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PART IV



DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

**Office of Assistant Secretary
for Housing—Federal Housing
Commissioner**

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LOANS FOR COLLEGE HOUSING

Program for Fiscal Year 1977

**DEPARTMENT OF HOUSING AND
URBAN DEVELOPMENT**

Assistant Secretary for Housing—Federal
Housing Commissioner

[24 CFR Part 279]

[Docket No. R-77-423]

LOANS FOR COLLEGE HOUSING

Program For Fiscal Year 1977

The Department is considering amending Title 24, Part 279—College Housing by adding a new Subpart B. This amendment is proposed in connection with the reactivation of the College Housing Program for Fiscal Year 1977.

The amendment would set forth the substantive provisions and procedural requirements for direct Federal loans for the rehabilitation, alteration, construction or acquisition of dormitories by eligible applicants under Title IV of the Housing Act of 1950, as amended, 12 U.S.C. 1749 et seq., and would apply only to application submitted during Fiscal Year 1977.

In previous years, loans and debt service grants were made for the acquisition, improvement and construction of central dining facilities, student centers and infirmaries. The proposed amendment would exclude such facilities from the definition of eligible projects with respect to applications submitted during Fiscal Year 1977. In addition, no new applications for debt service grants will be accepted, since all unused grant contract authority was rescinded by Public Law 93-529, enacted December 21, 1974.

The current regulations contained in Part 279 Sections 279.1 through 279.8 will be redesignated at Part 279, Subpart A and will continue to apply to all applications submitted prior to October 1, 1976.

Interested persons may participate in this proposed rulemaking by submitting such written data, suggestions, or arguments as they may desire. All such materials should be filed with the Rules Docket Clerk, Office of the Secretary, Room 10141, Department of Housing and Urban Development, 451 7th Street, S.W., Washington, D.C. 20410. All comments received on or before February 14, 1977, will be considered before adoption of a final rule in this matter. Copies of all comments received will be available for public inspection at the above address during regular business hours both before and after the close of the comment period.

The Department has determined that this proposed rule will not have a significant impact upon the quality of the environment. A Finding of Inapplicability respecting the National Environmental Policy Act of 1969 has been made in accordance with HUD procedures. A copy of the Finding of Inapplicability is available for public inspection, during regular business hours, in the Office of the Rules Docket Clerk, Office of the Secretary, Room 10141, Department of Housing and Urban Development, 451 7th Street, S.W., Washington, D.C.

It is hereby certified that the economic and inflationary impacts of this proposed

rule have been carefully evaluated in accordance with OMB Circular A-107.

Accordingly, it is proposed to amend Title 24, Part 279—College Housing by inserting a centered heading "Subpart A—College Housing Program—Pre-October 1976" immediately after the centered heading Part 279—College Housing and by adding a new Subpart B reading:

**Subpart B—College Housing Program for
Fiscal Year 1977**

Sec.

- 279.10 General policy.
- 279.11 Definitions.
- 279.12 Eligible projects.
- 279.13 Applications for reservations of funds.
- 279.14 Limitations on loan amounts.
- 279.15 Priority criteria.
- 279.16 Approval of applications for reservations of funds.
- 279.17 Applications for loan approval.
- 279.18 Loan terms.
- 279.19 Loan agreements.
- 279.20 Fee for Government field expense.
- 279.21 Construction financing.
- 279.22 Loan disbursement procedures.
- 279.23 Determination of final approved development cost.
- 279.24 Other requirements.

AUTHORITY: Sec. 402, Housing Act of 1950, 12 U.S.C. 1749a; Sec. 7(d) Department of HUD Act (42 U.S.C. 3535(d)).

**Subpart B—College Housing Program for
Fiscal Year 1977**

§ 279.10 General policy.

The purpose of this program is to assist educational institutions in providing housing for students and faculty members at the lowest possible charge by means of direct loans for the rehabilitation, alteration, erection or purchase of dormitories. Loans under the College Housing Program may be made in accordance with these regulations only to the extent that applicants are unable to obtain the necessary financing elsewhere on equally favorable terms and conditions.

§ 279.11 Definitions.

As used in this Part:

(a) "Act" means Title IV of the Housing Act of 1950, as amended (12 U.S.C. 1749 et seq.).

(b) "Construction" means erection of new dormitories or the rehabilitation or alteration of existing dormitories.

(c) "Current severe housing shortage" means an existing shortage in the supply of decent, safe and sanitary housing available for currently enrolled students at reasonable rents within the commuting area of the educational institution, which shortage must at least equal accommodations for the greater of 50 students or 2 percent of the institution's full-time enrollment.

(d) "Development cost" means the cost of land and site improvements, architectural and engineering services, construction, legal and administrative services, interest during construction, and the cost of acquiring existing dormitory facilities, all as determined by the Secretary. The cost of all furnishings such as beds, dressers, chests, desks, tables and chairs is not included in the definition of development cost, regardless of whether such furnishings are built in or movable.

(e) "Dormitory" means a structure or a portion of a structure which consists of living accommodations for students and faculty members but does not contain either central kitchen or dining facilities.

(f) "Educational institution" means: (1) Any public or nonprofit private college, university, or other institution which offers, or will offer within a reasonable time after completion of the dormitory project, at least a 2-year program acceptable for full credit toward a bachelor's degree; (2) any public or nonprofit private hospital operating a school of nursing beyond the level of high school approved by State authority, or operating an internship program approved by recognized authority; (3) any public educational institution which is administered by an accredited college or university and offers technical or vocational instruction; and (4) any nonprofit corporation, or public body, eligible under Section 404(b) of the Act, and established for the purpose of providing or financing dormitories for students and faculty members at educational institutions defined in (f) (1), (2) and (3) of this section; provided that in the case of a nonprofit corporation other than the educational institution, either the corporation must have been established by the educational institution, or the payment of principal and interest on any loan to such a separate nonprofit corporation must be guaranteed by the educational institution which the project is intended to serve.

(g) "Field Office" means any HUD Area or Regional Office which is delegated authority to process and approve applications under the College Housing Program.

(h) "Secretary" means the Secretary of Housing and Urban Development or other official authorized to perform the functions of the Secretary.

(i) "State" means the several States, the District of Columbia, and the Territories and possessions of the United States, including the Commonwealth of Puerto Rico.

§ 279.12 Eligible projects.

Loans may be provided for the rehabilitation or alteration of existing dormitories which will result in greater economy in the use of fuel or will otherwise result in a reduction in operating costs, and for the construction or acquisition of dormitories by educational institutions which have a current severe housing shortage, under the following conditions:

(a) Construction must not be of elaborate or extravagant design or materials and must be undertaken in an economical manner.

(b) Construction must not have been completed at the time the application for assistance is made.

(c) A loan cannot be made solely for the purpose of refunding a long-term loan obtained prior to the filing of an application.

(d) Site acquisition is limited to the amount of land reasonably necessary for the proposed dormitory.

(e) Parking facilities are not eligible.

(f) Projects to provide facilities for religious purposes or for theological seminaries or other schools providing training primarily for religious vocations are not eligible for assistance.

§ 279.13 Applications for reservations of funds.

(a) Information and application forms may be obtained from and applications submitted to the Field Office of the Department of Housing and Urban Development which serves the area in which the educational institution is located. Applications will be accepted until August 15, 1977.

(b) Applications for assistance will consist of two parts:

(1) Part one must be submitted to receive consideration for a fund reservation and must include the following information:

(i) Name, type and accreditation of educational institution;

(ii) Description and estimated cost of proposed project;

(iii) With respect to applications proposing the rehabilitation or alteration of existing facilities, an estimate of the annual savings in operating costs which will result from the proposed rehabilitation or alterations;

(iv) Evidence of need for proposed project;

(v) Engineering data and/or appraisals on which estimated project costs and operating cost savings, if any, are based;

(vi) Preliminary plans and specifications; and

(vii) Proposed method of financing.

(2) Part two must be submitted to receive consideration for loan approval and must include the information specified in § 279.17.

(c) Each Field Office will review the applications submitted to it and will request HUD Headquarters to reserve funds for those applications which it selects in accordance with the criteria specified in these regulations.

(d) Applications for reservations of funds shall be submitted to and reviewed by HUD Field Offices. Applications will not be reviewed by HUD Headquarters.

(e) Due to the limited amount of funds available and the uncertainty as to which areas will generate the greatest demand for funds, no predetermined allocations of funds to the Field Offices will be made. Funds will only be reserved for specific projects by HUD Headquarters on the basis of Field Office recommendations, subject to the availability of funds.

(f) Subject to the availability of funds, fund reservations will be made promptly for eligible applications which meet the priority criteria specified in § 279.15(a)(1), when HUD Headquarters receives the Field Office recommendations.

(g) The priority criteria specified in § 279.15(a)(2) and (3), will be used for establishing priorities by all Field Offices. Therefore, the ranking numbers assigned to individual applications in accordance

with § 279.15(a)(2) and (3) will permit a comparison by HUD Headquarters between applications in those categories which are recommended for funding by different Field Offices.

(h) In the event that HUD Headquarters receives more recommendations for fund reservations than can be funded, HUD Headquarters will prepare a nationwide priority list for each of the categories specified in § 279.15(a)(2) and (3) by using the priority numbers assigned by the Field Offices on the basis of the ranking criteria specified in said section. Fund reservations will then be made by HUD Headquarters on the basis of the nationwide lists.

(i) Field Office recommendations and rankings for the priority category specified in § 279.15(a)(2) will be due in HUD Headquarters on June 1 and September 1, 1977. HUD Headquarters will reserve funds, subject to availability, no later than June 30 and September 30, 1977.

(j) Recommendations and rankings for the priority category specified in § 279.15(a)(3) will be due in HUD Headquarters on September 1, 1977. HUD Headquarters will reserve funds, subject to availability, no later than September 30, 1977.

(k) HUD Headquarters will promptly advise all Field Offices when funds are no longer available. Field Offices will then notify all educational institutions which submitted applications but did not receive reservations of funds.

§ 2279.14 Limitations on loan amount.

(a) The maximum loan which any educational institution may request is the lesser of \$7,500,000, or \$2,500 per full-time student, or \$12,200 per student and/or faculty member to be housed in the proposed dormitory. The number of full-time students stated in the application must be the same as reported to the U.S. Office of Education for the Fall Semester 1976.

(b) The minimum loan which may be requested is \$25,000.

(c) In order to exclude projects which are uneconomical or exceed reasonable design standards, applications proposing a Development Cost (exclusive of land or extraordinary project costs as determined by the Secretary) in excess of \$14,000 per student and/or faculty member to be housed in the proposed dormitory are not eligible.

(d) The limitations specified in (a), (b) and (c) of this section will be adjusted to reflect local construction costs on the basis of a nationwide cost index of local construction costs to be furnished by HUD Headquarters.

§ 279.15 Priority criteria.

(a) In recommending and making reservations of funds, the following order of priorities will be observed by HUD Field Offices and HUD Headquarters.

(1) Dormitory projects for which the construction contract was executed on or before August 9, 1976 (the date of enactment of Pub. L. 94-378), and which have not been permanently financed in whole

or in part. Fund reservations may be made by HUD Headquarters for applications in this priority category as soon as the Field Office has completed its review and made its recommendation, subject to the availability of funds.

(2) Rehabilitation or alteration of existing dormitories to improve fuel economy or otherwise reduce operating costs. Applications proposing major structural alterations are not eligible in this category. Applications in this priority category will be retained in the Field Office and recommended for reservations of funds on June 1 and September 1, 1977, subject to the availability of funds. In the event that the amount of assistance requested in this category exceeds the amount available, applications will be recommended for funding in the following order:

(i) Applications proposing the rehabilitation or alteration of dormitories originally financed with assistance under the College Housing Program, which will result in greater economy in the use of fuel or will otherwise result in a reduction in operating costs. Within this subcategory, applications which demonstrate the greatest savings in fuel consumption or other operating costs in relation to the cost of the proposed rehabilitation or alteration will be given priority. This will be determined on the basis of a ranking number equal to the estimated number of months before the savings will equal the cost of the rehabilitation or alterations.

(ii) Applications proposing the rehabilitation or alteration of dormitories not originally financed with assistance under the College Housing Program, which will result in greater economy in the use of fuel or will otherwise result in a reduction in operating costs. Within this subcategory, applications which demonstrate the greatest savings in fuel consumption or other operating costs in relation to the cost of the proposed rehabilitation or alteration will be given priority. This will be determined on the basis of a ranking number equal to the estimated number of months before the savings will equal the cost of the rehabilitation or alterations.

(3) New construction or acquisition of dormitories for institutions which have a current severe housing shortage. No funds will be reserved for applications in this category until funds have been reserved for all eligible applications in the priority categories specified in § 279.15(a)(1) and (2). In the event that the amount of assistance requested exceeds the amount available, priority will be given to applications from institutions having the most severe current shortage of housing for students. The relative severity of the shortage will be determined on the basis of a ranking number equal to the number of accommodations needed to eliminate the shortage multiplied by the percentage of the institution's full-time enrollment not adequately housed.

(b) Applications that do not receive fund reservations by the close of business on September 30, 1977, will be returned to the applicant.

PROPOSED RULES

(c) A reservation of funds will not constitute or imply approval of an application.

§ 279.16 Approval of applications for fund reservations.

(a) To be eligible for selection, a request must be received by HUD within the period specified herein and must be complete and responsive to the requirements specified herein. Requests for fund reservations will be approved by the Secretary based on an evaluation procedure that takes into account the information provided pursuant to § 279.13.

(b) Educational institutions whose requests for fund reservations are approved shall be notified by letter, which letter shall:

(1) Specify the amount of the fund reservation;

(2) Inform the educational institution that use of the fund reservation is conditioned on approval by the Field Office of a loan application;

(3) Instruct the educational institution to submit an application for loan approval to the Field Office; and

(4) State that the amount of loan funds reserved or any portion thereof unused by the educational institution may not be transferred by the educational institution.

(c) Educational institutions whose requests for fund reservations are not approved shall be so notified in writing by the Field Office.

(d) Educational institutions whose requests for fund reservations are approved shall, as soon as possible after receiving such approval, communicate with the Field Office in order to provide the Field Office with sufficient information to enable the Field Office to process an application for loan approval.

(e) The Secretary shall cancel any reservations of loan funds for projects for which the construction or rehabilitation is not commenced or the acquisition completed within the eighteen-month period following issuance of the written notification to the educational institution that funds have been reserved, unless an extension of time, not to exceed six additional months, is requested of and granted by the Secretary.

§ 279.17 Applications for loan approval.

(a) Following approval of a reservation of funds, the educational institution shall submit to the Field Office a request for loan approval on forms prescribed by HUD.

(b) Requests for loan approval shall be accompanied by or include evidence satisfactory to the Field Office Director that:

(1) The educational institution:

(i) Has the necessary legal authority to finance, acquire, construct or rehabilitate the project, to maintain the project, and to apply for and receive the proposed loan;

(ii) Meets any requirements as to corporate organization and has authority to enter into such contract obligation and execute such security instruments as may be required by HUD;

(iii) Has met the HUD requirements (set forth in HUD 1390.1) implementing the National Environmental Policy Act of 1969 (83 Stat. 852);

(iv) Has the ability to comply with the terms and conditions governing receipt of assistance and operation of the project;

(v) Has or will have such interest in or title to the project site, including access thereto, as will assure undisturbed use, possession and operation of the facilities during the period of assistance; and

(vi) Will retain title to and all of its right, title, and interest in and to the project during the period of assistance, except as otherwise expressly approved by the Secretary.

(2) The financial condition of the applicant and the proposed security for the loan are adequate to provide a reasonable assurance of repayment of the loan.

(c) The HUD Field Office shall review the loan application and shall notify the educational institution of its approval or disapproval, indicating any deficiencies. The educational institution will be given a reasonable time, as determined by the Field Office, to correct any deficiencies. The approval shall set forth fully the terms and conditions upon which the loan will be disbursed.

§ 279.18 Loan terms.

(a) The loan amount shall not exceed the total eligible Development Cost of a project, as determined by the Secretary.

(b) Loans shall be for such periods not to exceed 40 years, bear interest at such rate not to exceed 3 percent per annum, be so secured, and be subject to such terms and conditions, as shall be determined by the Secretary.

(c) Loans will be evidenced by either notes or bonds issued by the educational institution.

(d) The interest rate shall be determined by the Secretary on the basis of the formula prescribed in the Act, as follows:

(1) Section 401(c)(1) of the Act provides that the loans shall bear an interest rate of not more than the lower of:

(i) Three (3) per centum per annum, or

(ii) The total of one-quarter of one (1) per centum per annum added to the rate of interest paid by the Secretary on funds obtained from the Secretary of the Treasury as provided in section 401(e) of the Act.

(2) Section 401(e) of the Act provides that notes or other obligations issued by the Secretary to obtain funds for these loans shall bear interest at a rate determined by the Secretary of the Treasury which shall not be more than the lower of:

(i) Two and three fourths (2¾) per centum per annum, or

(ii) The average annual interest rate on all interest bearing obligations of the United States then forming a part of the public debt as computed at the end of the fiscal year next preceding the issuance by the Secretary and adjusted to the nearest one-eighth of one per centum.

(e) In the case of loans to private educational institutions, the security normally will be a general obligation secured by a first mortgage on the project and a pledge of project revenues.

(f) In the case of loans to public educational institutions, the security normally will be, in order of preference:

(1) A general obligation secured by a first mortgage on the project and a pledge of project revenues, where legally available;

(2) A special obligation secured by a first mortgage on the project and a pledge of project revenues, where legally available; or

(3) A special obligation secured by a pledge of project revenues.

(g) If the Field Office Director determines that additional security is needed to reasonably assure loan repayment, a pledge of income from endowment funds, securities or other revenue sources, and/or a mortgage on other facilities, may be required as deemed necessary to reasonably assure repayment.

(h) Loans will be amortized by approximately equal periodic payments of combined principal and interest over the life of the loan. Said payments shall be made not less often than annually and not more often than semiannually; provided, however, that the payment of interest only may be required for a reasonable period of time not to exceed one (1) year following the completion of construction.

§ 279.19 Loan agreements.

Upon approval of a direct loan together with reservation of funds, the Field Office will prepare and forward a loan agreement for execution by the educational institution. The agreement will set forth the terms and conditions of the loan and will also specify conditions which must be fulfilled precedent to making of the loan. The fully executed agreement will constitute a contract between the educational institution and the Secretary during the life of the loan.

§ 279.20 Fee for Government field expense.

For each approved loan, the educational institution is required to pay a fixed fee, which in the aggregate will be sufficient to cover the cost of the Government's field expense. 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 a maximum charge of \$1,500.

(a) The fixed fee shall be computed on the loan amount at the time of the original loan agreement. After execution of the loan agreement no adjustment shall be made in the specified fixed fee, except when the loan amount is changed by 20 percent or more. In such cases, the fixed fee shall be redetermined by the formula above and specified in the related amendment to the loan agreement.

(b) The fixed fee must be paid to the Government out of the first funds deposited into the Construction Account, regardless of source.

§ 279.21 Construction financing.

The Secretary may advance loan funds to the educational institution during the construction of the project, provided that all prerequisites to loan disbursement as specified in the loan agreement, have been met.

(a) Total HUD advances to the educational institution will normally not exceed 75 percent of the approved loan, and shall be made only in amounts necessary to meet the actual current disbursement needs of the educational institution. Where circumstances warrant, the Field Office may approve additional advances so long as the total does not exceed 90 percent of the approved loan.

(b) Interest on advances will be charged by HUD at the same rate as on the bonds or notes.

(c) If the applicant is participating in the project financing, it must deposit to the Construction Account and substantially expend its own funds prior to obtaining any advances from HUD.

§ 279.22 Loan disbursement procedures.

(a) Advances of loan proceeds shall be made directly by HUD to the depository designated by the educational institution for deposit into the Construction Account.

(b) Advances shall be made on a periodic basis in an amount not to exceed the HUD-approved cost of portions of construction or rehabilitation work completed and in place, minus the appropriate holdback or retainage, as determined by the Field Office.

(c) Loan disbursements, including advances, may only be made upon the receipt by the Field Office of a duly executed note and a mortgage on the project and its site (or other real property satisfactory to the Field Office) whenever a note and mortgage is legally available as evidence of the debt of the educational institution to be created by the loan disbursement; provided, however, that in the event a note and mortgage is not legally available, loan disbursements may only be made upon the receipt by the Field Office of bond anticipation notes or such other evidence of the debt to be created by the loan disbursement as shall be satisfactory to the Field Office. Advances will not be made in the absence of a debt instrument satisfactory to the Field Office.

(d) Requisitions for loan disbursements shall be submitted by the educational institution on forms to be prescribed by the Secretary and shall be accompanied by such additional information as the Field Office may require in order to approve loan disbursements under this part, including, but not limited to, evidence of compliance with the Davis-Bacon Act, Department of Labor regulations, all applicable zoning, building and other governmental requirements, and, where applicable, such evidence of continued priority of the

mortgage, if any, as the Secretary may prescribe.

§ 279.23 Determination of final approved development cost.

(a) A certificate of project development cost prepared on forms prescribed by the Secretary and executed by the educational institution may be used at the discretion of the Secretary, in lieu of an audit by the Government, for the purpose of determining the final approved Development Cost.

(b) The educational institution shall submit to the Field Office such documentation as may be prescribed by the Secretary. The documentation hereunder shall include such information and forms as the Secretary may require in order to approve the educational institution's certificate of project development cost, and to determine the final approved development cost, including, but not limited to, a certificate of actual cost, in a form prescribed by the Secretary, showing the actual cost to the educational institution for construction, architectural, legal, organizational, offsite costs and other items of expense approved by the Field Office. The Certificate shall not include as actual cost any kickbacks, rebates, trade discounts, or other similar payments to the educational institution. Any such payments shall be deducted from the costs determined to be eligible for inclusion in the total loan amount approved by the Field Office.

§ 279.24 Other requirements.

(a) Construction plans and specifications are subject to review and approval by the Field Office.

(b) Unless otherwise agreed to in writing by the Secretary, all construction work must be undertaken pursuant to contracts approved by the Secretary.

(c) All prime construction contracts must be awarded to the responsible bidder submitting the lowest bid on the basis of open competitive bidding.

(d) All laborers and mechanics employed by contractors and subcontractors in the construction of dormitories assisted under the Act shall be paid wages at rates not less than those prevailing in the locality involved for the corresponding classes of laborers and mechanics employed on construction of a similar character as determined by the Secretary of Labor in accordance with the Davis-Bacon Act, as amended (40 U.S.C. 276a-276a-5), and shall receive overtime compensation in accordance with and subject to the provisions of the Contract Work Hours Standards Act (40 U.S.C. 327-332).

(e) All contracts for construction work paid for in whole from loan funds provided under the Act shall provide that the contractor shall comply with the Copeland ("Anti-Kickback") Act (40 U.S.C. 276c) and the regulations of the Secretary of Labor thereunder (29 CFR Part 3).

(f) The requirements of Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d et seq.) that no person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, or be denied the benefits of, or be otherwise subjected to discrimination are applicable to educational institutions receiving assistance under the Act.

(g) All contracts for construction work paid for in whole or in part from loan funds provided under the Act are subject to Executive Order 11246 (30 FR 12319, Sept. 28, 1965), as amended by Executive Order 11375 (32 FR 14303, Oct. 17, 1967), providing for equal opportunity in employment, and the rules and regulations of the Department of Labor with respect thereto.

(h) The provisions of Title VIII (Fair Housing) of the Civil Rights Act of 1968 (Pub. L. 90-284, 42 U.S.C. 3601-3619), prohibiting refusal to rent to or discrimination against any person in terms or conditions of rental or provision of services on account of race, color, religion, or national origin, are applicable to projects assisted under the Act.

(i) All projects for which loans are made pursuant to this Subpart B are subject to the following requirements:

(1) Equal Opportunity requirements, which include Executive Order 11063 and section 3 of the Housing and Urban Development Act of 1968 and regulations and guidelines pursuant thereto.

(2) HUD requirements implementing the National Environmental Policy Act of 1969 (83 Stat. 852).

(3) Governmental requirements implementing the Clean Air Act (77 Stat. 392, as amended) and the Federal Water Pollution Control Act (66 Stat. 755, as amended).

(4) HUD requirements implementing the Flood Disaster Protection Act of 1973 (87 Stat. 975).

(j) Projects for which loans are made to public educational institutions or eligible public bodies pursuant to this Subpart B are also subject to the following requirements:

(1) HUD relocation requirements established pursuant to the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (84 Stat. 1894).

(2) Any special requirements for the handicapped pursuant to the standards established by HUD under the Architectural Barriers Act of 1968 (82 Stat. 718).

Issued at Washington, D.C., January 10, 1977.

JOHN T. HOWLEY,
Acting Assistant Secretary for
Housing—Federal Housing
Commissioner.

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