

§ 57.1506

this section, any application for interest subsidies may be approved by the Secretary only if he determines that without such interest subsidy payments the applicant would not, over a substantial portion of the loan term, be able to repay the principal and interest of the loan without jeopardizing the quality of the educational program.

§ 57.1506 Priority.

(a) Priority in approving applications for loan guarantee and/or interest subsidies shall be determined in accordance with the factors specified in section 721(d) of the Act, and the following: (1) The relative need for increased enrollment and the availability of students; (2) the relative effectiveness of the project relative to the cost to the Federal Government; and (3) the relative ability of the applicant to make efficient and productive use of the facility constructed.

(b) In the case of applications to aid in the construction of new schools of medicine, osteopathy, or dentistry, the Secretary shall give special consideration to those applications which contain or are reasonably supported by assurances that, because of the use that will be made by such school of already existing facilities (including Federal medical or dental facilities), the school will be able to accelerate the date on which it will begin its teaching program.

§ 57.1507 Limitations applicable to loan guarantee.

(a) The amount of loan with respect to which a guarantee is made under this subpart shall be determined by the Secretary based upon such considerations as the availability of funds and the applicant's need therefor; *Provided*, That: (1) Subject to paragraph (a)(2) of this section, no loan with respect to which a guarantee is made for any project under this subpart may be in an amount which, when added to the amount of any grant made with respect to such project under part B of title VII of the Act or any other law of the United States, or to the total of such grants, exceeds 90 percent of the eligible cost of construction of such project as determined by the Secretary;

(2) Notwithstanding paragraph (a)(1) of this section, the Secretary may in particular cases guarantee loans in excess of the amount specified in paragraph (a)(1) of this section where he determines that, because of special circumstances, such additional loan guarantee will further the purposes of part B of title VII of the Act. In making such determinations, the Secretary will in each case consider the following factors:

(i) The need for the project in the area to be served;

(ii) The availability of financing for the project on reasonable terms and conditions without such additional loan guarantee;

(iii) Whether the project can be constructed without such additional loan guarantee; and

(iv) Other relevant factors consistent with the purpose of part B of title VII of the Act and this subpart.

(3) In determining the cost of construction of the project there shall be excluded from such cost all fees, interest, and other charges relating or attributable to the financing of the project except the following:

(i) Reasonable fees attributable to services rendered by legal counsel in connection with such loan;

(ii) With the approval of the Secretary, reasonable fees attributable to the services of a financial advisor in assisting the applicant in securing the loan and arranging for repayment thereof; and

(iii) Interest attributable to the interim financing of construction of the project prior to the initial permanent financing thereof.

(b) No loan guarantee under this subpart shall apply to more than 90 percent of the loss of principal of and interest on such loan incurred by the holder of such loan upon default by the applicant.

§ 57.1508 Amount of interest subsidy payments; limitations.

The length of time for which interest subsidy payments will be made under the agreement, the amount of loan with respect to which such payments will be made, and the level of such payments shall be determined by the Secretary on the basis of the availability

of funds and his determination of the applicant's need therefor taking into consideration his analysis of the present and reasonable projected future financial ability of the applicant to repay the principal and interest of the loan without jeopardizing the quality of its educational program: *Provided however*, That each such interest subsidy payment shall not exceed the amount necessary to reduce by 3 percent per annum the net effective interest rate otherwise payable on the loan or the portion thereof with respect to which such interest subsidy is paid.

§ 57.1509 Forms of credit and security instruments.

Each loan with respect to which a guarantee is made or interest subsidies are paid under this subpart shall be evidenced by a credit instrument and secured by a security instrument in such forms as may be acceptable to the Secretary.

§ 57.1510 Security for loans.

Each loan with respect to which a guarantee is made or interest subsidies are paid under this subpart shall be secured in a manner which the Secretary finds reasonably sufficient to insure repayment. The security may be one or a combination of the following:

(a) A first mortgage on the facility and site thereof.

(b) Negotiable stocks or bonds of a quality and value acceptable to the Secretary.

(c) A pledge of unrestricted and unencumbered income from an endowment or other trust fund acceptable to the Secretary.

(d) A pledge of a specified portion of annual general or special revenues of the applicant acceptable to the Secretary.

(e) Such other security as the Secretary may find acceptable in specific instances.

§ 57.1511 Opinion of legal counsel.

At appropriate stages in the application and approval procedure for a loan guarantee or interest subsidy, the applicant shall furnish to the Secretary a memorandum or opinion of legal counsel with respect to the legality of any proposed note issue, the legal author-

ity of the applicant to issue the note and secure it by the proposed collateral, and the legality of the issue upon delivery. "Legal counsel" means either a law firm or individual lawyer, thoroughly experienced in the long-term financing of construction projects, and whose approving opinions have previously been accepted by lenders or lending institutions. The legal memorandum or opinion to be provided by legal counsel in each case shall be as follows:

(a) A memorandum, submitted with the application for a loan guarantee or interest subsidy, stating that the applicant is or will be lawfully authorized to finance, construct, and maintain the project, and to issue the proposed obligations and to pledge or mortgage the assets and/or revenues offered to secure the loan, citing the basis for such authority; and

(b) A final approving opinion, delivered to the Secretary at the time of delivery of the evidence of indebtedness to the lender, stating that the credit and security instruments executed by the applicant are duly authorized and delivered and that the indebtedness of the applicant is valid, binding, and payable in accordance with the terms on which the loan guarantee was approved by the Secretary.

§ 57.1512 Length and maturity of loans.

The repayment period for loans with respect to which guarantees are made or interest subsidies paid under this subpart shall be limited to 30 years: *Provided*, That:

(a) The Secretary may, in particular cases where he determines that a repayment period of less than 30 years is more appropriate to an applicant's total financial plan, approve such shorter repayment period;

(b) The Secretary may, in particular cases where he determines that, because of unusual circumstances, the applicant would be financially unable to amortize the loan over a repayment period of 30 years, approve a longer requirement period which shall in no case exceed 40 years; and