

to 38 U.S.C. 1819 may not exceed the following maxima except on loans guaranteed or insured pursuant to guaranty or insurance commitments issued by the Veterans Administration prior to October 3, 1979. (38 U.S.C. 1819(f)).

(1) 12½ percent simple interest per annum on that portion of a loan which finances the purchase of a mobile home unit.

* * * * *

(3) 10½ percent simple interest per annum for that portion of the loan which will finance the cost of the site preparation necessary to make a lot owned by the veteran acceptable as the site of the mobile home purchased with the proceeds of the loan except that a rate of not to exceed 12½ percent may be charged if the portion of the loan to pay for the cost of such necessary site preparation does not exceed \$2,500.

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POSTAL SERVICE

39 CFR Part 111

Enclosures in Controlled Circulation Publications

AGENCY: Postal Service.

ACTION: Final rule.

SUMMARY: This rule will allow certain enclosures in publications that are mailed at the controlled circulation postage rates. Prior to this rule, enclosures of any kind were prohibited in controlled circulation publications, but not in second-class publications. This rule will simplify the mail classification structure by allowing the same enclosures in both types of publications.

EFFECTIVE DATE: October 10, 1979.

FOR FURTHER INFORMATION CONTACT: Kenneth H. Young, (202) 245-4661.

SUPPLEMENTARY INFORMATION: On August 16, 1979, the Postal Service published for comment in the Federal Register a proposed amendment to section 523 of the Domestic Mail Manual as described above (44 FR 47959). Interested persons were invited to submit written comments concerning the proposed amendment by September 15, 1979.

The Postal Service received 11 written and 8 telephonic comments in response to its August 16 notice. All commenters favored the proposal except one, who took no position on it. His comment dealt with a concern that the Postal Service was attempting to erode the

distinctions between second-class and controlled circulation publications. The proposal was not intended to erode the distinctions between second-class and controlled circulation mail. The proposal was made in response to requests from mailers for a minor adjustment in the preparation requirements for controlled circulation mail. The Postal Service concluded that such a change would be beneficial and, therefore, published the proposed rule.

Another commenter suggested that order forms for both second-class and controlled circulation publications be allowed as enclosures in controlled circulation publications. This appears to be a reasonable suggestion and is consistent with the proposal. We have included it in the final rule.

Another commenter urged that we simplify the mail classification structure by having the same postal regulations applicable to both second-class and controlled circulation publications. Another commenter suggested that consideration be given to a change of the proposal and second-class regulations to allow publishers to "exchange" subscription cards on a one-for-one basis for inclusion in their publications. These suggestions go beyond the scope and intent of the proposal and, therefore, are not adopted. They will be treated separately as public proposals for changes in Postal Service regulations.

For the above reasons, and after careful consideration of all the comments, the Postal Service hereby adopts the following amendments to the Domestic Mail Manual, with certain modifications as discussed above:

Chapter 5—Controlled Circulation Mail

Amend section 523, Domestic Mail Manual, to read as follows:

523 What May Be Mailed.

523.1 Integral Material.

Except for the enclosures permitted by 523.2, only material which is an integral part of an authorized controlled circulation publication (see 541.1) may be mailed at controlled circulation rates. Provisions for combination mailings of controlled circulation publications with other classes of mail are contained in 136.31. Supplements, parts, sections, etc., are not prohibited, providing they are, in fact, integral parts of the publication. Although not required, the following are indicators (but not conclusive evidence) that material is an integral part of a publication:

- a. Inclusion in the publication's pagination;
- b. Listing material in a *List of Advertisers*;
- c. Listing in a table of contents; or

d. Indication, in the primary part of the publication, that specific material is included as parts, sections, or supplements.

Note.—Printing "Supplement to . . ." on material is not, by itself, sufficient to establish it as an integral part of a publication.

523.2 Enclosures.

The only enclosures permitted in controlled circulation publications are receipts and orders for subscriptions. These may be inserted loose or bound in the publication. Preparation methods include, but are not limited to:

- a. Printed or written;
- b. Printed on cards and envelopes including business replies;
- c. Arranged to include coin receptacles; or
- d. Arranged as combination forms for two or more controlled circulation or second-class publications issued by the same publisher.

A transmittal letter making these changes in the pages of the Domestic Mail Manual will be published and will be transmitted to subscribers automatically.

These changes will be published in the Federal Register as provided in 39 CFR Part 111.3.

(39 U.S.C. 401(2), 403)

W. Allen Sanders,

Acting Deputy General Counsel.

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DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Office of the Secretary

45 CFR Part 80

Nondiscrimination in Federally Assisted Programs; Title VI of the Civil Rights Act of 1964; Policy Interpretation

AGENCY: Office for Civil Rights, Department of Health, Education, and Welfare.

ACTION: Policy interpretation.

SUMMARY: The Office for Civil Rights issues a policy interpretation of regulations under Title VI of the Civil Rights Act of 1964. The regulations concern nondiscrimination in federally assisted programs. This policy interpretation is issued in connection with the Office for Civil Rights' ongoing responsibilities to interpret and enforce Title VI. It is also prompted by the Supreme Court's decision in *Regents of the University of California v. Bakke*. It is one of a series of policy

determinations issued by the Office for Civil Rights under the procedures announced in the Federal Register on May 1, 1978 (43 FR 18630).

FOR FURTHER INFORMATION CONTACT: Burton M. Taylor, (202) 472-3216.

Title VI of the Civil Rights Act of 1964 Policy Interpretation Number 1

SUBJECT: Voluntary Affirmative Action: Admission of Minority Students to Institutions of Higher Education.

PURPOSE: This policy interpretation encourages institutions of higher education to continue and expand voluntary affirmative action programs to increase their enrollment of minority group members and to attain a diverse student body. It identifies permissible techniques to achieve these objectives consistent with Title VI of the Civil Rights Act of 1964 and the Supreme Court's decision in *Regents of the University of California v. Bakke*, 438 U.S. 265(1978) (*Bakke*).

SUMMARY OF POLICY INTERPRETATION: An institution of higher education that receives Federal financial assistance is encouraged to take voluntary affirmative action in admissions to overcome the effects of conditions that have resulted in limited participation by minority group members and to attain a diverse student body. The Department has reviewed the Supreme Court's decision in *Bakke* and has determined that voluntary affirmative action may include, but is not limited to, the following: consideration of race, color, or national origin among the factors evaluated in selecting students; increased recruitment in minority institutions and communities; use of alternative admissions criteria when traditional criteria are found to be inadequately predictive of minority student success; provision of preadmission compensatory and tutorial programs; and the establishment and pursuit of numerical goals to achieve the racial and ethnic composition of the student body the institution seeks.

Techniques of this kind are permissible regardless of whether there has been a finding of past discrimination. Where such a finding has been made, an institution has a duty to overcome the effects of past discrimination and, therefore, may be required to employ these as well as other race conscious techniques to overcome the present effects of past discrimination. These additional techniques also may be employed by colleges and universities to overcome the effects of discrimination found to have been committed by related institutions. However, in light of *Bakke*,

in the absence of a finding of past discrimination committed by the institution or related entities, a fixed number of positions may not be set aside for minority students for which nonminority students cannot compete, nor may race or national origin otherwise be used as the sole criterion for admissions.

POLICY INTERPRETATION: Title VI of the Civil Rights Act of 1964 prohibits institutions of higher education that receive or benefit from Federal financial assistance from discriminating against applicants for admission on the basis of race, color, or national origin. The primary purpose of the statute was to eliminate widespread discrimination against blacks and other minorities in Federally-assisted programs. Accordingly, the Department's Title VI regulation requires recipients of Federal financial assistance, when found to be discriminating, to end any current discrimination and to take affirmative action to overcome the effects of past discrimination.

Findings of discrimination can be made by a legislative, judicial or administrative body, including the Office for Civil Rights. The regulation also permits a recipient to take affirmative action to overcome the effects of conditions that have resulted in limited participation by persons of a particular race, color, or national origin and to attain a diverse student body. This is permitted even though the recipient has not itself discriminated against these groups.

The Department has reviewed its Title VI regulation, in light of the Supreme Court's decision in *Bakke*, and has concluded that no changes in the regulation are required or desirable. The Court affirmed the legality of voluntary affirmative action. However, where there has been no finding of past discrimination, *Bakke* prohibits an institution from setting aside a fixed number of places for minority students, for which nonminorities cannot compete, or otherwise using race as the sole criterion for admission.

The limitations contained in *Bakke* apply only to institutions undertaking voluntary affirmative action. The decision has no bearing on the legal obligation of an institution which has been found, by a court, legislature or administrative agency, to have discriminated on the basis of race, color, or national origin. Race conscious procedures that are impermissible in voluntary affirmative action programs may be required to correct specific acts of past discrimination committed by an institution or other entity to which the institution is directly related. For

example newly established public institutions of higher education in a State that formerly maintained segregated colleges may be required to participate in a desegregation plan to provide a complete remedy for past discrimination.

The Department encourages the continuation and expansion of voluntary affirmative action programs. This policy interpretation provides guidance to institutions of higher education that are not responding to a finding of past discrimination as to permissible means of increasing minority student enrollments under the Department's Title VI regulation. One illustration of permissible voluntary action is stated in the regulation:

Even though an applicant or recipient has never used discriminatory policies, the services and benefits of the program or activity it administers may not in fact be equally available to some racial or nationality groups. In such circumstances, an applicant or recipient may properly give special consideration to race, color, or national origin to make the benefits of its program more widely available to such groups, not being adequately served. For example, where a university is not adequately serving members of a particular racial or nationality group, it may establish special recruitment policies to make its program better known and more readily available to such group, and take other steps to provide that group with more adequate service.

Other methods of considering race, color, or national origin in voluntary affirmative action programs, consistent with *Bakke* and the Department's regulation, include but are not limited to the following:

An institution may:

(1) Consider race, color, or national origin as a positive factor, with other factors, such as geographic or economic circumstance, in selecting from among qualified candidates. The relative weight granted to each factor is properly determined by institution officials; race, color or national origin may be accorded greater weight than other factors;

(2) Recruit, or increase recruiting, in predominantly minority institutions and communities;

(3) Modify admissions criteria for minorities if it determines that it is necessary for a fair appraisal of the academic promise of minority applicants. This may be appropriate to cure established inaccuracies in predicting performance where an institution can demonstrate that traditional admissions criteria are not predictive of success for minority students;

(4) Offer special services, including summer institutes and special tutoring

services, to assist educationally and socially disadvantaged students in meeting admissions requirements. Students may not be excluded from these programs on the basis of race, but race may be considered as a factor in selecting participants; and

(5) Establish and pursue numerical goals to achieve the racial and ethnic composition of the student body it seeks through techniques such as those listed above.

In addition to the foregoing techniques, institutions may use their authority to broaden admissions criteria generally to evaluate better the qualifications of minority applicants. This may be accomplished by giving increased consideration to an applicant's character, motivation, ability to overcome economic and educational disadvantage, work experience, and other factors.

All of these techniques are consistent with Title VI because they do not exclude individuals on the basis of race, color, or national origin from competing for any place in an institution of higher education. The Department encourages the development of additional or alternative techniques for inclusion in voluntary affirmative action plans.

§ 80.3 [Amended].

(b)(6) * * *

(i) In administering a program regarding which the recipient has previously discriminated against persons on the ground of race, color, or national origin, the recipient must take affirmative action to overcome the effects of prior discrimination.

(ii) Even in the absence of such prior discrimination, a recipient in administering a program may take affirmative action to overcome the effects of conditions which resulted in limiting participation by persons of a particular race, color, or national origin. Section 80.5(j).

Even though an applicant or recipient has never used discriminatory policies, the services and benefits of the program or activity it administers may not, in fact, be equally available to some racial or nationality groups. In such circumstances, an applicant or recipient may properly give special consideration to race, color or national origin to make the benefits of its program more widely available to such groups, not then being adequately served. For example, where a university is not adequately serving members of a particular racial or nationality group, it may establish special recruitment policies to make its programs better known and more readily available to such group, and take

other steps to provide that group with more adequate service.

Coverage: This policy interpretation applies to any public or private institution of higher education that receives or benefits from financial assistance authorized or extended under a law administered by the Department. Coverage includes institutions whose students participate in HEW funded or guaranteed student loan assistance programs. For further information, see definition of recipient at 45 CFR 80.13(i) and (j).

Regulation issued under Title VI of the Civil Rights Act of 1964, 45 CFR.

Dated: October 2, 1979.

David S. Tatal,

Director, Office for Civil Rights.

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INTERSTATE COMMERCE COMMISSION

49 CFR Parts 1011 and 1100

[Ex Parte No. 367]

Tariff Integrity Board

AGENCY: Interstate Commerce Commission.

ACTION: Final rules.

SUMMARY: The Commission is adopting rules which will provide tariff users with a simplified and expedited procedure for striking from its files tariffs which have been established in violation of the Commission's tariff regulations, provisions of the Interstate Commerce Act, and orders of the Commission or the courts. The rules are being adopted as a result of the Commission's change to a random sampling tariff examination program. It is expected that under the sampling program unlawfully established tariffs may become effective.

EFFECTIVE DATE: The rules are effective on October 10, 1979.

FOR FURTHER INFORMATION CONTACT: Martin E. Foley, (202) 275-7348.

SUPPLEMENTARY INFORMATION: As outlined in our notice served June 29, 1979 (44 FR 39558), we are in the process of establishing a random sampling tariff examination program for checking compliance with tariff regulations (49 CFR 1300 *et seq.*) the provisions of the Interstate Commerce Act (49 USC 10101 *et seq.*), and orders of the Commission or courts. We expect that under the sampling program, which will begin October 1, 1979, some tariffs may become effective which are unlawfully established or contain unlawfully established provisions. The causes for the unlawful establishment would have

been reason for rejection if detected prior to effective dates. The institution of the Tariff Integrity Board (or T.I. Board) and the adoption of the rules under which it will operate provide an expedited procedure by which a tariff user may file a verified complaint to establish that a tariff or tariff provision has been unlawfully established. In our previous notice we sought comments concerning the rules.

The comments we received indicate that there is both support for and opposition to random sampling tariff examination and the implementation of T.I. Board. In the following paragraphs we will respond to key questions and issues raised by the respondents. Issues and questions not specifically discussed have been considered and are viewed as either requiring no comment or related to those which are specifically treated.

Random Sampling

A substantial amount of criticism was directed toward the implementation of the random sampling tariff examination program. Our reconsideration of this program is requested.

The sampling program was adopted as a result of the Commission's Fiscal Year 1980 budget deliberations. The institution of this program is an agency procedural change which does not require a rulemaking proceeding (5 U.S.C 553). We do not intend to reconsider the implementation of the program at this time. However, we will explain why the program is to be implemented and how it will operate. Of course, if we should determine at some future date that the program is not in the public interest or otherwise undesirable, we may adopt alternative tariff examining procedures.

In the past the Commission has attempted to examine thoroughly every tariff publication which was filed. This has become an impossible task. In the past 5 fiscal years 1,827,317 publications have been received for filing, over 500,000 filings are expected to be filed in Fiscal Year 1979. In view of this ever increasing number of filings our staff simply cannot effectively examine every publication filed. Consequently, as an alternative to complete examination, the Commission has developed statistical sampling techniques which will reduce the number of publications subjected to an in-depth examination for tariff publishing violations. The sampling program will not reduce our present consumer oriented tariff examination program.

The Commission recognizes its responsibility to the protection of the shipping public, especially the small consumer, and its statutory obligations.