired with EPA funds, the appraisal of the land must be done by a certified appraiser.

No action may be taken to compel a seller to waive his right to an appraisal. However, for acquisitions whose market value appears to be less than \$1,000, based on an appraisal of similar property, the appraisal requirement shall be considered to be met if:

(1) Both of the following conditions exist:

(i) The seller is informed of his right to an appraisal and waives that right in writing; and

(ii) The acquisition is not carried out under eminent domain; or

(2) The acquisition is a donation, i.e., voluntarily given at no cost.

(b) The acquiring agency must establish an amount which it believes to be just compensation for the real property interest acquired, including damages, and make a prompt offer to acquire for that amount. The determination of just compensation must:

(1) Be based on the fair market value of the property;

(2) Not be less than the approved appraised value of the property;

(3) Disregard any decrease or increase in the fair market value of the property caused by the contemplated project; however, for acquisitions of other than fee simple interests, any benefit to the remainder of the property may be set off against the value of the acquisition price.

(4) In the case of separately held interests in the real property, include an apportionment of the total just compensation for each of those interests.

#### § 4.303 Acquisition procedures.

In acquiring real property EPA or the State agency must follow the procedures in paragraphs (a) and (b) of this section.

(a) *Offer to acquire.* Promptly following the determination of just compensation, EPA or a State agency must make a written offer to acquire for the amount so determined. This offer must be accompanied by a written statement of the basis on which the agency determined just compensation. The statement must:

(1) Identify the property and the type of interest being acquired;

(2) Certify, where applicable, that any separately held interest in the real property is not being acquired in whole or in part;

(3) Identify buildings, structures, and other improvements (including fixtures, removable building equipment, and any trade fixtures) which are considered to be part of the real property for which the offer of just compensation is made;

(4) Identify any real property improvements, including fixtures, not owned by the owner of the land;

(5) Identify the types and approximate quantity of personal property located on the premises; and

(6) Separate compensation paid for the property interest being acquired and that paid for damages to remaining real property interests, if applicable.

(b) *Requirements for taking possession.* Before requiring any owner to surrender possession of real property, EPA or the State agency must:

(1) Pay the agreed purchase price; or

(2) Deposit with the local court of jurisdiction, for the benefit of the owner, an amount not less than the agency's approved appraisal of the fair market value of the property.

#### § 4.304 Tenant interests.

(a) When a tenant owns a building, structure, or other improvement to real property acquired under this Part, the displacing agency, subject to paragraph (b) of this section, must pay the tenant the larger of:

(1) The fair market value of the improvement, if it were removed from real property; or

(2) The enhancement of the fair market value of the real property resulting from the improvement.

(b) A payment may not be made to a tenant under this Subpart unless:

(1) The tenant, in consideration for the payment, releases to the displacing agency all his rights in the improvement; and

(2) The payment is not duplicated by any other payment authorized by federal, State, or local law.

#### § 4.305 Expenses incidental to acquisition.

As soon as possible after real property has been acquired, the displacing agency must reimburse the owner for:

(a) Recording fees, transfer taxes, and similar expenses incidental to conveying the real property to the agency;

(b) Penalty costs for prepaying any mortgage which encumbers the acquired property; and

(c) The pro-rata portion of any prepaid property taxes which are allocable to a period after title is vested in the agency or after the agency takes possession of the real property, whichever is earlier.

#### § 4.306 Litigation expenses.

(a) In any condemnation proceeding brought by the State agency to acquire property, the State agency must reimburse the owner of any interest in the property for actual reasonable expenses of the proceeding (including attorney, appraisal, and engineering fees) incurred if:

(1) The final judgment is that the State agency cannot acquire the real property by condemnation; or

(2) The State agency abandons the proceeding.

(b) In any inverse condemnation (in which an owner must institute legal proceedings to bring about condemnation) where an owner receives an award of compensation by judgment or settlement, the State agency must reimburse the plaintiff for actual

reasonable expenses incurred because of the proceeding (including reasonable attorney, appraisal, and engineering fees).

### Subpart C—Relocation

#### § 4.400 Basic relocation requirements.

Sections 4.410 through 4.470 describe basic protections and benefits which the Act provides for displaced persons.

#### § 4.410 Availability of comparable replacement housing.

No person shall be required to move from his dwelling because of the acquisition of real property for an EPA or EPA-assisted project unless comparable replacement housing, as described in § 4.740, and within his ability to pay, is available to that person.

#### § 4.420 Housing of last resort.

If displacement due to acquisition for an EPA or EPA-assisted project cannot proceed due to the unavailability of comparable replacement housing, and the displacing agency determines that such housing cannot otherwise be made available, the displacing agency may take such appropriate action as is necessary to provide comparable replacement housing through the use of funds authorized for the project.

#### § 4.430 Ninety days' notice of move date.

No person may be required to move from his dwelling, business or farm because of the acquisition of real property for an EPA or EPA-assisted project, unless, at least 90 days before the move is required, he received from the displacing agency written notice of the date by which such move is required.

#### § 4.440 Relocation payments.

(a) *General.* Displaced persons are eligible for relocation payments for the reasonable cost of moving and related expenses (see § 4.600). In addition, certain displaced persons are eligible for payments to help with the cost of replacement housing (see § 4.700). In order to receive either payment, displaced persons must file a written application with the displacing agency no later than 18 months after their effective date of displacement. Applications must contain sufficient information, adequately documented, for computing payments in accordance with this part.

(b) *Advance relocation payments.* Displacing agencies may consider requests for relocation payments in advance of a displaced person's move. However, advance payments may be

made only if, in the displacing agency's judgement, a hardship otherwise would result. Advance payments should be limited to the amount necessary to avoid the hardship and should not exceed the amount the displacing agency estimates the applicant will receive in relocation payments.

**§ 4.450 Prohibition of deductions from relocation payments.**

The displacing agency may not deduct or withhold any amount from a relocation payment except as required by court order or IRS attachment.

**§ 4.460 Relocation payments not considered income.**

No relocation payment made under the Act may be considered income for federal, State, or local tax purposes, nor may such payments be used in determining basic eligibility or extent of eligibility under the Social Security Act or any other Federal law.

**§ 4.470 Relocation payment and replacement housing appeals.**

The displacing agency must provide an appeals process. This process must enable a displaced person to obtain a review by the head of the displacing agency (or his designee) of agency decisions concerning eligibility for or the amount or a relocation payment, or concerning comparability of replacement housing.

(a) *EPA-assisted projects.* For EPA-assisted projects this process must provide:

(1) *State agency review.* The displaced person must file a request for review with the State agency no later than 90 days after he receives written notice of the decision being appealed. Review by the State agency must include:

(i) The opportunity for the appellant to make oral and written presentations, including the right to have counsel present;

(ii) Prompt action on the request for review, including payment of any amount determined to be due the appellant; and

(iii) A written response to the appellant explaining the decision and the basis on which it was made.

(2) *EPA review.* If an appellant is dissatisfied with the decision of the State agency, he may request a review by EPA. This review is limited to an examination of the correctness of the State agency's decision. Requests for review must be filed with the award official no later than 30 days after the displaced person receives written notice of the decision being appealed. EPA must issue its decision promptly, in writing, with a copy provided the

displaced person. The decision must state the facts and law which form its basis. The decision on the matter reviewed shall be final within EPA and shall not be subject to the disputes provision of 40 CFR Part 30, Subpart J.

(b) *EPA projects.* For EPA projects, displaced persons may request a review by the Administrator or his/her designee. This review is limited to an examination of the correctness of the original decision. Requests for these reviews should be directed to the Assistant Administrator for Administration. These requests must be filed within 90 days of the date the displaced person receives written notice of the decision he is appealing. EPA must issue its decision promptly, in writing, and provide a copy to the displaced person. The decision must state the facts and law which form its basis. The decision shall be final within EPA.

**§ 4.500 Relocation assistance advisory services.**

Sections 4.510 and 4.520 describe minimum standards for relocation assistance and services. The displacing agency must offer basic assistance and services to all displaced persons. It may offer similar assistance and services to any person occupying property adjacent to the acquired property if it determines that the acquisition will cause him substantial economic injury.

**§ 4.510 Informational program.**

As soon as practicable after the Notice of Intent to Acquire, before the initiation of negotiations, the displacing agency must inform everyone to be displaced of the relocation assistance and services it will offer. Informational materials must be written so that displaced persons will understand them. Where appropriate, these materials must be available in languages other than English. This information must be delivered to each person to be displaced, either in person or by certified mail, return receipt requested, and must include:

(a) An explanation of the services and relocation payments available to the displaced person including eligibility requirements for the relocation payments.

(b) A statement of his right to appeal decisions on payments or replacement housing which he feels do not meet the requirements of this part.

**§ 4.520 Assistance and services.**

The displacing agency must make available staff and other resources to:

(a) Explain the nature of payments and services available;

(b) Determine displaced persons' replacement housing, business and related needs;

(c) Provide information on the availability of replacement housing and business locations;

(d) Provide information about relevant federal, State, and other housing or assistance programs (e.g., Small Business Administration, Veterans Administration or Department of Housing and Urban Development programs);

(e) Help complete claims for relocation payments or applications for other assistance programs;

(f) Provide help needed to arrange for the displaced person's relocation, such as transportation to examine replacement housing; and

(g) Provide other services needed to insure a successful move, such as financial counseling.

**§ 4.600 Payment for moving and related expenses.**

Section 4.610 through 4.630 describe the payments for moving and related expenses for which displaced persons are eligible. However, payments for businesses, farms, and non-profit organizations (non-residential payments) may include elements not available under payments for persons displaced from a dwelling (residential payments).

**§ 4.610 Residential payments.**

Payments for persons displaced from a dwelling may be computed either on the basis of actual costs, as described in § 4.611 or, at the displaced person's option, according to the formula described in § 4.612.

**§ 4.611 Actual cost method for residential payments.**

A person displaced from a dwelling may receive payment for the actual, reasonable cost of:

(a) Transportation of household members and personal property from the acquired site to the replacement site. When a move exceeds 50 miles, the displacing agency must approve the need for a move of such distance.

(b) Packing, unpacking, crating and uncrating of personal property;

(c) Disconnecting, dismantling, removing, reassembling and reinstalling relocated household appliances and other personal property;

(d) Storage of personal property for a period generally not to exceed 12 months;

(e) Insurance premiums covering loss and damage of personal property while in transit or storage;

(f) Personal property lost, stolen, or damaged (except where this is the fault of the displaced person, his agent or his employees) in the process of moving, where insurance to cover the loss is unavailable; and

(g) Any other expenses that the displacing agency determines to be necessary and directly attributable to displacement.

**§ 4.612 Formula method for residential payments.**

A person displaced from a dwelling may receive payment based on the sum of:

(a) A dislocation allowance of \$200, and

(b) A fixed payment, not to exceed \$300, based on the most recent moving allowance schedule issued by the Federal Highway Administration.

**§ 4.613 Multiple-occupancy and moving expense payments.**

The occupants of an acquired dwelling may choose to move to separate replacement housing, or a combination of families and/or individuals may share an acquired dwelling. In these cases, payment for moving expenses may be based either on the actual cost of moving and related expenses or, if any or all of the displaced choose the formula method of computation, on the amount which would have been paid had the occupants moved together to replacement housing. In either case, payments must be prorated among the displaced persons according to the amount of space actually occupied at the acquired dwelling.

**§ 4.620 Non-residential payments.**

Payments for persons displaced from businesses, farms, or non-profit organizations may be computed either on the basis of actual costs as described in §§ 4.621 and 4.622 or, at the displaced person's option, according to the formula described in § 4.623.

**§ 4.621 Actual cost method for non-residential payments.**

(a) A person displaced from a business, farm, or non-profit organization may receive payment for the actual reasonable cost of expenses similar to those identified in § 4.611.

(b) It may be advantageous to a displaced business not to move certain items of tangible personal property. In those cases, for items not moved and compensated under paragraph (a) of this section, the displacing agency may make a payment under either paragraph (b)(1), (b)(2), or (b)(3) of this section. A displacing agency may not make this payment until the owner of a displaced

business has made a good faith effort to sell the property.

(1) *Direct loss of tangible personal property.* The displacing agency may make a payment for direct loss of tangible personal property. That payment must be for the lesser of:

(i) The difference between the fair market value of the property for continued use at the acquired site and the proceeds of the sale; or

(ii) The estimated cost of moving this property.

(2) *Substitute equipment.* The displacing agency may make a payment for substitute equipment. That payment must be for the lesser of:

(i) The cost of comparable equipment installed at the new location less the proceeds of the sale; or

(ii) The estimated cost of moving the equipment.

(3) *High bulk, low value.* Personal property such as stockpiles of sand or gravel or the contents of salvage yards may be costly to move in relation to its value. In such cases, moving expense costs should be based on the reasonable cost of replacing the item less its liquidation value.

**§ 4.622 Search costs.**

The displacing agency may pay actual, reasonable expenses which the displaced person incurs in searching for a replacement business location. Total compensation for search costs is limited to \$500.

**§ 4.623 Formula method for non-residential payments.**

In place of the amount computed under § 4.621(a), the displaced person may receive payment equal to average annual net income, but not less than \$2,500 nor more than \$10,000.

(a) *Requirements for using the formula method.* The displacing agency may use the formula method only if it determines that:

(1) The displaced entity cannot be relocated without a substantial loss of its existing patronage; and

(2) The displaced entity is not part of a commercial enterprise having another establishment which is engaged in the same or similar business but which is not being acquired for the project.

(b) *Formula method payments for non-profit organizations.* Displaced non-profit organizations received \$2,500 under the formula method.

**§ 4.630 Self-moves.**

A displaced person may move himself. If he chooses the actual cost method of computing his payment, the displacing agency must obtain at least three bids or estimates from commercial

movers for the cost of relocating the displaced person. Payment up to the amount of the low acceptable bid may be made without documentation. Payment exceeding the low acceptable bid must be documented and justified.

**§ 4.700 Replacement housing.**

Sections 4.710 through 4.722 describe replacement housing payments for displaced persons. In addition to a payment for moving and related expenses, certain persons displaced from a dwelling are eligible for a replacement housing payment. There are two kinds of replacement housing payments: payments for homeowners and payments for tenants and 90-day homeowners (i.e., an owner/occupant for at least 90 days but less than 180 days). Except in hardship situations, displacing agencies may not make a replacement housing payment unless and until the displaced person occupies relocation housing which the displacing agency has inspected and found to be comparable.

**§ 4.710 Replacement housing payment for homeowners.**

(a) *General.* A payment under this section may be made only to a homeowner displaced from a dwelling which he owned and occupied for at least 180 days prior to the initiation of negotiations for the property. An owner/occupant must purchase and occupy a comparable replacement dwelling (§ 4.740) within one year of his effective date of displacement to receive this payment.

(b) *Computation of replacement housing payment for homeowners.* The replacement housing payment for homeowners may not exceed a total of \$15,000. That total includes the following elements:

(1) *Price differential.* The difference between the acquisition price of the acquired dwelling and the lesser of the actual cost of the replacement dwelling which the displaced person purchased or the cost of a replacement dwelling which meets comparable housing standards (as described in § 4.740). The cost of comparable housing must be based on the cost of at least three comparable dwellings which are available for sale on the private market. Schedules of replacement housing costs (i.e., pre-established lists of unit sizes and prices) shall not be used.

(2) *Increased interest.* The amount of increased interest, reduced to present value, which the displaced person must pay for financing the lesser of the actual cost of the replacement dwelling or the cost of a comparable replacement

dwelling. All of the following requirements apply to the calculation of the increased interest element:

(i) Increased interest includes the interest to be paid on the replacement dwelling's mortgage plus other debt service costs, including points. The amount which may be paid is limited to the increase in interest costs payable on the balance of the acquired dwelling's mortgage (at acquisition) over the remaining term of the mortgage of either the acquired or the replacement dwelling, whichever is less.

(ii) Present value shall be based on the prevailing interest rate paid on passbook (or similar) savings deposits by commercial banks in the area in which the replacement dwelling is located.

(iii) For purposes of computing increased interest, the interest rate on the new mortgage may not exceed the prevailing rate charged by mortgage lending institutions in the area.

(iv) The acquired dwelling must have been encumbered by a mortgage for at least 180 days before initiation of negotiations.

(c) *Incidental expenses.* Actual reasonable costs which the displaced person incurs as a part of the purchase of the replacement dwelling. Prepaid expenses (such as insurance premiums and tax escrows) may not be reimbursed. Incidental expenses include:

- (1) Customary legal, closing and related costs;
- (2) Lender's, FHA or VA appraisal fees;
- (3) FHA or VA application fees;
- (4) Credit report, title policy, escrow fee; and
- (5) Revenue stamps or transfer taxes.

**§ 4.720 Replacement housing payment for tenants and 90-day homeowners.**

A payment under this section may be made to a renter or to a homeowner who was an owner/occupant for less than 180 days. The renter or homeowner must be displaced from a dwelling which he rented or owned, as appropriate, and which he occupied for at least 90 days prior to the initiation of negotiations to acquire the property. Displaced renters or 90-day homeowners (see § 4.700) are eligible to receive one of two types of payment, either a rental assistance payment (§ 4.721) or a payment for downpayment assistance (§ 4.722).

**§ 4.721 Rental assistance payment.**

(a) *General.* A homeowner or renter must rent and occupy a comparable replacement dwelling (see § 4.740) within one year of his effective date of displacement to receive this payment.

(b) *Computation of rental assistance payment.* A rental assistance payment is computed using the difference between the displaced person's base monthly housing costs (see paragraph (b)(1) of this section) and the lesser of similar costs for a comparable replacement dwelling or the actual replacement dwelling to which the displaced person moves. That difference multiplied by 48 equals the payment, up to a maximum of \$4,000. The following limitations apply to the calculation of this payment:

(1) Base monthly housing cost is the greater of the actual costs which the displaced person paid for the acquired unit or 25% of the displaced person's gross monthly income.

(2) If the actual housing cost for the acquired dwelling is less than the economic rent, or if the displaced person is a homeowner moving to rental housing, base monthly housing cost shall be computed as the economic rent.

(3) A displaced homeowner's payment may not exceed the amount he would receive if he were eligible for a replacement housing payment for homeowners.

(4) The cost of comparable rental housing must be based on the rental price of at least three comparable dwellings available on the private market. Schedules of replacement housing costs shall not be used.

**§ 4.722 Down payment assistance.**

(a) *General.* Only a tenant or a 90 day homeowner (as described in § 4.720) who occupied the dwelling from which he was displaced for at least 90 days prior to the initiation of negotiations for the acquired property and who purchases a comparable replacement dwelling within one year of his effective date of displacement may be eligible for this payment.

(b) *Computation of down payment assistance payment.* The down payment assistance payment may not exceed a total of \$4,000. The payment includes:

(1) The amount necessary to make a down payment on the lesser of the actual replacement dwelling or a comparable dwelling, not to exceed the amount which would be required on a

conventional loan at prevailing interest rates in the area; and

(2) Incidental expenses as described in § 4.710(c).

(c) *Limitations.* The following limitations apply to this payment:

(1) Any portion of this payment over \$2000 must be matched by the tenant.

(2) The full amount of this payment including the matching amount must be applied to the down payment (including incidental expenses).

**§ 4.730 Multiple occupancy and replacement housing payments.**

When the occupants of an acquired dwelling choose to move to separate replacement housing, or when a combination of families and/or individuals shares a dwelling, the displacing agency may prorate replacement housing payments for persons who did not constitute separate households before the move.

**§ 4.740 Standards for comparable housing.**

Replacement housing is comparable if it meets the standards for living space and for quality of living conditions in this section.

(a) *Living space.* Replacement housing must provide the greater of:

(1) Living space equivalent to that of the dwelling from which displacement occurred, or

(2) Living space equal to the need of the displaced person as required by local housing codes.

(b) *Living conditions.* Replacement housing must provide the greater of:

(1) State or local housing codes; or

(2) EPA minimum standards:

(i) Sound, clean, and weathertight;

(ii) Has an adequate and safe wiring system for lighting and other electrical services;

(iii) Provides heating or cooling as required by climatic conditions;

(iv) For dwelling (housekeeping) units, includes a sink, stove or connection for same, a complete bathroom, and hot and cold running water in the bath and kitchen; and

(v) For rooming (non-housekeeping) units, provides the use of a complete bathroom which has hot and cold running water and which affords privacy to a person within it.

[FR Doc. 82-13729 Filed 5-19-82; 8:45 am]

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# Registered Federal Report

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Thursday  
May 20, 1982

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## Part V

## Department of Education

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College Housing Program; Final  
Regulations and Application Notice for  
New Projects for Fiscal Year 1982

## DEPARTMENT OF EDUCATION

## 34 CFR Part 614

## College Housing Program

AGENCY: Education Department.

ACTION: Final regulations.

**SUMMARY:** The Secretary issues final regulations for the College Housing Program with the exception of the part dealing with loan management, which will be issued separately. These regulations establish selection criteria for the award of low-interest loans to assist eligible institutions in (1) providing housing and other educational facilities for students and faculty members and (2) conserving energy and reducing related operating costs.

**EFFECTIVE DATE:** Unless Congress takes certain adjournments, these regulations will take effect 45 days after publication in the *Federal Register*. If you want to know the effective date of these regulations, call or write the Department of Education contact person. At a future date, the Secretary will publish a notice in the *Federal Register* stating the effective date of these regulations.

**FOR FURTHER INFORMATION CONTACT:**

Mr. Charles I. Griffith, (Room 3058, ROB-3), Department of Education, 400 Maryland Avenue, SW., Washington, D.C. 20202. Telephone: (202) 245-9868.

**SUPPLEMENTARY INFORMATION:** Final regulations with comments invited were published in the *Federal Register* on July 29, 1981. Interested persons were given 45 days in which to submit written comments. Several comments were received suggesting changes. Those comments, the Secretary's responses to them, and other substantive changes are summarized below:

**Summary of Changes**

The original regulations with comments invited, published in July, 1981, are reissued to incorporate technical amendments and minor changes that—

- (1) Simplify and clarify regulations;
- (2) Eliminate duplication with the provisions of the Education Department General Administrative Regulations (EDGAR);
- (3) Reflect procedural modifications resulting from the new administration of this program by the Department of Education;
- (4) Incorporate amendments of a minor nature resulting from comments and suggestions received in response to the invitation for comment.

As a result of several deletions, §§ 614.36 through 614.62 have been renumbered.

*A. Summary of Technical Revisions***§ 614.3** *Limitations of eligibility.*

In the interest of diligent credit management practices, the regulations are revised to exclude from eligibility for College Housing loans, institutions in default of loans made under the Higher Education Act as well as the Housing Act.

**§ 614.5** *What definitions apply to the College Housing Program?*

The definition of "construction" is clarified in these regulations, to state that College Housing loans may be used for the purchase of existing facilities.

**§ 614.32** *Selection criterion for housing loans.*

A fourth element is added to the criterion of housing deficiency to include students residing in facilities leased by colleges with terminating leases as an eligible factor in the calculation of housing deficiency.

**§ 614.36** *Determination of economical construction.*

This section is eliminated because it is redundant with the provisions for construction in EDGAR (34 CFR 75.607).

**§ 614.50** *Prior determination of eligible costs.*

This section is deleted because its provisions are inconsistent with the current administrative practices of the Department.

**§ 614.52** *Additional ineligible cost.*

A provision is added to exclude from eligibility, costs for purchases of land incurred more than two years prior to application, and costs for acquisition of existing structures incurred more than one year prior to application. This provision is included to ensure valid allocation of Federal funds and to limit Federal support to costs directly attributable to current housing shortages. In view of limited Federal resources, the provision serves to contain eligible costs so that a greater number of projects may be supported.

**§ 614.56** *Investment of idle construction funds.*

A provision is added to protect the Federal interest by requiring that any interest earned on Federal funds shall revert back to the Federal government through a credit to the Federal loan account.

**§ 614.67** *Procedures for loan disbursement.*

Paragraphs (a), (c), and (d) are deleted, because the provisions are inconsistent with the current

administrative practices of the Department.

*B. Summary of Comments and Responses**General*

*Comment.* One commenter suggested that loan recipients be granted some recourse in the event of undue delays caused by the administering office.

*Response.* No change has been made. The recent transfer of the program to the Department of Education has served to reduce administrative delays in the operation of the program. As the new administering office, the Department is utilizing its every resource to expedite the processing of applications.

*Comment.* One commenter cited typographical errors in §§ 614.3, 614.27, and 614.35.

*Response.* Corrections have been made in §§ 614.3, 614.27, and 614.35.

**§ 614.2** *Who is eligible to apply for a loan?*

*Comment.* One commenter suggested that the eligibility criteria discriminated against two-year institutions by stipulating that (a) the institution must offer at least a two year program acceptable for full credit toward a bachelor's degree and (b) the institution must be administered by an accredited college or university.

*Response.* No change has been made. The definition and criteria for an eligible institution are taken directly from Section 404(b) of the statute. These regulation requirements are therefore consistent with the statute. It should be noted that the stipulation under paragraph (a) requires only that at least a two year program creditable toward a bachelor's degree be offered. The provision under paragraph (b) regarding administration of institution by an accredited college or university is only one of the six possible conditions for eligibility.

**§ 614.5** *What definitions apply to the College Housing Program?*

*Comment.* Two commenters felt that the current definition of "reasonable commuting distance" had an unfair impact on urban institutions. The recommendation was made that the definition be changed to the distance a student can travel in forty-five minutes from his or her residence to the applicable institution by automobile or public transportation, rather than the existing one-hour time frame.

*Response.* No change has been made. The Secretary feels that the one-hour time frame is a reasonable limit for commuting distances for both urban and

rural contexts. Urban institutions may have the advantage of public mass transit thereby counter-balancing any negative impact.

*Comment.* Two commenters indicated the need for a definition of "assignable square feet."

*Response.* A change has been made. The definition has been added.

#### § 614.21 OMB Circular A-95 requirements.

*Comment.* One commenter recommended that State postsecondary education coordinating agencies be given the opportunity to review and comment on the applications for College Housing Loans, similar to the A-95 review process.

*Response.* The change has been made. The section on A-95 requirements has been expanded to include a provision for the submission of applications to the appropriate State agency for postsecondary education for review and comment. In his report on the College Housing Program, the Comptroller General recommended that State education officials be consulted on proposed college housing projects so that they may provide the administering office with relevant information to support the awarding of valid loans. The provision is added to provide these agencies the opportunity for comment on the College Housing applications. This provision does not require the approval of State postsecondary education agencies.

*Comment.* One commenter recommended that applicants be required to submit applications to areawide A-95 clearinghouses as well as State A-95 clearinghouses.

*Response.* A change has been made. Inclusion of areawide clearinghouses was inadvertently omitted in the original regulations. These regulations are amended to require submission of applications to areawide clearinghouses as well as State clearinghouses in order to comply with the purposes and requirements of OMB Circular A-95.

#### § 614.32 Selection criteria for housing loan.

*Comment.* One commenter recommended including the number of students on waiting lists with paid deposits in the calculation of housing deficiency.

*Response.* No change has been made. The use of waiting lists and housing deposits is not a universal practice. The need for accountability would create an undue burden on institutions for verification of data.

*Comment.* One commenter recommended that a specific allowance

be made for institutions housing students in temporary, off-campus situations such as motels and hotels. The commenter suggested that older institutions with smaller rooms are disadvantaged in that they can not temporarily house students in excess of design capacity and thus cannot qualify under this criterion element.

*Response.* No change has been made. The Secretary feels that the existing criteria sufficiently account for housing deficiency on the bases of overcrowding and residence in substandard housing. The claim that older institutions are disadvantaged due to smaller dorm rooms is a broad and possibly unjustified generalization. Older institutions may in fact have an advantage under the criterion of substandard housing in that aging housing structures are more likely to fail building codes.

*Comment.* One commenter recommended that a scaling system be utilized in the awarding of loans in order to equitably distribute awards among large and small institutions.

*Response.* No change has been made. The criteria of "relative deficiency" and "relative impact" were designed specifically to account for institutional size differentials. An analysis of fiscal year 1981 loan recipients revealed an equitable distribution of awards among small, moderate, and large institutions.

*Comment.* One commenter recommended the modification of selection criteria to allow for planned expansion of services as a basis for funding. Another commenter objected to the criterion of previous residential history and use of existing dormitories as bases for funding.

*Response.* No change has been made. The Secretary feels that the intent of the program, as expressed by Congress in the appropriations report, is to remedy existing housing deficiencies and relieve severe, localized housing shortages as demonstrated on campuses, rather than to support first-time or expansion oriented housing construction. The Comptroller General supports this position in his report on the College Housing Program.

*Comment.* One commenter recommended that preferential consideration be given to institutions engaged in cooperative activities aimed at relieving operational costs in housing facilities.

*Response.* No change has been made. The Secretary does not wish to grant preference based on a specific means of maintenance. The only regulatory requirement with respect to maintenance is that a recipient agree to repair and maintain its project facilities.

#### § 614.33 Apportionment of loan funds.

*Comment.* One commenter proposed that an allocation based on postsecondary enrollment would be more equitable than the existing 12½ percent limitation per State.

*Response.* No change has been made. The 12½ percent limitation per State is set by statute.

#### § 614.42 Limitation on loan amounts.

*Comment.* One commenter questioned the minimum limit on loan amounts.

*Response.* No change has been made. The minimum limit was established in the interest of administrative cost-effectiveness.

#### Executive Order 12291

These regulations have been reviewed by the Department in accordance with Executive Order 12291. They are classified as non-major regulations because they do not meet the criteria for major regulations established in the order.

#### Invitation to comment

To assist the Department in complying with the specific requirements of Executive Order 12291 and its overall objective of reducing regulatory burden, public comment is invited on whether there may be further opportunities to reduce any regulatory burden found in these regulations, especially with regard to paperwork and compliance requirements.

#### List of Subjects in 34 CFR Part 614

Colleges and Universities, Education, Grant programs—housing and community development, Housing, Loan programs—housing and community development.

#### Citation of Legal Authority

A citation of statutory or other legal authority is placed in parentheses on the line following each substantive provision of these regulations.

Dated: May 12, 1982.

T. H. Bell,

Secretary of Education.

(Catalog of Federal Domestic Assistance No. 84.142—College Housing Program)

The Secretary revises Part 614 of the Code of Federal Regulations to read as follows:

#### PART 614—COLLEGE HOUSING PROGRAM

##### Subpart A—General

Sec.

614.1 College Housing Program.

614.2 Who is eligible to apply for a loan?

## Sec.

- 614.3 Limitations on eligibility.  
 614.4 What regulations apply to the College Housing Program?  
 614.5 What definitions apply to the College Housing Program?

**Subpart B—What Kinds of Projects Does the Secretary Assist Under This Program?**

- 614.10 Eligible projects.  
 614.11 Conditions for eligibility of project.

**Subpart C—How Does One Apply for a Loan?**

- 614.20 Submission of application.  
 614.21 OMB Circular A-95 requirements and other clearance procedures.  
 614.22 Evidence and assurances.  
 614.23 Demonstration of need for an energy conservation loan.  
 614.24 Demonstration of need for a housing loan.  
 614.25 Application by a nonprofit student housing cooperative.  
 614.26 Application by a nonprofit corporation.  
 614.27 Facilities located in jurisdiction without applicable building code.  
 614.28 Opinion of bond or legal counsel.

**Subpart D—How Does the Secretary Make a Loan?**

- 614.30 How does the Secretary rank application for loans?  
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**Appendix A—Guides for Determining Minimum Energy Savings.**

Authority: Title IV of the Housing Act of 1950, 64 Stat. 48, 77; Pub. L. 81-475; (12 U.S.C. 1749-1749d). Sec. 306 of the Department of Education Organization Act, Pub. L. 96-88; (20 U.S.C. 3446).

**Subpart A—General****§ 614.1 College Housing Program.**

The College Housing Program provides low-interest loans to institutions of postsecondary education for the construction, rehabilitation, or purchase of housing or other educational facilities for students or faculty members.

(12 U.S.C. 1749-1749d)

**§ 614.2 Who is eligible to apply for a loan?**

The following are eligible to apply for a loan under the College Housing Program:

(a) Any public or nonprofit private educational institution that offers, or will offer within a reasonable time after completion of the proposed project, at least a two-year program acceptable for full credit toward a bachelor's degree.

(b) Any public educational institution that—

(1) Is administered by an accredited college or university;

(2) Offers technical or vocational instruction; and

(3) Provides residential facilities for some or all of the students.

(c) Any public or nonprofit private hospital that operates—

(1) A school of nursing beyond the level of high school and approved by State authority; or

(2) An internship program approved by a recognized authority.

(d) Any public body, established for the purpose of providing or financing housing or other educational facilities for students and faculty members at any institution referred to in paragraphs (a) or (b) of this section.

(e) Any nonprofit student housing cooperative established for the purpose of providing housing for students at any institution referred to in paragraphs (a) or (b) of this section.

(f) Any nonprofit corporation established for the sole purpose of providing housing or other educational facilities for students or faculty of one or more institutions referred to in paragraphs (a) or (b) of this section if—

(1) The housing or facilities are not restricted to students or faculty on the basis of their membership in or affiliation with any social, fraternal, or honorary society or organization; and

(2) Upon dissolution of the nonprofit corporation all title to any property built or purchased with proceeds of the loan will go to the institutions or for some other nonprofit educational purpose.

(12 U.S.C. 1749c; 1749(g))

**§ 614.3 Limitations on eligibility.**

(a) An institution may not apply for a reservation of funds for a housing loan

under the Act sooner than the fourth year in which Congress makes funds available for the program subsequent to the last reservation of funds for that institution. This does not apply to energy conservation loans. In calculating this interval, the Secretary includes only reservations of funds made after fiscal year 1981.

(b) An institution may not apply for a reservation of funds for any loan under the Act if it is in default on a loan previously made under the Act or the Higher Education Act—whether or not the Secretary has agreed to any deferment—until the default has been removed.

(12 U.S.C. 1749a (c) (1); 1749a (c) (8); 20 U.S.C. 3474 (b))

**§ 614.4 What regulations apply to the College Housing Program?**

The following regulations apply to the College Housing Program:

(a) The Education Department General Administrative Regulations (EDGAR) 34 CFR 75.170 through 75.173 (Clearinghouse Procedures) and 75.600 through 75.615 (Construction), 34 CFR 77.1 (Definitions), and 34 CFR Part 74 Subpart P.

(b) The regulations in this Part 614. (20 U.S.C. 3474)

**§ 614.5 What definitions apply to the College Housing Program?**

(a) *Definitions in EDGAR.* The following terms used in this part are defined in 34 CFR 77.1:

EDGAR	Public
Nonprofit	Secretary
Private	State

(20 U.S.C. 3474)

(b) *Definitions that apply to this part.* "Act" means Title IV of the Housing Act of 1950, as amended.

(12 U.S.C. 1749-1749d)

"Assignable square feet" means the square footage of floor-space in facilities designed and available for assignment to specific functional purposes, such as student sleeping rooms, apartments and related dining areas, and including purposes that are ineligible for assistance under Title IV, such as instruction, research, administration, and religious worship.

"Branch campus" means, within an educational institution, a unit that—

(1) Is separately organized;

(2) Is located apart from the parent institution; and

(3) Has its own Federal Interagency Committee on Education (FICE) identification number.

"Construction" means—

(1) Erection of new structures; or

(2) Rehabilitation, conversion, or improvement of existing structures.

(3) Purchase of existing facilities.

"Design capacity" of housing means the number of occupants a building was designed to house, or, if that information is not available, the maximum number of occupants residing in the facility in any of its first three years of use as student housing.

"Development cost"—

(1) This term means the costs of construction of the housing or other educational facilities and the land on which they are located, including necessary site improvements to permit the use of the land for housing or other educational facilities;

(2) However, in the case of the purchase of facilities, the term means the cost as approved by the Secretary.

"Full-time enrollment" means the number of full-time undergraduate and graduate, resident and non-resident students, as reported by the educational institution—for the fall semester of the year prior to that in which the application is filed—to the National Center for Educational Statistics (NCES) of the Department of Education for its annual survey entitled "Fall Enrollment in Institutions of Higher Education."

"Historically residential institution" means an educational institution that prior to 1976 provided on-campus housing for at least 10 percent of its full-time enrollment.

"Housing" means—

(1) New or existing structures suitable for dwelling use by students or faculty, including (i) single-room dormitories and (ii) apartments; and

(2) Dwelling facilities for student occupancy provided by rehabilitation, alteration, conversion, or improvement of existing structures that are otherwise inadequate for the proposed dwelling use.

"Housing shortage" means an existing need for decent, safe, and sanitary housing for currently enrolled full-time students and faculty.

"Other educational facilities" means—

(1) New or existing structures suitable for—

(i) Use as cafeterias or dining halls, student centers or student unions, infirmaries, or other inpatient or outpatient health facilities; and

(ii) Other essential service facilities; and

(2) Structures—

(i) Suitable for the uses in paragraph (1) of this definition; and

(ii) Provided by rehabilitation, alteration, conversion, or improvement of existing structures that are otherwise inadequate for those uses.

"Reasonable commuting distance" means the distance a student can travel in one hour from his or her residence toward the applicant educational institution by automobile or public transportation, whichever is more expeditious.

"Substandard housing" means student housing, either on campus or off campus, that—

(1) Is owned, leased, or subsidized by an eligible institution under § 614.2; and

(2) Fails substantially to meet applicable State or local building code requirements.

(12 U.S.C. 1749c, 1749a(c)(1))

#### Subpart B—What Kinds of Projects Does the Secretary Assist Under This Program?

##### § 614.10 Eligible projects.

The Secretary makes loans for two categories of projects:

(a) Projects to reduce fuel consumption or related operating costs of existing housing and other educational facilities as defined in § 614.5. These loans are referred to in these regulations as "energy conservation loans."

(b) Projects to alleviate severe student or faculty housing shortage. These loans are referred to in these regulations as "housing loans."

(12 U.S.C. 1749, 1749a(c)(1))

##### § 614.11 Conditions for eligibility of project.

The Secretary considers a project eligible to receive assistance only if—

(a) After October 1, 1981 the applicant has not contracted for construction before filing its application, and has not begun construction prior to execution of loan agreement.

(b) The facility will not be used—

(1) For religious worship;

(2) In connection with a school or department of divinity; or

(3) For a school providing either training for religious purposes or principally sectarian instruction.

(12 U.S.C. 1749a(c)(1); *Tilton v Richardson*, 403 U.S. 672 (1971))

#### Subpart C—How Does One Apply for a Loan?

##### § 614.20 Submission of application.

(a) An applicant for a reservation of funds for a loan shall submit an application to the Secretary at the time, in the manner, and containing the information specified in the application notice.

(b)(1) An applicant may submit only one application for a reservation of

funds for each category of project described in § 614.10.

(2) For purposes of paragraph (b)(1) of this section, the Secretary considers as a separate applicant a branch campus of a multi-campus institution if that branch campus has its own Federal Interagency Committee on Education (FICE) identification number.

(12 U.S.C. 1749a(c)(1) and 1749c)

##### § 614.21 OMB Circular A-95 requirements and other clearance procedures.

(a) An applicant shall submit a copy of its application to the State and areawide clearinghouses established in compliance with the Office of Management and Budget Circular A-95.

(b) When the applicant submits its application to the Secretary, the applicant shall forward to the Secretary all State and areawide clearinghouses comments.

(c) An applicant shall submit one copy of its application to the appropriate State agency for postsecondary education to give the agency the opportunity to make comments or recommendations on the application. The applicant shall forward any comments it may receive to the Secretary.

(12 U.S.C. 1749a(c)(1), 20 U.S.C. 3474)

##### § 614.22 Evidence and assurances.

An applicant shall submit to the Secretary, as part of its application, the following evidence and assurances:

(a) Satisfactory evidence that the applicant has or will have—based on title or lease—an interest in the site, including the right of access, that is sufficient to insure the applicant's undisturbed use and possession of the facilities for not less than the useful life of the facilities or 50 years, whichever is longer.

(b) Satisfactory evidence that the applicant has the necessary legal authority to—

(1) Finance, construct, rehabilitate, purchase or maintain the proposed facilities;

(2) Apply for and receive the proposed loan; and

(3) Pledge or mortgage any assets or revenues to be given as security for the proposed loan.

(c) Satisfactory assurance that if the Secretary offers and the applicant accepts the loan, the applicant will comply with the terms and conditions for repayment of the loan.

(d) Satisfactory assurance that the applicant will secure the loan in a manner the Secretary finds will reasonably assure repayment. The

security may be one or a combination of procedures listed in § 614.37.

(e) Satisfactory assurance that the applicant will not, without consent of the Secretary, sell, mortgage, encumber, or lease to others during the life of the loan the facility constructed with the aid of the loan.

(12 U.S.C. 1749a(c)(1))

**§ 614.23 Demonstration of need for an energy conservation loan.**

In order to be considered for an energy conservation loan, an applicant must demonstrate in its application that the proposed project will provide savings in fuel consumption and related costs above those achieved by implementation of the measures similar to those described in Appendix A of this part.

(12 U.S.C. 1749a(c)(1))

**§ 614.24 Demonstration of need for a housing loan.**

(a)(1) In order to be considered for a housing loan, an applicant must demonstrate in its application a housing shortage in excess of the greater of 50 students or five percent of full-time enrollment.

(2) The percentage of full-time enrollment affected by a housing shortage is determined by dividing the applicant's housing shortage computed in accordance with paragraph (b) of this section, by the applicant's full-time enrollment.

(b) Housing shortage is measured as the sum of—

(1) The number of students in on-campus facilities in excess of the design capacity of the facilities;

(2) The number of students living in substandard housing both on and off campus;

(3) The number of students commuting to the campus from beyond a reasonable commuting distance; and

(4) The number of students residing in facilities leased by the college with leases which will terminate and will not be renewed within 12 months from the date of application.

(12 U.S.C. 1749a(c)(1))

**§ 614.25 Application by a nonprofit student housing cooperative.**

A nonprofit student housing cooperative—as described in § 614.2(e)—that applies for a reservation of funds for a loan must assure the Secretary at the time of its application that—

(a) The educational institution the proposed project is intended to serve has agreed to cosign the loan; or

(b) If State law in effect on September 7, 1964, prevents the institution from

cosigning the loan, the institution has approved the cooperative and the proposed project.

(12 U.S.C. 1749c(b))

**§ 614.26 Application by a nonprofit corporation.**

(a) The provisions of paragraph (b) of this section apply to a nonprofit corporation—

(1) As described in § 614.2(f); and  
(2) That has not been established by the institution or institutions for whose students or faculty the loan is intended to provide housing or other educational facilities.

(b) If a nonprofit corporation that meets the description of paragraph (a) of this section applies for a reservation of funds for a loan, it must assure the Secretary at the time of its application that—

(i) The educational institution or institutions the proposed project is intended to serve have agreed to cosign the loan; or

(ii) If State law in effect on September 7, 1964, prevents the institution or institutions from cosigning the loan, the institution or institutions have approved the corporation and the proposed project.

(12 U.S.C. 1749c(b))

**§ 614.27 Facilities located in jurisdiction without applicable building code.**

(a) The provision of paragraph (b) of this section applies to an application for a reservation of funds for a housing loan if—

(1) One of the factors supporting the claim of a housing shortage is the existence of substandard housing; and

(2) The facilities that the loan is intended to replace or rehabilitate do not meet the terms of paragraph (2) of the definition of "substandard housing" in § 614.5(b) because the State or local jurisdiction in which those facilities are located—

(i) Has no building code; or

(ii) Has no building code that applies to the facilities or to the applicant.

(b) An applicant affected by the condition described in paragraph (a)(2)(i) or (ii) of this section shall submit to the Secretary, together with its application, evidence that the facilities would not meet the building code of the geographically nearest jurisdiction with a building code pertinent to the deficiency noted in the application.

(12 U.S.C. 1749a(c)(1))

**§ 614.28 Opinion of bond or legal counsel.**

(a) An applicant shall submit—or arrange to have submitted—to the Secretary, either by bond counsel, as described in paragraph (b) of this

section, or legal counsel, as described in paragraph (c) of this section, legal opinions with respect to—

(1) The legality of the note or the bond issue that the applicant proposes to offer to secure the loan;

(2) The legal authority of the applicant to offer the note or bond issue and secure it by the proposed collateral; and

(3) The legality of the debt instrument and collateral on delivery.

(b) As used in this section, "bond counsel" means a law firm or individual lawyer—

(1) Who is thoroughly experienced in the financing of construction or rehabilitation of housing through the issuance of bonds;

(2) Whose approving opinions have been previously accepted by purchasers of bonds offered at public sales; and

(3) Who, if the borrower is a public institution or agency, is a recognized bond counsel in the municipal field.

(c) As used in this section, "legal counsel" means a law firm or individual lawyer—

(1) Having experience in the financing of construction or rehabilitation of housing; and

(2) Whose opinions with regard to that type of financing have been accepted previously by responsible lenders or lending institutions.

(12 U.S.C. 1749a(c)(1))

**Subpart D—How Does the Secretary Make a Loan?**

**§ 614.30 How does the Secretary rank applications for loans?**

(a) The Secretary ranks applications for energy conservation loans according to the criteria in § 614.31.

(b) The Secretary ranks applications for housing loans according to the evaluation criteria in § 614.32.

(12 U.S.C. 1749a(c)(1))

**§ 614.31 Selection criteria for energy conservation loans.**

For projects designed to conserve energy, the Secretary evaluates each application according to the following criteria, for a total of 100 possible points:

(a) *Savings in annual operating costs.*

(1) The Secretary examines each application for information that shows the extent to which the proposed project will result in savings in fuel consumption and other energy costs on an annual basis.

(2) The estimated savings in annual operating costs are the difference between—

(i) Average annual routine expenses for heating and cooling and related

energy costs for the previous three years; and

(ii) Projected annual operating costs based on current prices of fuel and related services for the same purposes for the proposed project.

(3) The Secretary awards up to 50 points for this criterion.

(b) *Extent of savings compared with assistance.* (1) The Secretary examines each application for information that shows the extent to which the savings projected for the proposed project will recoup the assistance received under this program.

(2) The Secretary awards up to 50 points for this criterion, and assigns the highest score to projects requiring the least number of months.

(12 U.S.C. 1749a(c)(1))

**§ 614.32 Selection criteria for housing loans.**

For construction projects, the Secretary evaluates each application according to the following criteria, for a total of 100 possible points:

(a) *Previous residential history.* (1) The Secretary examines each application for information that shows whether the applicant qualifies as a historically residential institution.

(2) The Secretary awards 6 points for this criterion.

(b) *Use of existing dormitories.* (1) The Secretary examines each application for information that shows the extent to which the applicant makes effective use of dormitory space that it owns or leases.

(2) Use of dormitory space is measured by the number of assignable square feet per occupant.

(3) The Secretary awards up to 20 points for this criterion, and assigns the highest scores to applicants with the smallest amount of space per occupant.

(c) *Housing deficiency.* (1) The Secretary examines each application for information that shows the extent to which the applicant has a housing deficiency.

(2) Housing deficiency is measured by the number of student accommodations required to—

(i) Eliminate overcrowding; that is, occupancy in excess of design capacity;

(ii) Provide accommodations for students living in substandard housing; and

(iii) Provide accommodations for students living beyond a reasonable commuting distance.

(iv) Provide accommodations for students residing in facilities leased by the college with leases which will terminate and will not be renewed within 12 months from the application date.

(3) The Secretary awards up to 20 points for this criterion and assigns the highest scores to applicants with the greatest housing deficiency.

(d) *Relative housing deficiency.* (1) The Secretary examines each application for information that shows the extent to which the applicant has a relative housing deficiency.

(2) Relative housing deficiency is measured as a percentage obtained by dividing the total housing deficiency in § 614.32(c) by the institution's full-time enrollment.

(3) The Secretary awards up to 20 points for this criterion and assigns the highest scores to applicants with the highest relative housing deficiency.

(e) *Impact of the proposed project.* (1) The Secretary examines each application for information that shows the impact of the proposed project.

(2) Impact is measured by the number of necessary student accommodations the applicant proposes to add.

(3) The Secretary awards up to 17 points for this criterion and assigns the highest scores to the applicants proposing the largest number of necessary accommodations.

(f) *Relative impact of the proposed project.* (1) The Secretary examines each application for information that shows the relative impact of the proposed project.

(2) Relative impact is measured as a percentage obtained by dividing the number of necessary accommodations to be provided by the project by the total housing deficiency obtained under § 614.32(c).

(3) The Secretary awards up to 17 points for this criterion and assigns the highest scores to applicants with the highest relative impact.

(12 U.S.C. 1749a(c)(1))

**§ 614.33 Apportionment of loan funds.**

(a) The Secretary indicates in the application notice published in the *Federal Register*, the amount of funds available in any fiscal year that will be awarded for projects in each category.

(12 U.S.C. 1749(a)(c)(1))

(b) The Secretary awards to educational institutions in any one State not more than 12.5 percent of the total funds available for loans under this program in any fiscal year.

(12 U.S.C. 1749b)

**§ 614.34 Reservation of funds for applications from historically black colleges and universities.**

(a) Subject to the restriction in § 614.33, the Secretary, as necessary, may deviate from the rank order of applications for energy conservation

loans and for housing loans to ensure that not less than 10 percent of total funds available and not less than 10 percent of the number of loans that the Secretary makes are reserved for applications from historically black colleges.

(b) The purpose of this reservation of funds is to assist historically black colleges in remedying the adverse effects of past or present discrimination on the adequacy of those colleges' housing facilities or other educational facilities.

(12 U.S.C. 1749a(c)(1))

**§ 614.35 Determination of non-availability of equally favorable terms and conditions.**

(a) The Secretary makes a loan only if the Secretary finds that the applicant is unable to secure from other sources a loan with terms and conditions equally as favorable as the terms and conditions applicable to loans under this part.

(b) In order to assist the Secretary in making this determination, the applicant shall comply with any procedures the Secretary may establish, including—if bonds are to be issued—public advertising for bids.

(12 U.S.C. 1749a(1))

**§ 614.36 Loan agreements.**

(a) The Secretary prepares and sends a loan offer to an applicant if—

(1) The application meets all requirements of the Act and the regulations governing administration of the Act; and

(2) The Secretary approves the project and reserves funds for it.

(b) The loan offer—

(1) Contains the terms and conditions for the loan; and

(2) Is conditioned on the acceptance of these terms and conditions.

(c) The accepted loan offer constitutes the agreement between the Secretary and the applicant for the loan.

(12 U.S.C. 1749a)

**§ 614.37 Security for the loan.**

(a) A borrower shall evidence its loan by either notes or bonds issued by the borrower, secured by a mortgage, a trust indenture, or project revenue, or any combination thereof.

(b) If the Secretary determines that additional security is needed to reasonably assure loan repayment, the Secretary may require one or more of the following:

(1) A pledge of income from endowment funds.

(2) Securities or other revenue sources.

(3) A mortgage on other facilities.

(4) A guarantee of the payment of principal and interest by a third party.

(12 U.S.C. 1749a(c)(1))

**§ 614.38 Evidence of approved debt instrument.**

(a) After signifying to the Secretary its acceptance of a loan offer, a borrower shall furnish to the Secretary a debt instrument in the form the Secretary prescribes in the loan agreement and in accordance with the terms and conditions of the loan agreement.

(b) The approved debt instrument referred to in paragraph (a) of this section shall include as appropriate—

(1) A recorded copy of the executed trust indenture between the borrower and the trustee institution or other paying agent; and

(2) The bond, note, or other security approved by the Secretary.

(12 U.S.C. 1749(a); 1749a(c)(1))

**§ 614.39 Loan closing.**

Loan closing occurs at a time determined by the Secretary.

(12 U.S.C. 1749a(c)(1))

**§ 614.40 Interim financing.**

(a) A borrower may arrange for interim financing, subject to approval of the Secretary, to cover the cost of construction pending the loan closing.

(b) If the Secretary finds that the borrower is unable to secure necessary interim financing on reasonable terms, the Secretary may provide for advances against the approved loan.

(12 U.S.C. 1749a(c)(1))

**§ 614.41 Limitation on loan amounts.**

(a) The maximum loan that the Secretary makes to an eligible applicant is \$3,500,000.

(b) The minimum loan that the Secretary makes to an eligible applicant is \$100,000.

(12 U.S.C. 1749a(c)(1), 20 U.S.C. 3474)

**Subpart E—What Conditions Must Be Met by a Borrower?**

**§ 614.50 Eligible development costs.**

Eligible development costs under this program include architectural and engineering services, construction, legal and administrative services, interest during construction, built-in or installed kitchen equipment, such as ranges and refrigerators, and equipment for food service in central dining facilities.

(12 U.S.C. 1749a(c)(1))

**§ 614.51 Ineligible development costs.**

Ineligible development costs are the cost of furnishings, other than kitchen and food service equipment, such as

beds, dressers, and tables, whether built-in or movable.

(12 U.S.C. 1749c(c); 1749a(c)(1))

**§ 614.52 Additional ineligible costs.**

(a) If, under the Act, an applicant files for assistance for a proposed project after the effective date of these regulations, the Secretary excludes from eligible development costs any cost for construction, or for otherwise eligible equipment, if the contract was entered into—

(1) Before the date the applicant filed the application; and

(2) Before the Secretary concurred in the award of the contract.

(b) The Secretary excludes from eligible development costs—

(1) Any costs for land incurred more than two years prior to application date; and

(2) Any costs for the acquisition of an existing structure incurred more than one year prior to the application date.

(12 U.S.C. 1749(c); 1749a(c)(1))

**§ 614.53 Fee for government field expense.**

(a) For each approved loan, a borrower shall pay a fixed fee that is sufficient to cover the cost to the Government for the site inspections and reviews.

(b) The fixed fee shall be an amount equal to one-eighth of one percent (.00125) of the loan amount, with a minimum charge of \$500 and maximum charge of \$1,500.

(c)(1) The borrower shall compute the fixed fee on the loan amount at the time of the original loan agreement.

(2) After the execution of the loan agreement, the borrower may not make an adjustment in the specified fixed fee.

(12 U.S.C. 1749d)

**§ 614.54 Construction account.**

(a) A borrower shall deposit in a separate bank account known as the Construction Account—

(1) The proceeds of the sale of the bonds or notes;

(2) Any interim advances against the approved loans; and

(3) All other money that the borrower will use in paying for the construction, of the approved project.

(b) If the borrower is expending funds of its own on the project, it shall deposit those funds in the Construction Account and expend those funds prior to obtaining any advances from the Secretary.

(c) The borrower shall make all expenditures for construction, rehabilitation or acquisition from this account.

(d) Accounting for this account shall be in accordance with generally accepted accounting principles.

(12 U.S.C. 1749a(c)(1))

**§ 614.55 Investment of idle construction funds.**

(a) If the money on deposit in the Construction Account exceeds the estimated disbursements for the next 90 days, the Secretary encourages the borrower to invest those excess funds.

(b) If the borrower chooses to invest the funds referred to in paragraph (a) of this section, the borrower—unless otherwise prohibited by State or local law—shall invest those funds in—

(1) Direct obligations of the U.S. Government; or

(2) Obligations whose principal and interest are guaranteed by the U.S. Government.

(c) An investment made in accordance with paragraph (b) of this section shall be in obligations that will mature not later than 18 months from the date of the investment.

(d) Any interest earned on the investment of idle funds in the Construction Account during the construction period shall be deposited in the Construction Account. Any such interest shall be credited against the interest expense accruing during the construction period. In the event that interest earned exceeds interest expense, the excess shall be used to reduce the outstanding principal amount of the loan.

(12 U.S.C. 1749a(c)(1))

**§ 614.56 Procedure for loan disbursement.**

(a) The borrower shall submit requests for loan disbursement on forms prescribed by the Secretary and shall furnish to the Secretary any additional information the Secretary may request.

(b) The Secretary charges interest on the advances at the same rate the Secretary charges interest on the loan.

(12 U.S.C. 1749a(c)(1))

**§ 614.57 Disposal of balance remaining in the Construction Account.**

Upon full settlement with all contractors, suppliers, and the other parties to whom it has incurred obligations under the project, a borrower shall dispose of any money remaining in the Construction Account in accordance with the provisions of the loan agreement.

(12 U.S.C. 1749a(c)(1))

**§ 614.58 Determination of final approved development costs.**

(a) For the purpose of determining the final approved development costs, the

Secretary may permit a borrower to use—in place of an audit by the Government—a certificate of project development cost prepared on forms prescribed by the Secretary and executed by the borrower.

(b)(1) In conjunction with the Secretary's determination of final approved development costs, the borrower shall submit to the Secretary whatever documentation the Secretary requires.

(2) This documentation may include but is not limited to, a certificate of actual cost—in a form prescribed by the Secretary—showing the actual cost to the borrower for construction, architectural, legal, organizational, and offside costs and other items of expense approved by the Secretary.

(12 U.S.C. 1749c(c); 1749a(c)(1))

#### § 614.59 Application of pledged revenues.

(a) A borrower that has pledged project revenues—either net or gross—as security for its loan must deposit all pledged revenues into a separate fund in accordance with the terms of the loan agreement.

(b) This fund is known as the Revenue Fund.

(c) The borrower shall make repayments on the loan from this fund in accordance with the terms of the loan agreement.

(12 U.S.C. 1749a(c)(1))

#### § 614.60 Length and maturity of loan.

(a)(1) The maximum repayment period for a housing loan under this program is 30 years, unless the Secretary finds that a longer repayment period is necessary.

(2) In no case may a loan repayment period exceed the lesser of 50 years or the estimated useful life of the facilities to be constructed, renovated or purchased with the proceeds.

(b) The repayment period for an energy conservation loan shall normally be the time required for projected operating savings to equal the costs of the project, plus 2 years.

(c) Loans shall bear interest at a rate not to exceed three percent per annum.

(d) Unless the Secretary authorizes otherwise—

(1) The borrower shall repay the loan in not less than annual nor more than

semiannual equal installments of principal and interest.

(2) However, for a reasonable period of time—normally not exceeding two years following the date of the loan—a borrower may make payments of interest only.

(12 U.S.C. 1749(c))

#### § 614.61 Borrower's non-financial obligations.

In addition to its financial obligations under the loan agreement, a borrower under this program must—as required in the loan agreement—agree to—

(a) Maintain its status as an eligible educational institution;

(b) Use the project for the purpose or purposes for which the loan was made, unless the Secretary approves a change of purpose;

(c) Maintain insurance on the project facilities; and

(d) Repair and maintain the project facilities.

(12 U.S.C. 1749a(c)(1))

#### § 614.62 Deferments.

(a) A borrower may request—and the Secretary may grant—deferment of any repayment due on a loan under this program if the borrower has—

(1) Complied with—

(i) The terms and conditions of the loan agreement; and

(ii) All nonfinancial obligations under § 614.61;

(2) Properly applied and accounted for all assets pledged as security under the loan agreement; and

(3) Submitted a financial plan that satisfies the Secretary that the borrower is remedying the conditions that caused the request for deferment.

(b) If the Secretary agrees to a deferment, that deferment normally does not exceed one year unless the borrower provides evidence, and the Secretary agrees, that a longer deferment is necessary.

(c) The Secretary does not grant a deferment if the borrower proposes to do any of the following:

(1) Use pledged revenues for any purpose or purposes other than that provided in the loan agreement.

(2) Create another lien on the facilities assisted under this program.

(3) Release obligors, co-obligors, or guarantors under the loan.

(4) Request a reduction of principal or interest.

(12 U.S.C. 1749a(c)(8))

#### Appendix A.—Guides for Determining Minimum Energy Savings

In connection with projects intended to conserve energy, the applicant indicates its compliance with minimum energy conservation measures through completion of the following checklist:

Code: 1=No (no considerable involvement in this activity).

Code: 2=Yes (considerable involvement in this activity).

Code: 3=N.A. (not applicable).

Specific temperature ranges and thermostat settings:

- 65°-68° Winter
- 75°-80° Summer
- Reduction in illumination levels and lamp wattage
- Substantial night and weekend building shutdowns
- Consolidation of activities into fewer buildings, particularly during evenings and weekends
- Development of energy efficient space allocation practices
- Scheduling of institutional vacations during energy intensive periods
- Restrictive policy on appliance usage
- Restrictive policy on air conditioning installation
- Reduction of domestic hot water temperature
- Manual reduction of fresh air makeup
- Manual monitoring of buildings
- Work schedule adjustments to maximize daylight working hours
- Reduction of building heat leakage by using blinds and drapes
- Maintenance review of existing energy systems:
  - Inspection and regularized maintenance of steam traps
  - Inspection and correction of valve functions and air filtration systems where needed
- ORSAT analysis of flue gases
- Total involvement of institutional community:
  - Faculty, staff, and student energy committee
  - Appointment of building energy monitors
  - Energy briefing sessions with building occupants
  - Campus-wide energy awareness programs

If the answer to any of the above is "no," please attach a brief explanation.

[FR Doc. 82-13512 Filed 5-19-82; 8:45 am]

BILLING CODE 4000-01-M

## DEPARTMENT OF EDUCATION

## Office of Postsecondary Education

## Application Notice for New Projects Under the College Housing Program for Fiscal Year 1982

Applications are invited for new projects under the College Housing Program.

Authority for this program is contained under Title IV of the Housing Act of 1950, 64 Stat. 48, 77; Pub. L. 81-475; 12 U.S.C. 1749-1749d, and under Section 306 of the Department of Education Organization Act (Pub. L. 96-88).

Under this program, the Secretary is authorized to award low-interest loans to assist eligible institutions (1) in providing housing and other educational facilities for student and faculty members, and (2) in conserving energy, and reducing related operating costs.

**Closing Date for Transmittal of Applications:** Applications for awards must be mailed (post-marked) or hand-delivered by June 30, 1982.

**Applications Delivered by Mail:** An application sent by mail must be addressed to the U.S. Department of Education, Attention: 84.142, College Facilities Branch, 400 Maryland Avenue, SW., (ROB-3, Room 3717), Washington, D.C. 20202.

An applicant must show proof of mailing consisting of one of the following:

- (1) A legibly dated U.S. Postal Service Postmark.
- (2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.
- (3) A dated shipping label, invoice or receipt from a commercial carrier.
- (4) Any other proof of mailing acceptable to the U.S. Secretary of Education.

If an application is sent through the U.S. Postal Service, the Secretary does not accept either of the following as proof of mailing: (1) A private metered postmark, or (2) a mail receipt that is not dated by the U.S. Postal Service.

An applicant should note that the U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, an applicant should check with its local post office.

**Applications Delivered by Hand:** An application that is hand-delivered must be taken to the U.S. Department of Education, College Facilities Branch, Room 3717, Regional Office Building 3, 7th and D Streets, SW., Washington, D.C. between 8:00 a.m. and 4:30 p.m. (Washington, D.C. time) daily except Saturday, Sunday, or Federal holidays. Applications that are hand-delivered will not be accepted after 4:30 p.m. on the closing date.

**Program Information:** The College Housing Program provides low-interest 3 percent long-term loans to postsecondary educational institutions for the construction, rehabilitation or acquisition of student and faculty housing and related facilities and for conserving energy and reducing related operating costs.

Regulations for this program are published in the regulations section in this issue of the **Federal Register**. The regulations specify selection criteria for the two types of loans available under this program. All applications are ranked according to the criteria contained in §§ 614.31 and 614.32 of the program regulations.

**Available Funds:** There is authorized \$75,000,000, or the amount of income less expenses, whichever is less, to be made available for College Housing Loans. Funds available for commitment for new loans in fiscal year 1982 are estimated to be approximately \$10,000,000. However, the total amount available will not be known until the end of the fiscal year. Gross commitments for the principal amount of direct loans may not exceed \$75,000,000. If the amount of available funds is greater than \$30,000,000, twenty-five percent of the available funds will be apportioned for energy conservation loans and seventy-five percent of the available funds will be apportioned for housing loans. If the amount of available funds is \$30,000,000 or less, the total amount will be used for energy conservation loans.

**Application Forms:** Application forms and program information packages are available.

Application packages will not automatically be mailed to all institutions of higher education. Copies may be obtained by writing to the

College Facilities Branch, U.S. Department of Education, 400 Maryland Avenue, SW., (ROB-3, Room 3717), Washington, D.C. 20202.

Applications must be prepared and submitted in accordance with the criteria, instructions, and forms included in the program information packages.

**Applicable Regulations:** The regulations applicable to this program are—

(a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR 75.179—75.173; and

(b) The final regulations governing the College Housing Program, 34 CFR Part 614, published in this issue of the **Federal Register**.

**Special Procedures:** On or before the deadline for submitting its application to the Secretary, the applicant shall submit a copy of its application, with a letter asking for comment, to the State and areawide clearinghouses established in compliance with the Office of Management and Budget Circular A-95. The applicant shall also submit a copy of its application to the appropriate State agency for postsecondary education. Comments, if any, are to be addressed to the College Facilities Branch, U.S. Department of Education, 400 Maryland Avenue, SW., (ROB-3, Room 3717), Washington, D.C. 20202. Comments must be received within 20 days after the deadline date if they are to be considered. The applicant shall attach to its application to the Secretary a copy of its letter requesting the State and areawide clearinghouses to comment on the application.

**FOR FURTHER INFORMATION CONTACT:**

Charles I. Griffith, College Facilities Branch, Department of Education, 400 Maryland Avenue, SW., (ROB-3, Room 3717), Washington, D.C. 20202. Telephone: (202) 245-3253.

(12 U.S.C. 1749-1749d)

Dated: May 12, 1982.

(Catalog of Federal Domestic Assistance No. 84.142, College Housing Program)

**Thomas P. Melady,**

*Assistant Secretary for Postsecondary Education.*

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