

September 1, 1986, by each manufacturer, shall comply with the requirements of S4.1.2.1.

S4.1.3.2 Passenger cars manufactured on or after September 1, 1987, and before September 1, 1988.

S4.1.3.2.1 Subject to S4.1.3.2.2 and S4.1.3.4, each passenger car manufactured on or after September 1, 1987, and before September 1, 1988, shall comply with the requirements of S4.1.2.1, S4.1.2.2 or S4.1.2.3.

S4.1.3.2.2 Subject to S4.1.5, an amount of the cars specified in S4.1.3.2.1 equal to not less than 25 percent of the average annual production of passenger cars manufactured on or after September 1, 1984, and before September 1, 1987, by each manufacturer, shall comply with the requirements of S4.1.2.1.

S4.1.3.3 Passenger cars manufactured on or after September 1, 1988, and before September 1, 1989.

S4.1.3.3.1 Subject to S4.1.3.3.2 and S4.1.3.4, each passenger car manufactured on or after September 1, 1988, and before September 1, 1989, shall comply with the requirements of S4.1.2.1, S4.1.2.2 or S4.1.2.3.

S4.1.3.3.2 Subject to S4.1.5, an amount of the cars specified in S4.1.3.3.1 equal to not less than 40 percent of the average annual production of passenger cars manufactured on or after September 1, 1985, and before September 1, 1988, by each manufacturer, shall comply with the requirements of S4.1.2.1.

S4.1.3.4 For the purposes of calculating the numbers of cars manufactured under S4.1.3.1.2, S4.1.3.2.2 or S4.1.3.3.2 to comply with S4.1.2.1, each car whose driver's seating position will comply with these requirements by means other than any type of seat belt is counted as 1.5 vehicles.

3. Standard No. 208 is amended by adding the following new sections:

S4.1.4 Passenger cars manufactured on or after September 1, 1989. Except as provided in S4.1.5, each passenger car manufactured on or after September 1, 1989, shall comply with the requirements of S4.1.2.1.

S4.1.5 Mandatory seatbelt use laws.
S4.1.5.1 If the Secretary of Transportation determines, by not later than April 1, 1989, that state mandatory safety belt usage laws have been enacted that meet the criteria specified in S4.1.5.2 and that are applicable to not less than two-thirds of the total population of the 50 states and the District of Columbia (based on the most recent Estimates of the Resident Population of States, by Age, Current Population Reports, Series P-25, Bureau of the Census), each passenger car manufactured under S4.1.3 or S4.1.4 on or after the date of that determination shall comply with the requirements of S4.1.2.1, S4.1.2.2, or S4.1.2.3.

S4.1.5.2 The minimum criteria for state mandatory safety belt usage laws are:

(a) Require that each front seat occupant of a passenger car equipped

with safety belts under Standard No. 208 has a safety belt properly fastened about his or her body at all times when the vehicle is in forward motion.

(b) If waivers from the safety belt usage requirement are to be provided, permit them for medical reasons only.

(c) Provide for the following enforcement measures:

(1) A penalty of not less than \$25.00 (which may include court costs) for each occupant of a car who violates the belt usage requirement.

(2) A provision specifying that the violation of the belt usage requirement may be used to mitigate damages with respect to any person who is involved in a passenger car accident while violating the belt usage requirement and who seeks in any subsequent litigation to recover damages for injuries resulting from the accident. This requirement is satisfied if there is a rule of law in the State permitting such mitigation.

(3) A program to encourage compliance with the belt usage requirement.

(d) An effective date of not later than September 1, 1989.

(Sec. 103, 119, Pub. L. 89-563, 80 Stat. 718 (15 U.S.C. 1392, 1407))

Issued: July 11, 1984.

Elizabeth H. Dole,
Secretary of Transportation.

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Tuesday
July 17, 1984

Part III

**Department of the
Interior**

Bureau of Land Management

43 CFR Part 2710

**Sales—Federal Land Policy and
Management Act; Amendment to the
Sales Regulations; Final Rulemaking**

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Part 2710

[Circular No. 2548]

Sales—Federal Land Policy and Management Act; Amendment to the Sales Regulations

AGENCY: Bureau of Land Management, Interior.

ACTION: Final rulemaking.

SUMMARY: This final rulemaking amends the existing sales regulations to simplify the procedures for disposal of public lands. The amendment removes redundant or unnecessary requirements; changes the terms for payment for public lands; and provides for more streamlined and efficient procedures.

EFFECTIVE DATE: August 16, 1984.

ADDRESS: Any inquiries or suggestions should be sent to: Director (320), Bureau of Land Management, 1800 C Street, NW., Washington, D.C. 20240.

FOR FURTHER INFORMATION CONTACT: Ben Koski, (202) 343-8693.

SUPPLEMENTARY INFORMATION: Proposed rulemaking was published in the *Federal Register* on December 6, 1983 (48 FR 54656), with a 60-day comment period. Comments were received from 36 sources, 10 from associations, 10 from Federal agencies, 7 from individuals, 6 from businesses and 3 from State and local governments. Generally, the comments supported the proposed rulemaking and its aims, but objections were raised to specific sections. Several of the comments supported the streamlining and expressed the view that this made the regulations easier to understand and use. The major concern raised in the comments dealt with land use planning as it related to sales of public lands.

The largest number of comments were directed at the land use planning process as it applies to the identification of public lands that are suitable for disposal by sale or other means. Most of the comments expressed concern regarding: Disposal prioritization, (e.g., sale v. exchange); environmental assessment; public participation in the land use planning process; physical suitability; State/local government participation; planning amendments; and the land sale nomination process.

A cornerstone of the land use planning process as set forth in the land use planning regulations in 43 CFR Part 1600 is the role public participation, including State and local participation, plays in the identification and

development of multiple use management planning decisions. This active participation is specifically provided for in 43 CFR 1610.2 and 1610.3 and has been extremely successful in identifying public and governmental needs in the land sale and conveyance elements of Resource Management Plans.

A number of comments objected to the public nomination process for the identification of lands suitable for sale contained in the proposed rulemaking because the comments were of the view that it bypassed the Bureau of Land Management's land use planning process. The existing sales regulations specifically state in §§ 2710.0-6(a) and 2711.1-1(a) that sales of public lands must be made in accordance with the land use planning regulations in Part 1600. This requirement applies to sales that result from the public nomination process. Public nominations will be examined either as part of the preparation of a land use plan or as part of an amendment to a land use plan. Since it is clear that any public nominations of lands for disposal must conform to the Bureau's land use planning process before those lands can be disposed of, the final rulemaking retains this provision.

Some of the comments expressed a concern that full consideration might not be given to alternative forms of disposal, such as exchanges or conveyance under the Recreation and Public Purposes Act. The land use planning process and the public participation that it requires will be the basis of determining the best method of disposal. As an example, if the land use planning process demonstrates a need for public lands for public purposes within the planning area, the lands designated in the plan for disposal would probably be conveyed under the provisions of the Recreation and Public Purposes Act. Further, all land conveyances, whatever the conveyance method used, must be consistent with State and local planning and zoning requirements.

A few comments expressed the concern that lands nominated for sale under the public nominations process might not be adequately reviewed for their environmental impacts. The environmental impacts resulting from the disposal of public lands are required to be fully addressed as part of the Bureau of Land Management's land use planning process. As explained above in this preamble, all lands nominated by the public for disposal must be considered under the Bureau's land use planning process before they can actually be offered for disposal, a process that includes a full analysis of

the environmental impacts of such a disposal.

Although not affected by the proposed rulemaking, several of the comments supported the continuation of public benefit discount conveyances. This highly successful initiative will continue under other statutes and existing regulations and is unaffected by this final rulemaking.

Section 2710.0-5—Definitions

The three definitions that were added to the existing regulations by the proposed rulemaking were the subject of several comments. Since these terms are in common use and are commonly understood by the public, they are deemed unnecessary and have been deleted by the final rulemaking.

Section 2710.0-6—Policy

Several comments were received on § 2710.0-6(b) of the proposed rulemaking, with many of them objecting to the provision allowing public nomination of public lands for sale. Those making this comment suggested that it provided a method of subverting the Bureau of Land Management's land use planning procedure. As pointed out earlier in this preamble, any public lands offered for sale must be included in a land use plan or amendment to a land use plan. Moreover, public nominations are but one form of public participation in the decisionmaking process. Since public lands are offered for sale only upon the motion of the Bureau, the authorized officer can reject any public nomination that does not meet the requirements of the sales regulations and which is not consistent with an existing land use plan or an amendment to an existing land use plan. No change has been made in § 2710.0-6(b) by the final rulemaking.

Several comments were received on § 2710.0-6(c) of the proposed rulemaking, with most making suggested editorial changes to clarify its provisions. This section of the final rulemaking has adopted several of these suggested changes, including the substitution of the word "may" for the word "shall" in subparagraph (3)(i) to make it consistent with other sections of the existing regulations that allow the authorized officer discretion in selecting the method of sale appropriate for each parcel.

Several comments were received regarding the language regarding appraisals added to § 2710.0-6(f) by the proposed rulemaking. Some of the comments supported the provision in the proposed rulemaking giving the authorized officer flexibility in

determining appraisal methods based on the complexity of the case, method of sale or other factors. Other comments indicated that the amendment gave too much discretion to the authorized officer and that this could have an adverse impact on the fair market value determination for the public lands offered for sale. The change made by the proposed rulemaking was not intended to have any impact on the fair market value determination. The Federal Land Policy and Management Act and the regulations are clear in their requirement that the United States receive fair market value for any public lands that are sold. The amendment in the proposed rulemaking was designed to allow the authorized officer discretion to consult with an appraiser to determine the level of detail needed to determine the fair market value for the parcel in question. The amendment was never intended to give the authorized officer license to change the procedure for determining the fair market value of the lands offered for sale. The final rulemaking deletes this provision of the proposed rulemaking, leaving the language of the existing regulation in effect. Appraisal reports will be prepared using the principles of the "Uniform Appraisal Standards for Federal Land Acquisitions."

Section 2711.1-2—Notice of Realty Action

Section 2711.1-2(d) of the proposed rulemaking has been revised by the final rulemaking by substituting the word "shall" for the word "may" to make it clear that public lands offered for sale will be segregated from entry under the public land laws. Other changes to this section made by the final rulemaking are for clarity.

Several comments objected to the provision in this section of the proposed rulemaking that would allow a planning decision announcement to be substituted for the notice of realty action. The change was proposed to avoid duplication of sales notices in certain situations. The final rulemaking adopts the language of the proposed rulemaking for several reasons. Amendments to a land use plan covering the disposal of public lands will, in most instances, deal with a specific parcel of public lands and will make a thorough analysis of each specific sales proposal. It is duplicative and an additional expense to the United States and its taxpayers to republish that information in the form of a notice of realty action. In those instances where the Bureau of Land Management is prepared to implement the planning decision and proceed with the sale of

the public lands, it is unnecessary to solicit public comments twice on the same action. When the planning decision announcement is used to give notice of a sale of public lands, the 45-day public comment period and 60-day Congressional notification required with a notice of realty action will be provided, even though the planning decision announcement requires only a 30-day comment period.

A few comments were received on section 2710.1-2 of the existing regulations that were not related to the changes made by the proposed rulemaking. One comment suggested that the patent for public lands sold under Part 2710 contain a provision requiring that existing land uses be continued. If the analysis of the public lands being considered for disposal by sale reveals that current land uses should be maintained to protect significant resources, the public lands will be retained in Federal ownership. Another comment on this section indicated a preference for oral bidding. The system of bidding should not be confused with the method of sale. The bidding system which best serves the purpose of the particular sale will be used. Finally, a comment suggested that signs be placed on public lands which are offered for sale. This very useful marketing technique will be considered for use in those instances where it would be appropriate.

Section 2711.1-3—Sales Requiring Grazing Permit or Lease Cancellation

The change made by the proposed rulemaking to § 2711.1-3 was generally supported by the comments, but there were requests for clarification. A careful review was made of the comments and the language of the proposed rulemaking and a decision was made to modify the language of the section in the final rulemaking to avoid confusion and provide consistency with other sections of Title 43 of the Code of Federal Regulations by using a cross-reference to the newly effective provisions in 43 CFR 4110.4-2(b).

Section 2711.3-1—Competitive Bidding

Several comments expressed full support for the variable bid deposit percentage (10 to 30 percent of the amount of the bid) and the 180-day period allowed a successful bidder to submit the remainder of the full bid price provided in this section of the proposed rulemaking. A group of comments expressed the view that the proposed changes favored large corporations or large economic units over individuals. Three comments stated that the lowering of the bid deposit and

the extension of the settlement period to 180 days would enable large economic units to reinvest money that really belongs to the United States, whereas smaller units could not do this because of cash flow problems. Another comment suggested that the proposed changes would result in increased administrative costs to the United States. One comment proposed that some type of financial assistance be offered to buyers. Still another comment suggested that the final rulemaking should be amended to require a variable down payment of 15 to 25 percent and a payment period of three years, because this would be more beneficial to potential purchasers.

After a careful review of the comments on this section of the proposed rulemaking, a decision was made to have the final rulemaking retain the 10 to 30 percent bid deposit and allow up to 180 days in which to complete the sale transaction. This provision affords flexibility to vary the bid deposit percentage based on the total purchase price of the specific parcel being offered, while allowing equity considerations for all potential purchasers and prevailing market conditions. The 180-day period provided in the final rulemaking should allow sufficient time for a purchaser to obtain the funds needed to complete the purchase. Experience indicated that the 30-day period provided in the existing regulations had been constraining and the increased time period will afford greater latitude in arranging for financing which will benefit all potential purchasers. Long term financing, on the other hand, is more properly a role for the private sector. The administrative costs of the Bureau should be no different as a result of this change and might decrease if the number of parcels sold increases. Finally, paragraph (c) has been clarified in the final rulemaking.

Section 2711.3-2—Modified Bidding and Section 2711.3-3—Direct Sales

Many of the comments combined their view on these two sections of the proposed rulemaking and this preamble follows that lead in its discussion of the two sections. Several questions were asked regarding the process for selection of a method of sale. The practice of the Bureau of Land Management is to select one of three methods of sale, either competitive, modified competitive or direct sale, after the parcel has been found suitable for disposal in the land use plan and after the parcel has been found to meet at least one of the criteria for sale

(iii) Direct sale as provided in § 2711.3-3 of this title may be used when the lands offered for sale are completely surrounded by lands in one ownership with no public access, or where the lands are needed by State or local governments or non-profit corporations.

or where necessary to protect existing equities in the lands or resolve inadvertent unauthorized use or occupancy of said lands.

(4) When lands have been offered for sale by one method of sale and the lands remain unsold, then the lands may be reoffered by another method of sale.

(5) In no case shall lands be sold for less than fair market value."

§ 2711.1-1 [Amended]

3. Section 2711.1-1 is amended by adding a new paragraph (c) to read:

(c) Nominations or requests for sales of public lands may be made to the District office of the Bureau of Land Management for the District in which the public lands are located and shall specifically identify the tract being nominated or requested and the reason for proposing sale of the specific tract.

§ 2711.1-2 [Amended]

4. Section 2711.1-2 is amended by:

a. Revising paragraph (b) to read:

(b) Not less than 60 days prior to sale, notice shall be sent to the Member of the United States House of Representatives in whose district the public lands proposed for sale are located and the United States Senators for the State in which the public lands proposed for sale are located, the Senate and House of Representatives, as required by paragraph (f) of this section, to Governor of the State within which the public lands are located, to the head of the governing body of any political subdivision having zoning or other land use regulatory responsibility in the geographic area within which the public lands are located and to the head of any political subdivision having administrative or public services responsibility in the geographic area within which the lands are located. The notice shall be sent to other known interested parties of record including, but not limited to, adjoining landowners and current land users; and

(b) Renumbering paragraph (d) as paragraph (f) and inserting new paragraphs (d) and (e) to read:

(d) The publication of the notice of realty action in the *Federal Register* shall segregate the public lands covered by the notice of realty action to the extent that they will not be subject to appropriation under the public land laws, including the mining laws. Any subsequent application, shall not be accepted, shall not be considered as

filed and shall be returned to the applicant, if the notice segregates the lands from the use applied for in the application. The segregative effect of the notice of realty action shall terminate upon issuance of patent or other document of conveyance to such lands, upon publication in the *Federal Register* of a termination of the segregation or 270 days from the date of publication, whichever occurs first.

(e) The notice published under § 1610.5 of this title may, if so designated in the notice and is the functional equivalent of a notice of realty action required by this section, serve as the notice of realty action required by paragraph (a) of this section and may segregate the public lands covered by the sale proposal to the same extent that they would have been segregated under a notice of realty action issued under paragraph (a) of this section.

5. Section 2711.1-3 is revised to read:

§ 2711.1-3 Sales requiring grazing permit or lease cancellations.

When lands are identified for disposal and such disposal will preclude livestock grazing, the sale shall not be made until the permittees and lessees are given 2 years prior notification, except in cases of emergency, that their grazing permit or grazing lease and grazing preference may be cancelled in accordance with § 4110.4-2(b) of this title. A sale may be made of such identified lands if the sale is conditioned upon continued grazing by the current permittee/lessee until such time as the current grazing permit or lease would have expired or terminated. A permittee or lessee may unconditionally waive the 2-year prior notification. The publication of a notice of realty action as provided in § 2711.1-2(c) of this title shall constitute notice to the grazing permittee or lessee if such notice has not been previously given.

§ 2711.2 [Amended]

6. Section 2711.2(b) is amended by removing the word "law" and replacing it with the word "laws".

§ 2711.3-1 [Amended]

7. Section 2711.3-1 is amended by:

a. Revising the title to read:

§ 2711.3-1 Competitive bidding.

b. Amending paragraph (c) by removing from the second sentence the phrase "not less than one-fifth" and replacing it with the phrase "the amount required in the notice of realty action which shall be not less than 10 percent or more than 30 percent"; and by removing from the beginning of the third

sentence the word "of" and replacing it with the word "or"; also by removing from the third sentence the word "drawing" and replacing it with the words "supplemental biddings; and removing the last sentence and replacing it with a new sentence to read: "The designated high bidders shall be allowed oral or sealed bids as designated by the authorized officer."

c. Amending paragraph (d) by removing the phrase "30 days" and replacing it with the phrase "180 days" and by removing the word "30th" and replacing it with the word "180th".

§ 2711.3-2 [Amended]

8. Section 2711.3-2 is amended by:

a. Revising the title to read:

§ 2711.3-2 Modified bidding.

b. Amending paragraph (a)(1) by removing the period at the end of paragraph (ii) and replacing it with a semicolon and the word "or" and by adding a new paragraph (iii) to read:

(iii) Offering to designated bidders the right of first refusal to purchase the lands at fair market value. Failure to accept an offer to purchase the offered lands within the time specified by the authorized officer shall constitute a waiver of his preference consideration.

c. Revising paragraph (b) to read:

(b) Where 2 or more designated bidders exercise preference consideration awarded by the authorized officer in accordance with paragraph (a)(1) of this section, such bidders shall be offered the opportunity to agree upon a division of the lands among themselves. In the absence of a written agreement, the preference right bidders shall be allowed to continue bidding to determine the high bidder.

d. Renumbering paragraphs (c) and (d) as paragraphs (d) and (e) and inserting a new paragraph (c) to read:

(c) Where designated bidders fail to exercise the preference consideration offered by the authorized officer in the allowed time, the sale shall proceed using the procedures specified in § 2711.3-1 of this title; and

9. A new § 2711.3-3 is added to read:

§ 2711.3-3 Direct sales.

(a) Direct sales (without competition) may be utilized, when in the opinion of the authorized officer, a competitive sale

is not appropriate and the public interest would best be served by a direct sale. Examples include, but are not limited to:

(a) A tract identified for transfer to State or local government or nonprofit organization; or

(2) A tract identified for sale that is an integral part of a project or public importance and speculative bidding would jeopardize a timely completion and economic viability of the project; or

(3) There is a need to recognize an authorized use such as an existing business which could suffer a substantial economic loss if the tract

were purchased by other than the authorized user; or

(4) The adjoining ownership pattern and access indicate a direct sale is appropriate; or

(5) A need to resolve inadvertent unauthorized use or occupancy of the lands.

(b) Once the authorized officer has determined that the lands will be offered by direct sale and such determination has been issued, published and sent in accordance with procedures of this part, payment shall be made by the same instruments as authorized in § 2711.3-1(c) of this title.

(c) Failure to accept an offer to purchase the offered lands within the time specified by the authorized officer shall constitute a waiver of this preference consideration.

(d) Acceptance or rejection of an offer to purchase the lands shall be in accordance with the procedures set forth in § 2711.3-1 (f) and (g) of this title.

§ 2711.5-3 [Amended]

10. Section 2711.5-3 is amended by removing the phrase "publish in the Federal Register and".

[FR Doc. 84-18877 Filed 7-16-84; 8:45 am]

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Federal Register

Tuesday
July 17, 1984

Part IV

Department of Education

34 CFR Part 614

College Housing Program; Final
Regulations and Notice

DEPARTMENT OF EDUCATION

34 CFR Part 614

College Housing Program

AGENCY: Department of Education.

ACTION: Final regulations.

SUMMARY: The Secretary of Education issues final regulations governing an aspect of the College Housing Program. The regulations implement a recent amendment to the Housing Act of 1950 made by section 308 of Pub. L. 98-139, which authorizes the Secretary under certain conditions to grant a discount to institutions that prepay their college housing loans. These regulations provide a mathematical formula for computing a discounted prepayment of a college housing loan, and establish certain requirements that institutions must meet, if they wish to receive a discount.

EFFECTIVE DATE: These regulations will take effect either 45 days after publication in the *Federal Register* or later if the Congress takes certain adjournments. If you want to know the effective date of these regulations, call or write the Department of Education contact person.

FOR FURTHER INFORMATION CONTACT: John K. Uchima, Program Manager, Loan Management Branch, U.S. Department of Education, L'Enfant Plaza, P.O. Box 23471, Washington, D.C. 20024. Telephone: (202) 472-9300.

SUPPLEMENTARY INFORMATION: The College Housing Program provides long-term, low-interest loans to colleges, universities, teaching hospitals, certain vocational/technical institutions and other eligible college housing agencies for construction, acquisition, or substantial rehabilitation of dormitories, faculty housing, and related facilities such as dining halls, student centers, and infirmaries.

The Housing Act of 1950 was recently amended by section 308 of Pub. L. 98-139 (the Department of Education Appropriation Act of 1984). This legislative measure allows the Secretary of Education to discount college housing loans under certain conditions. These conditions include the following:

(a) Prior to October 1, 1984, the borrower prepays the discounted outstanding loan amount;

(b) The discount is based on the yield on outstanding marketable obligations of the United States with maturities comparable to the remaining repayment schedule of the housing loan;

(c) The prepayment is made from non-Federal sources;

(d) The Secretary is assured by the borrower that the housing or other

educational facility will be used for purposes related to the educational institution for the remaining term of the original loan; and

(e) The prepayment amount is in the best financial interests of the Federal Government.

On April 20, 1984, the Secretary published in the *Federal Register*, 49 FR 16932, a notice of proposed rulemaking for the College Housing program, which contained proposed regulations for implementing the discount authority granted to the Secretary by the Congress in section 308 of Pub. L. 98-139. In response to the proposed regulations, a number of comments were received by the Secretary, including comments from public officials, a college housing loan borrower, investment bankers, and financial advisors. In addition, during the public comment period, the House Subcommittee on Intergovernmental Operations and Human Resources held oversight hearings on the Department of Education's management of the College Housing Program. The Chairman of the subcommittee asked numerous questions about the proposed regulations, and, in particular, commented and inquired about the application of discount authority to institutions that are currently in default of their college housing loan payment obligations. (A copy of the Hearing Transcript is available for public inspection in Room 3671, Regional Office Building 3, 7th and D Streets, SW., Washington, D.C. between the hours of 8:30 a.m. and 4:00 p.m., Monday through Friday of each week except Federal holidays.)

Many of the comments received by the Secretary, including those arising from the subcommittee's hearings, called for assessments of financial and tax consequences to the Government, with respect to the manner in which the Secretary proposed to exercise the discount authority. For such assessments, the Secretary consulted with officials from the Office of Management and Budget and from the Department of the Treasury.

The Secretary is adopting most of the text of the proposed regulations as the final regulations for implementing the discount authority. Changes and additions from the proposed regulations have been incorporated into the final regulations based on comments received by the Secretary as well as the Secretary's internal review. The following is a summary of the comments and the Secretary's responses to them:

Comments and Responses

Comment

One commenter requested clarification on what constitutes an adequate assurance of educational use for a housing or other educational facility that was financed by a college housing loan which the institution proposes to prepay under the discount authority. In this connection, the commenter also raised the question of whether an institution which leases an educational facility would be in compliance with the educational use requirement.

Response

A change is made in the regulations. The regulations are amended to specify that the Secretary considers as a satisfactory assurance of educational use the placement of a restriction (through a covenant, or other form of use restriction) of educational use on the deed to the property originally financed by the loan, or the execution by the institution of a legally binding covenant to the Secretary that provides for the educational use restriction. In negotiating such covenants, the Secretary reserves the right to include a provision calling for recapture of the discount benefits for breach of the restriction.

The Secretary believes that it is necessary to specify requirements of educational use so that those institutions which have received a discount continue to use the facility in a manner consistent with the educational mission of the institution. Based on the Secretary's experience in administering the College Housing and Academic Facilities Programs, the Secretary is particularly concerned about institutions which use federally financed projects for noneducational uses and in contravention of their loan agreements. The Secretary interprets the discount authority granted by the Congress to authorize the Secretary to require legally binding assurances of educational use to prevent institutions from subsequently selling or leasing property for noneducational purposes.

The Secretary does, however, intend to take a broad view of what constitutes a permissible educational use; for instance, if an institution demonstrates that leasing the facility to a particular tenant contributes to the educational mission of the institution, the Secretary will approve the use as satisfying the statutory condition. Finally, the Secretary does not intend that regulatory requirements for the educational use restriction are

exhaustive of all forms by which an institution adequately assures the Secretary of its compliance with the restriction.

Comment

Another commenter on the educational use requirement recommended that the Secretary retain flexibility to relax the period during which the educational use requirement is in force for institutions.

Response

No change is made in the regulations. The Secretary does not possess authority to waive or compromise any aspect of the educational use requirement, including the time period during which the requirement is in force. The discount amendment requires that the educational use requirement be in force "for the original term of the loan." The legislative history indicates the Congress' concern "that educational institutions not retire loans simply to convert the facility's purpose to noneducational related purposes or sell them outright to other entities." However, the Secretary interprets the phrase "the original term of the loan" not to mean the period originally specified for loan repayments, but the remaining term of the original loan prior to an award of a discount. (S. Rept. 98-247 at 155).

Comment

One commenter stated that the proposed regulations were ambiguous on whether "the discounting of each payment to the prepayment date is intended to be at a rate appropriate to the last payment date or at a rate appropriate to the date of the particular payment being discounted."

Response

No change is made in the regulations. The Secretary believes that the text of the regulations and the present value formula as originally proposed called for discounting of each scheduled payment for a college housing loan at the interest rate certified by the Secretary of the Treasury, which rate would be applicable to the maturity date of the particular payment being discounted.

Comment

One commenter suggested that the Secretary, for purposes of computing discounted present value, use $\frac{1}{8}\%$ more than the interest rates established weekly by the Department of the Treasury, Bureau of Public Debt for U.S. Treasury Certificates of Indebtedness, Notes and Bonds—State and Local Government Series (SLGs).

Response

No change is made in the regulations. For reasons of administrative convenience and necessity, the Secretary disagrees with this suggestion. The monthly interest rates that will be determined by the Treasury Department for use in calculating the discounted present value provide the Secretary with sufficient time to do the necessary computations and estimates. As the interest rates on SLGs vary from week to week, it would be administratively cumbersome to do computations and estimates for the volume of proposals the Secretary expects. In addition, the standard across the Government is the monthly rate.

Comment

One commenter suggested that the regulations not include a reamortization of all remaining payments of principal and interest because of the concern that such a reamortization "introduces an ambiguity into the process, as no formula or algorithm is provided."

Response

The Secretary agrees and the appropriate change is made in the regulations.

Comment

One commenter suggested that the Secretary require an institution to prepay its college housing loan based on the interest rates in force at the time that the institution has committed itself to prepay the loan and to submit its prepayment within a reasonable time, approximately thirty days, after expression of its commitment. Such a requirement would prevent undue speculation on market interest rates and preclude institutions from taking advantage of any unforeseen increases in interest rates that may not be accounted for in the interest rate certified monthly by the Department of the Treasury.

Response

The Secretary agrees and will include time limits for accepting prepayments in the notice for receipt of proposals for this program published elsewhere in this issue of the *Federal Register*.

Comment

One commenter recommended that the Secretary change the cutoff date of October 1, 1984 for accepting prepayments to a more realistic date in light of the difficulty that colleges might face in raising capital to finance prepayment.

Response

No change is made in the regulations. The amendment passed by the Congress for the discount authority requires that prepayment be made prior to October 1, 1984.

Comment

Another commenter recommended that the regulations as originally proposed be revised to clarify that a prepayment must be made before October 1, 1984, not that the Secretary may provide a discount prior to October 1, 1984.

Response

A change is made in the regulations. The Secretary agrees that the regulations should be clarified. As explained in a notice published elsewhere in this issue of the *Federal Register*, the Secretary may grant a discount after October 1, 1984 as long as a prepayment in full has been made prior to that date, also assuming other conditions are met by the borrower. While the amendment passed by Congress requires that prepayment of a college housing loan must be made prior to October 1, 1984, the amendment does not require that the Secretary award a discount prior to October 1, 1984.

It should be noted that prepayment in full does not, by itself, entitle an institution to a discount, but is merely one of several other conditions that must be satisfied for the Secretary to consider the award of a discount. For example, the Secretary must determine that the institution has prepaid from non-Federal sources of funds and that the discount is in the best financial interests of the Government. In addition, depending on the complexity of the proposals, particularly where multiple borrowers have multiple loans, and on the volume of proposals, it would be nearly impossible for the Secretary to award all discounts prior to October 1, 1984. Thus, based on the text of the amendment and administrative exigencies, the Secretary believes that the awarding of discounts to institutions after October 1, 1984 comports with the remedial nature of the statutory scheme provided prepayment and other stipulated conditions are met before October 1, 1984.

Comment

One commenter observed that the proposed regulations appeared to prevent the use of proceeds from tax exempt obligations for prepaying a college housing loan, although the program places a degree of reliance on State and local governments for some

financing. The commenter suggested procedures for allowing retirement and discount of the loans through the use of tax exempt financing.

Response

A change is made in the regulations. The change clarifies that tax exempt financing is not available to retire college housing loans. The Secretary is concerned about the use of proceeds from tax exempt obligations to retire college housing loans under the discount authority. Congress placed direct responsibility on the Secretary to ensure that an institution would not receive a discount under circumstances where the discount would not be in the best financial interests of the Federal Government. The statute vests broad discretion in the Secretary to carry out this responsibility.

The Secretary, throughout the rulemaking period, has received numerous inquiries from tax consultants, investment advisors, and investors concerning, among other things, private placement of tax exempt obligations, the proceeds from which would be used for retirement of college housing loans, and the leasing or sale-lease back arrangements between the holders of these privately placed obligations and the institution. Based on advice from the Treasury Department and the Office of Management and Budget, the Secretary has determined that the use of tax exempt financing for retirement of college housing loans at a discount through prepayment would not be in the best financial interests of the Government, particularly in light of the fact that such financing is, in effect, a Federal subsidy. Both OMB and the Treasury Department have advised that such financing would not be in the best financial interests of the Federal Government because of the revenue loss to the Treasury associated with such financing. The Secretary agrees and has placed a prohibition on such financing for prepayment discounts in the final regulations.

Comment

Two commenters raised questions about the wisdom of allowing institutions in default on their college housing loans to receive discounts for prepayment of those loans. In addition, these commenters sought more information and recommended specific policies for discounting loans of institutions currently in default of their loan obligations. Specifically, one commenter recommended that the discounted present value formula not apply to delinquency amounts.

Response

Changes have been made in the regulations. The Secretary has adopted special, separate procedures for evaluating proposals from institutions in default. Several new provisions in the regulations better inform the public and institutions in default about the separate evaluation that the Secretary conducts for such institutions and the factors the Secretary considers in reviewing proposals for prepayment discounts. These factors primarily pertain to the creditworthiness of, and risks associated with, institutions in default.

The Secretary believes that it is both necessary and appropriate for proposals from institutions in default to be reviewed and assessed separately from the proposals of non-defaulted institutions. Many institutions in default are currently under special repayment agreements with the Secretary, and, with the opportunity to receive a discount, many are in a financial position to cure past delinquencies. The Secretary believes that it would constitute a windfall to such institutions to allow them to receive a discount without requiring that they first cure amounts in delinquency. Also, discounting both past delinquencies and future payments would unfairly reward recalcitrant behavior, particularly where the institution has refused to become current on its loan after the Secretary has made a demand based on the institution's financial condition.

While the factors listed in the regulations are intended to ensure that institutions in default cure delinquencies before any consideration is given to an award of a discount, the Secretary retains authority under applicable legislation to grant financial relief by, for example, rescheduling loan payments or recasting the indebtedness for such institutions prior to approving a proposal for a prepayment discount. The Secretary does not intend to use that authority in connection with proposals for prepayment discounts from defaulted institutions, except in narrow and limited circumstances. If an institution in default demonstrates that it can cure some but not all delinquent amounts and has sufficient funds to retire projected scheduled payments by application of the present discounted value formula, the Secretary will consider extending financial relief to that institution prior to considering a prepayment discount. The Secretary has specified certain factors in the regulations to make such an assessment of extending relief dependent on an institution's creditworthiness and default risks. These factors are designed to ensure

that financial relief is extended only in cases where it can be demonstrated that substantial future default risks would be posed by *not* approving a prepayment discount for a particular institution in default.

By specifying factors of creditworthiness and risks, the Secretary is providing notice to institutions in default that the Secretary intends to review each proposal and the institution's prior performance in the College Housing Program separately and to consider the financial condition of the institution before a determination is made on granting a prepayment discount.

The Secretary believes that this approach is consonant with the letter of the law and the legislative history surrounding the authority. The Senate Committee that proposed the discount amendment stated that, "in some instances institutions may not be financially capable of retirement at market value, and * * * it would be in the best financial interests of the Government to receive less than the fair market value rather than risk default in which little or no payment on the loan would be received." (S. Rept. 98-247 at 155.) In this connection, all judgments to provide such financial relief under these limited and narrow circumstances will be made on a case-by-case basis.

Other Changes

The Secretary is incorporating a number of minor technical and stylistic changes in the final regulations based on an internal review of the proposed regulations. In addition, the Secretary has added one substantive condition to the regulations that institutions must meet to receive a prepayment discount.

Based on the Secretary's experience in administering the College Housing and Academic Facilities Programs, the Secretary believes that the condition that institutions not use Federal funds for a prepayment discount deserves special enforcement attention with respect to institutions that have recently received college housing loans from the Secretary. As money is fungible, it would be virtually impossible to trace whether an institution which has recently received a college housing loan is using part of that Federal loan for making a prepayment in full on other college housing loans that it might have previously received or on that same loan.

Based on the Secretary's administration of the College Housing Program, the Secretary is aware that institutions that have received loans over the last few years may not have

expended all of these Federal funds and that there exists potential for abuse of the program by use of such funds for retirement of the very loan that has not been fully expended. To prevent this abuse from occurring, to ensure that Federal funds are not used in such a manner, and to ensure that the financial interests of the Government are best served, the Secretary may choose not to approve discounts for institutions which have had college housing loans issued after October 1, 1979. This determination will be made on a case-by-case basis.

Executive Order 12291

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

Intergovernmental Review

This Program is listed in other regulations promulgated by the Secretary (34 CFR Part 79) as subject to the intergovernmental review requirements imposed by section 204 of the Demonstration Cities and Metropolitan Development Act of 1966. The objective of these requirements and Executive Order 12372, which implements these requirements, is to foster an intergovernmental partnership and a strengthened federalism by relying on State and local processes for State and local government coordination and review of proposed Federal financial assistance.

In accordance with the Order, this document is intended to provide early notification of the Department's specific plans and actions for this program. However, the limited discount program offered by the Secretary is not subject to section 204 because no financial assistance for capital construction is awarded.

Assessment of Educational Impact

In the Notice of Proposed Rulemaking the Secretary requested comments on whether the proposed regulations would require transmission of information that is already being gathered by or is available from any other agency or authority of the United States.

Based on the absence of any comments on this matter and the Department's own review, the Secretary

has determined that the regulations in this document do not require information that is already being gathered by or is available from any other agency or authority of the United States.

List of Subjects in 34 CFR Part 614

Colleges and universities, Education, 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.

(Catalog of Federal Domestic Assistance Number 84.142—College Housing Program)

Dated: July 12, 1984.

T.H. Bell,

Secretary of Education.

The Secretary of Education amends Part 614 of Title 34 of the Code of Federal Regulations as follows:

PART 614—COLLEGE HOUSING PROGRAM

1. Part 614 is revised by adding as new § 614.63 to read as follows:

§ 614.63 Discounted prepayment of a loan.

(a)(1) The Secretary may provide a discount for prepayment in full of a college housing loan in an amount determined to be in the best financial interests of the Government for institutions that meet the conditions established in paragraph (b).

(2) The discount is applicable both to loans in current payment status and to loans in default. The Secretary reviews proposals from institutions with defaulted loans separately from those in current payment status in order to provide institutions in default all possible guidance in accomplishing the prepayment of their college housing loans. In addition to assessing the conditions established in paragraph (b) of this section, the Secretary assesses proposals from institutions in default based on the following factors—

(i) The financial condition of the institution and the extent to which that condition establishes substantial future default risks on the college housing loan that the institution seeks to prepay;

(ii) The current ability and willingness of the institution to repay all past delinquent amounts of principal and interest prior to receiving a prepayment discount; and

(iii) The past efforts and willingness of the institution to repay past delinquent amounts.

(b) The Secretary may approve a proposal from an institution for discounted prepayment of a college housing loan if—

(1) The prepayment is made before October 1, 1984;

(2) The prepayment is made from non-Federal sources;

(3) Except as noted in paragraph (c) of this section, the prepayment is made on a loan issued before October 1, 1979;

(4) The prepayment is not derived from proceeds of obligations, the income of which is exempt from taxation under the Internal Revenue Code of 1954;

(5) The prepayment is in an amount computed in accordance with the formula set out in paragraph (d)(2) of this section; and

(6) The institution assures the Secretary that the housing or other educational facilities financed with the loan will continue to be used for educational purposes during the remaining term of the loan by—

(i) Promising to use the facilities for educational purposes and placing covenants on that use on the deed to the property; or

(ii) Executing an agreement with the Secretary that legally binds the institution to use the facilities for educational purposes.

(c) The Secretary considers a proposal from an institution for discounted prepayment on a loan issued on or after October 1, 1979 on a case-by-case basis.

(d)(1) The Secretary fixes the present (discounted) value of the remaining payments on a college housing loan by calculating a price on that loan which would, if the loan were purchased and held to maturity, produce a yield to the purchaser for the period from the date of purchase to the maturity of that loan equal to the interest rate determined by the Secretary. In taking into consideration current market yields on outstanding marketable obligations of the United States with remaining periods to maturity comparable to that of the loan to be prepaid, the Secretary applies the interest rate as certified monthly by the Secretary of the Treasury.

(2) The present value is computed by summing the present values of all remaining payments by using the following formula:

$$\text{Present value} = \sum_{k=1}^n \frac{P_k}{\left[\left(1 + \frac{d \times i}{365} \right)^k \left(1 + \frac{i}{2} \right)^{k-1} \right]}$$

Where

P_k = Total payment, including interest, due on the k th payment date following the prepayment date.

n = Total number of remaining payment dates.

d = Number of days from the prepayment date to the next scheduled payment date.

i_k = Treasury rate, in decimals, for the k th payment date.

[12 U.S.C. 1749a(c)(9); S. Rept. 98-247 at 155]

[FR Doc. 84-18879 Filed 7-16-84; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF EDUCATION**Office Of Postsecondary Education****College Housing Program; Closing Date for Transmittal of Proposals for a Prepayment Discount Under the College Housing Program**

Educational institutions that have outstanding college housing loans and that wish to apply for a prepayment discount under the College Housing Program are invited to submit a proposal for a discount to the Secretary of Education.

This program is authorized under Title IV of the Housing Act of 1950 (12 U.S.C. 1749-1749d). Under section 306 of the Department of Education Organization Act (Pub. L. 96-88), administration of the College Housing Program was transferred from the Secretary of Housing and Urban Development to the Secretary of Education (20 U.S.C. 3446). Section 308 of Pub. L. 98-139 (the Department of Education Appropriation Act of 1984) amended section 402(c) of the Housing Act to allow the Secretary to accept, prior to October 1, 1984, discounted prepayments on outstanding loans.

Closing Date for Transmittal of Proposals

Proposals must be mailed or hand delivered by August 16, 1984.

Proposals Delivered by Mail

A proposal sent by mail must be addressed to the U.S. Department of Education, Attention: Division of Grants and Loan Management, L'Enfant Plaza, P.O. Box 23471, Washington, D.C. 20034. 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 a proposal 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.

Institutions 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.

Institutions are encouraged to use registered or at least first-class mail.

Each late applicant will be notified that its proposal will not be considered.

Proposals Delivered by Hand

A proposal that is hand delivered must be taken to the U.S. Department of Education, Division of Grants and Loan Management, Room 3671, 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. Proposals that are hand delivered will not be accepted after 4:30 p.m. on the closing date.

Program Information

This limited invitation is solely for prepayment of outstanding college housing loans. The applicable regulations specify requirements for prepayment of outstanding loans and for determining the actual amount that must be prepaid under a formula. The Secretary determines whether to award a discount based on these requirements, including the requirement that the discount be in the best financial interests of the Government.

Supplemental Information

There is no standard form for a proposal. However, a proposal for a prepayment discount should be submitted and signed by an authorized official of the institution, should reflect the information necessary for the Secretary to award a discount under the applicable regulations, and should also contain the following information—

- If the institution intends to use funds on deposit on reserve accounts that were established for the building originally financed by the loan or the loan itself, it must also request that the Department grant the institution permission to use such funds for prepayment;
- For loans that are evidenced by bonds issued under a trust indenture (or similar instrument), a statement that the trustee under the indenture (or similar instrument) has verified the outstanding balance of the loan to be discounted;
- The exact date the institution will submit its prepayment to the Secretary; and
- The construction project number for the loan and a description of the building financed by the loan.

The Department encourages each institution that proposes to submit a discounted prepayment for loans that are evidenced under a trust indenture (or similar instrument) to consult directly with the trustee institution with respect to the execution of appropriate forms for releasing or cancelling mortgages or liens that secure

prepayment of the loan. In addition, to the extent that several loans are evidenced by the issuance of one bond under a trust indenture, an institution that wishes to prepay only one of the loans should seek the advice of the trustee as to the appropriate documents and forms for separating the loans for prepayment purposes. The Department anticipates that separating loans for prepayment purposes will necessitate the execution of collateral documents such as a supplemental to an indenture. All appropriate forms that a trustee might require the Department, as bondholder, to execute should be submitted with the proposal.

Each institution that submits a proposal should calculate the amount it must prepay under the formula reflected in the applicable regulations. The Department encourages prepayment directly to the Department of Treasury by electronic transfer but will accept prepayment by a certified check to the Federal Reserve Bank in Richmond, Virginia. Institutions are advised that full prepayment is required and that the prepayment must be made prior to October 1, 1984. No partial payments may be used to receive a prepayment discount under the legislation. Institutions that do not prepay in full or undercalculate the prepayment do so at the risk of rejection of the proposal. If time and resources permit, the Secretary notifies institutions that have submitted underpayments.

The Secretary reviews all prepayment calculations done by institutions. If an institution overcalculates and submits an overpayment, the overpaid amount will be returned to the institution unless the institution wishes the Secretary to apply the overpaid amount to other indebtedness to the Department. Once a proposal has been tentatively accepted, the Department will execute an agreement with the institution. The agreement would principally reiterate the statutory and regulatory requirements for a prepayment discount; however, it is possible that terms of the agreement may vary from institution to institution depending on the particular facts involved.

Applicable Regulations

The final regulations applicable to this program (34 CFR Part 614) are published in this issue of the **Federal Register**.

Intergovernmental Review

This program is listed in other regulations promulgated by the Secretary (34 CFR Part 79) as subject to intergovernmental review requirements imposed by section 204 of the

Demonstration Cities and Metropolitan Development Act of 1966. The objective of these requirements and Executive Order 12372, which implements these requirements, is to foster an intergovernmental partnership and a strengthened federalism by relying on State and local processes for State and local government coordination and review of proposed Federal financial assistance.

In accordance with the Order, this

document is intended to provide early notification of the Department's specific plans and actions for this program. However, the limited discount program offered by the Secretary is not subject to section 204 because no financial assistance for capital construction is awarded.

Further Information

For further information contact John K. Uchima, Chief, Loan Management Branch, Division of Grants and Loan

Management, Department of Education, P.O. Box 23471, Washington, D.C. 20034. Telephone: (202) 472-9300. (Catalog of Federal Domestic Assistance No. 84.142, College Housing Program) (12 U.S.C. 1749-1749d)

Dated: July 12, 1984.
Edward M. Elmendorf,

Assistant Secretary for Postsecondary Education.

[FR Doc. 84-18908 Filed 7-16-84; 8:45 am]

BILLING CODE 4000-01-M