

TEXAS SOUTHERN UNIVERSITY
THURGOOD MARSHALL SCHOOL OF LAW
3100 CLEBURNE AVENUE
HOUSTON, TEXAS 77004

M E M O R A N D U M

TO: Law School Faculty

FROM: McKen V. Carrington
Associate Dean *MVC*

DATE: September 12, 1988

RE: Federal funding of the Thurgood Marshall School
of Law

On August 11, 1988 Senators Lloyd Bentsen (TX), Lawton Chiles (NC), Bob Graham (FL), J. Bennett Johnston (LA) and John Breaux (LA) introduced a bill (S.2739) to expand Title III programs for black graduate institutions to include the Thurgood Marshall School of Law.

This bill represents an important initiative for the future of this institution. At present, this program provides \$9.6 million to Morehouse School of Medicine, Atlanta University, Meharry Medical School, Tuskegee School of Veterinary Medicine, and Charles Drew Postgraduate Medical School.

The average per institution is nearly \$2 million each year. The minimum funding has been \$500,000 per year since the program began in 1986. This means that when the bill is passed, this law school will receive at least \$500,000 per year to enhance its programs. If this sum is added to our current budget, it will significantly boost our entire operation. Moreover, this funding will be continuous - as there is no sunset provision on this program.

Law School Faculty
September 12, 1988

Five months ago, we began efforts to convince Congress that the Thurgood Marshall School of Law was a deserving institution of the benefits of the program - just like the current beneficiaries. After many letters and telephone calls, Senator Bentsen agreed to sponsor the bill. He suggested that all programs similarly situated be included in the bill.

The bill is now pending in the Senate Labor and Human Resources Committee. On the House side, no formal bill has been introduced. Congressman Leland has made informal inquiry with Chairman Hawkins of the House Education and Labor Committee regarding the bill. Therefore, the process is underway. However, with just one month left in this Congress, we are behind schedule in getting a bill passed this year. I believe that passage is possible in the next month if we increase our lobbying efforts. I solicit your ideas and assistance on this matter.

MVC/nls

Enclosure



Office for the Advancement of Public Black Colleges
An Office of
The National Association of State Universities and Land-Grant Colleges
In Cooperation with the American Association of State Colleges and Universities

M E M O R A N D U M

TO: Dr. Frederick Humphries
Dr. Tyronza Richmond
Dr. Joffre Whisenton

FROM: N. Joyce Payne *NJP*
Director, OAPBC

DATE: May 11, 1988

RE: Inclusion of Institutions in Part B of Title III

At the request of Texas Southern University's Administration and Law School, Senator Lloyd Bentsen's office plan to seek support for the inclusion of TSU's Law School and FAMU, Southern and North Carolina Central in the graduate section of Part B of Title III. They have requested that you contact your respective senators for support. Request that their legislative staff directors call Ray Bonilla for additional information. Ray's number is (202) 224-5922.

Dr. Humphries is taking the lead in consulting with Dr. Sullivan of Morehouse concerning an endorsement from all the CEOs of institutions currently included in Part B. Buddy Blakey has indicated that he will not support the inclusion of additional institutions in the absence of support from Dr. Sullivan and the minority health group he represents. In addition, we understand that Congressman Owens would prefer that this issue not be raised. Nevertheless, given the increase of \$10 million for this section, there will be no critical impact on the institutions currently covered. In our discussions with Buddy, we suggested that language be included to assure Morehouse of a solid percentage of dollars of not less than \$3 million. There appears to be an effort to double allocations for Morehouse.

I will keep you aware of other major developments on this issue.

NJP/laj
cc: Carrington
Bell

TEXAS SOUTHERN UNIVERSITY
HOUSTON, TEXAS 77004

OFFICE OF THE ASSOCIATE DEAN

527-7126

MEMORANDUM

TO: Dr. William H. Harris
President, Texas Southern University

FROM: McKen V. Carrington
Associate Dean, School of Law

DATE: October 28, 1988

RE: Title III Legislation

Pursuant to our discussion last week regarding pending Title III Legislation that seeks to expand the Black Graduate Institutions Programs, I have set forth below the chronology of events that brings us to the point of the proposed legislative action.

October 1987: The Campus Title III Coordinator took the position that Title III monies could not be used in the graduate program of an institution. He suggested that the law school seek funding under the Graduate Institutions Programs. Although the coordinator was wrong regarding the use of Title III funds, the suggestion of seeking law school inclusion in the Graduate Institutions Program appeared to be a good one. Therefore, the effort to gain law school admission to this program began at this time.

October - December 1987: A three month legislative research effort was undertaken and concluded. It gave the following results:

- (1) The program was the result of specific legislation (P.L. 99-498 Title III § 301(a) in part, 100 stat.1297) dated Oct. 17, 1986.
- (2) The 1986 legislation was added to the United States Education Code (20 USCS § 1063 (b)) and thus requires legislative action for any amendments.
- (3) The legislation was exclusive to five specific programs: Morehouse School of Medicine, Meharry Medical School, Charles Drew Postgraduate Medical School, Atlanta University, and Tuskegee Institute School of Veterinary Medicine). Furthermore, any new institution must be added by legislative action.

January 1988: We invited Mr. Isaac Jackson of the Austin office of Senator Lloyd Bentsen to visit the institution so that the senator's office could ascertain that the law school fit the objective of the federal legislation.

February 1988: Mr. Jackson requested that we formalize the request and send it to the Senator Bentsen's Washington office. At the same time, we began preliminary discussion with Mr. Ray Bonilla of Senator Bentsen's Washington office.

March 1988: Mr. Bonilla suggested that to facilitate legislative passage, the similarly situated graduate programs should be contacted and possibly included in the proposed legislative program. Letters were sent to the development officers of Southern University Law Center and North Carolina Central University . They both responded quickly indicating their interest.

Dr. Joyce Payne, the Washington lobbyist for the public Black higher education institutions was contacted. She then suggested the Florida A & M be included in the legislation.

April - July 1988: Each proposed beneficiary institution separately contacted their State's Congressional delegation to enlist their support of the proposed legislation. See attached letters.

At Thurgood Marshall, we wrote a model "Rationale for Federal Support" and sent it to Southern University and North Carolina Central so that similar statements could be developed. These were sent to Texas Southern and forwarded to Washington.

August 1988: Senators Bentsen, Breaux, Chiles, Graham, Johnson, and Sanford sponsored Bill S.2739 to add Thurgood Marshall School of Law, North Carolina Central University School of Law, Southern University School of Law, and Florida A & M College of Pharmaceutical Sciences (Graduate Program) to the current list of beneficiary institutions.

Ms. Patrice Johnson of Congressman Mickey Leland's office began intensive consultations with the various Title III support groups aimed at easing passage.

September 1988: Intensive consultations have continued regarding whether the expansion should be limited to the entities named in S. 2739 or further expanded to include the Schools of Pharmacy at Xavier University and Texas Southern University.

Comment: We are probably not knowledgeable enough regarding the Congressional Title III process to come to an informed judgment regarding the Pharmacy issue. We wish that the strong interest expressed by my Pharmacy colleagues was evident during our initial consultation with them nearly a year ago. Nevertheless, a strong lobbying effort should be made for their inclusion if at all possible. However, S. 2739 is a good bill and deserves the support of the entire institution irrespective of the debate regarding the inclusion of our pharmacy graduate program.

Thank you for giving us an audience regarding this matter.

MVC/nls

Enclosure



TEXAS SOUTHERN UNIVERSITY
3100 CLEBURNE AVENUE • HOUSTON, TEXAS 77004

(713) 527-7011

OFFICE OF THE PRESIDENT
TELEFAX
(713) 639-1092

M E M O R A N D U M

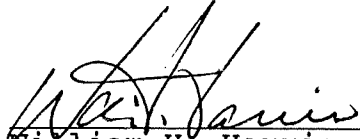
TO: Dean James Douglas
Dean Patrick Wells

FROM: William H. Harris

RE: Title III Funding

DATE: 20 April 1990

Attached hereto is a copy of language being introduced in the Congress by Senator Bentsen concerning our efforts to secure Title III funding for the School of Law and the College of Pharmacy and Health Sciences. I pass it along to you at this moment for information purposes only. As things develop, Senator Bentsen might want to make a speech that includes information concerning the two Schools to justify why he is proposing this legislation. I would appreciate it if you would give me a brief statement, no more than a page, on the essential elements of your School that you would like to have emphasized in a speech by the Senator that can show why Texas Southern University deserves this support. If I could have that in the next week it would be most helpful.


William H. Harris

TEXAS SOUTHERN UNIVERSITY
THURGOOD MARSHALL SCHOOL OF LAW

3100 CLEBURNE AVENUE
HOUSTON, TEXAS 77004

March 14, 1988

Irving Joyner, Associate Dean
North Carolina Central University
School of Law
Durham, NC 27707

Dear Mr. Joyner and Ms. Augustus:

I write to set forth for your consideration a plan under which our three law schools can qualify under the federal government's Strengthening Historically Black Graduate Institutions Programs.

The Program is set forth in 20 U.S.C. Section 1063 b (See enclosure) to provide grants to independent Historically Black Graduate Institutions who make substantial contributions to the legal, medical, dental, veterinary, or other graduate educational opportunities for Black Americans.

Under part e of Section 1063(b) the following five graduate programs are eligible:

- (1) Morehouse School of Medicine,
- (2) Meharry Medical School;
- (3) Charles R. Drew Postgraduate Medical School;
- (4) Atlanta University; and
- (5) Tuskegee Institute School of Veterinary Medicine.

Since no law programs are benefitted, I suggest that we collaborate in gaining inclusion of our three law programs.

Although our inclusion appears logical, I believe it will prove to be very difficult. First, the current beneficiary institutions would probably oppose opening the class of beneficiaries to us since in the 1988 Fiscal Year a total of \$10 million is available to them and they do not benefit from State support. Second, our parent institutions benefit

Page 2

Ms. Augustus & Mr. Joyner
March 14, 1988

from the non-graduate part of the strengthening Program and may be unwilling to accept any changes in the current arrangement. They, in turn, can share their grants with us by including law school programs in this part of their grant proposals. Third, if the pool is opened to law programs, why not open the pool further to other graduate programs. This would dilute the effectiveness of the entire Strengthening Graduate Program.

In spite of these difficulties, I believe that the arguments for strengthening our law programs are so strong that we can overcome these difficulties. First, although we benefit from State support, that support has come grudgingly and inadequately. Moreover, although we are fully accredited by the American Bar Association, I believe that we do not now have the more prestigious American Association of Law Schools accreditation. Federal support can help us achieve this status. Certainly other State supported schools enjoy this status. Second, strong Black law programs are just as essential as other graduate programs for it is Black lawyers who carry the fight for equality on a continuous basis. Third, our parent institutions should have no objectives if they are relieved of funneling scarce resources into their law units. In short, our case is strong and deserves pursuing.

I do not believe that we can win inclusion immediately. It will take intense lobbying of Congress with the aid of our Congressional Representatives. However, it should take no more than two Congressional sessions to achieve our goal.

If you have any further questions on this matter, please call me directly at (713) 527-7126.

Sincerely,

McKen V. Carrington
Associate Dean

/nls

Enclosure

cc: Dean James M. Douglas



SOUTHERN UNIVERSITY LAW CENTER

POST OFFICE BOX 9294

BATON ROUGE, LOUISIANA 70813-9294

OFFICE OF THE CHANCELLOR
(504) 771-2552

March 23, 1988

Finite list of schools
→
① letters from inst. here expressing an interest.

McKen V. Carrington, Associate Dean
Texas Southern University
Thurgood Marshall School of Law
3100 Cleburne Avenue
Houston, TX 77004

RE: Strengthening Historically Black
Graduate Institutions Programs

Dear Dean Carrington:

I commend you for spearheading efforts to obtain inclusion of our three law schools in the above-captioned federal program. In this connection, please be advised that the following named professor from our Law Center has agreed to collaborate with you (and others) in pursuing those efforts:

Professor Clyde C. Tidwell
Southern University Law Center
P.O. Box 9294
Baton Rouge, LA 70813
Telephone: (504) 771-4910

You may contact Professor Tidwell directly through the above address or telephone number.

We all hope that this will be a successful venture.

Sincerely,

BK Ag

B.K. Agnihotri

BKA/ag

cc: W. Marshall, Vice Chancellor
Clyde C. Tidwell, Professor

sen Bennett Johnson
Ben Cannon
Legislative Assistant
send copy to chancellor
elaine Paten

Sen. Pell's staff

Bentsen, Five Others Propose Expanded HBCU Graduate Program

by Charles Dervarics

Sen. Lloyd Bentsen (D-TX), the Democratic candidate for vice president, unveiled a plan on August 11 to expand the number of graduate institutions receiving money under the Title III program for historically Black colleges and universities.

Bentsen's legislation, co-sponsored by five other southern Democrats, would extend Title III graduate assistance to Florida A&M University's College of Pharmacy and Pharmaceutical Sciences and the law schools at Texas Southern University,

North Carolina Central University and Southern University. If approved by Congress, it would bring to nine the number of HBCU graduate programs eligible for federal aid.

"We all recognize the fact that much work remains to be done before true educational and economic opportunity exists in this country, and we are prepared to roll up our sleeves to achieve that objective," Bentsen said. "With this legislation, I believe we are taking a small, but significant, step in that direction."

In 1988, the five schools receiving HBCU graduate assistance received \$9.6 million. Bentsen, noting he does not plan "to rob Peter to pay Paul," said funding increases would be required. "I firmly believe the program should be expanded."

Congress in 1986 created a separate funding source for HBCU graduate programs. Programs currently receiving funding are Morehouse School of Medicine, Atlanta University, Meharry Medical School, Tuskegee School of Veterinary Medicine and Charles Drew Postgraduate Medical School.

"Like the five schools currently listed in the statute, the four schools covered by my bill are opening new doors for Blacks," Bentsen said.

Expanding eligibility for the program also would be a single but "important step" to attract more minorities to college, said co-sponsor Sen. Bob Graham (D-FL). Given current demographic trends, the effects of low minority participation in higher education could be "potentially devastating," he said. The bill, S. 2739, has been referred to the Senate Labor and Human Resources Committee.

The other sponsors are Sens. Lawton Chiles (D-FL), Terry Sanford (D-NC), J. Bennett Johnston (D-LA), and John Breaux (D-LA).



Sen. Lloyd Bentsen (D-TX)

Black Education Crisis Focus of CBC Forums

"The plight of African-American students seeking to go to college must be a priority item on the education agenda of the new administration," said Rep. Major Owens (D-NY), the Chairman of the Congressional Black Caucus Higher Education Braintrust. The trust will hold two forums during the 18th Annual Congressional Black Caucus Foundation Legislative Weekend on September 14-18.

"We must outline a greater federal role in Black education, and make certain that all parties concerned clearly understand that the national interests are closely interwoven with the interests of the African-American higher education community.

"One king pin of such federal participation should be the involvement of all Black institutions of higher education in a nation-wide educational research and development network. This could produce much needed data that is crucial to improving methods of educating Black children and developing ways to saturate Black communities with educational activities."

To draft a Black higher education agenda for a new administration, the braintrust will sponsor workshops: "Utilizing Educational Research and Development to Resolve the Education Crisis in the Black Community," and "A Black Higher Education Agenda for the New Administration."

"Utilizing Educational Research" will focus on the first phase of a study conducted by Dr. Gary Orfield of the University of Chicago. The study examines changes in education, college graduation, job training, and employment for city and suburban Blacks, Hispanics and majority students from 1975 to 1985. Participants will include Orfield who will present excerpts from his study; Dr. Reginald Wilson (moderator), Director of the American Council on Education's Office of Minority Concerns; Meldon Hollis, President of the Baltimore School Board; and Dr. Gwendolyn Baker, a member of the New York City Board of Education.

"A Black Higher Education" will explore legislative proposals such as the federal role in minority teacher recruitment and training, Black student recruitment and retention, financial aid for Black students and federal aid for historically Black colleges and universities.

Owens will be the moderator, and the presentors will be Dr. Luther Williams, special assistant to the director of the National Institute of General Medical Sciences (National Institutes of Health); William Blakey, chief counsel of the Senate Subcommittee on Employment and Productivity; Dr. Barbara Sizemore, University of Pittsburgh Black Studies professor and former superintendent of Washington, DC, schools; and Pansy Atkinson, director of Frostburg State University's Affirmative Action Office.

Education Funding, from pg. 1, col. 2

space shuttle. Earlier this year, the Education Department had sought to block funding for that program.

The final pact also followed the lead of the House in funding two new "pipeline" programs. It provided \$14.8 million for the new Even Start program combining adult education for parents and preschool education for their children; and \$19.7 million for comprehensive child development centers.

Despite the agreement, House and Senate negotiators remained at an impasse on a potentially divisive abortion provision in the bill. The debate could delay future consideration on the bill, which is expected to be taken up when Congress returns from its Labor Day recess.

Fiscal 1989 Appropriations (in millions)

Program	Reagan Budget	House Bill	Senate Bill	Initial Agreement	Final Agreement
TRIO	205.8	228.02	15.8	221.9	219.2
Aid to HBCUs	80.4	82.5	84.9	85.4	84.3*
Pell Grants	5,011.0	4,522.0	4,564.7	4,538.4	4,483.9
SEOGs	416.6	460.0	416.6	443.3	437.9
GSLs	2,735.6	3,174.4	3,174.4	3,174.4	3,174.4
Work/study	600.0	635.0	600.0	617.5	610.1
Perkins loans	—	185.7	182.7	185.7	183.5
Minority science improvement	5.4	5.4	5.4	5.4	5.3
Legal training for disadvantaged	1.9	1.9	1.9	1.9	1.9
Harris fellowships	15.3	20.0	18.5	19.3	19.0
Minorities/graduate education	3.3	3.7	3.5	3.5	3.5

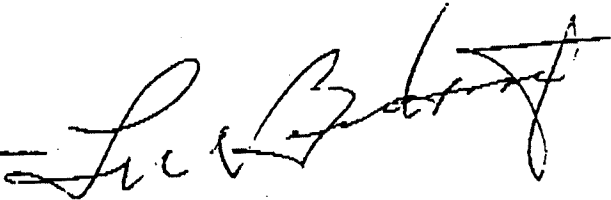
*Final level not specified, but figure assumes 1.2 percent cut.

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S.L.C.

100TH CONGRESS
2D SESSION

S. 2739



IN THE SENATE OF THE UNITED STATES

(for himself, Mr. Sanford, Mr. Johnston, Mr. Breaux, Mr. Chiles and Mr. Graham
Mr. BENTSEN introduced the following bill; which was read twice and referred
to the Committee on _____

A BILL

To amend the professional and graduate institution program under part B of title III of the Higher Education Act of 1965 to add certain additional institutions, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assem-*
3 *bled, That section 326(e) of the Higher Education Act of*
4 *1965 is amended—*

5 (1) by striking out "Independent professional"
6 and inserting in lieu thereof "Professional";

7 (2) by striking out "and" at the end of para-
8 graph (4);

1 (3) by striking out the period at the end of para-
2 graph (5) and inserting in lieu thereof a semicolon;
3 and

4 (4) by adding at the end thereof the following:

5 “(6) Thurgood Marshall School of Law;

6 “(7) North Carolina Central University School
7 of Law;

8 “(8) Southern University School of Law; and

9 “(9) Florida A&M College of Pharmacy and
10 Pharmaceutical Sciences (Graduate Program).”.



Office for the Advancement of Public Black Colleges
An Office of
The National Association of State Universities and Land-Grant Colleges
In Cooperation with the American Association of State Colleges and Universities

OFFICE OF THE PRESIDENT

APR 18 1990

M E M O R A N D U M

To: Ray Bonilla, Staff Assistant, Senator Bentsen
Bob Rogan, Staff Assistant, Senator Graham

From: N. Joyce Payne, Director, OAPBC

Re: Title III, Section 326, Graduate/Professional Schools

Date: April 10, 1990

In response to our recent discussion concerning the inclusion of five additional institutions in Section 326 of Part B of Title III, it appears that the following language "may be" appropriate:

- 5 "(6) Thurgood Marshall School of Law and/or Texas Southern School of Pharmacy (Graduate Program);
- 11 "(10) Xavier University of Louisiana School of Pharmacy (Graduate Program)."

LIMITATIONS

Sec. Sums available for each fiscal year for this part under Section 326 for the existing five (5) professional or graduate institutions (Morehouse School of Medicine; Meharry Medical School; Charles R. Drew Postgraduate Medical School; Atlanta University; and Tuskegee Institute School of Veterinary Medicine) will be held harmless at the FY89 appropriations level.

AUTHORIZATION OF APPROPRIATIONS

Sec. There are authorized to be appropriated to carry out this part \$2,500,000 under Section 326 for five (5) new professional or graduate institutions for fiscal year 1991 and such sums as may be necessary for succeeding fiscal years (Thurgood Marshall School of Law and/or Texas Southern School of Pharmacy (Graduate Program)); North Carolina Central University School of Law; Southern University School of Law; Florida A&M College of Pharmacy and Pharmaceutical Sciences (Graduate Program); and Xavier University of Louisiana School of Pharmacy (Graduate Program).

As indicated in our previous discussions, the presidents/chancellors agree that the sums available for existing institutions should remain exclusively available to them at the FY 89 appropriations level.

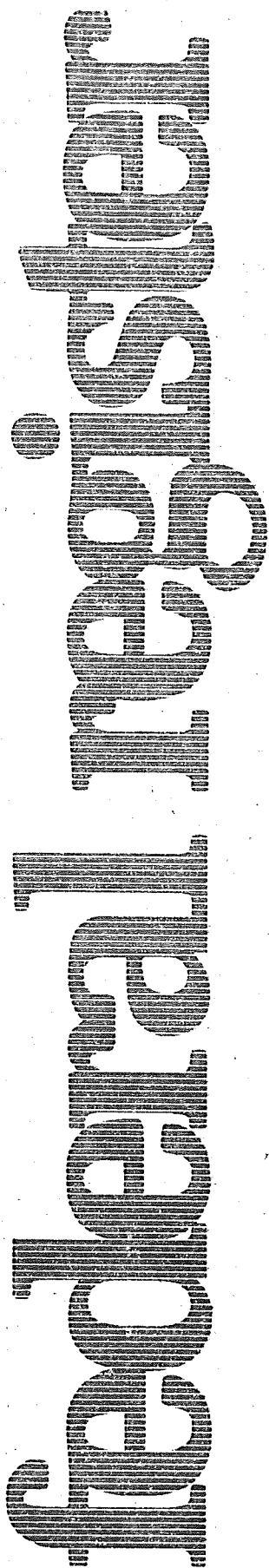
If a bill comparable to S. 2739 can be introduced within the immediate future we can maintain the current momentum in the community. We, of course, are willing to work with both of you in getting these long overdue funds for the five new institutions. If you need support beyond the targeted states, we can be of some assistance in mobilizing the larger community of public colleges. In addition, I spoke with Bea Smith at NAFEO who indicated that they are very supportive of this initiative. I suggested that they contact each office by telephone and follow with a letter indicating the same. As you know, the primary opposition was driven by the "hold harmless" issue. Since this bill would resolve that matter, I really don't foresee any problems.

Moreover, in the next few weeks, we will continue working with NAFEO and UNCF to develop some draft language for an entirely new Section 326 for all historically black institutions with professional and graduate programs at the Ph.D. level and beyond. We will keep you informed of these developments.

Our sincere appreciation for your continued assistance.

NJP/laj
cc: Humphries
Spikes
Richmond
Harris
Francis

Friday
August 14, 1987



Part III

Department of
Education

34 CFR Parts 608 and 609
Strengthening Historically Black Colleges
and Universities Program and
Strengthening Historically Black Graduate
Institutions Program; Final Regulations

DEPARTMENT OF EDUCATION

34 CFR Parts 608 and 609

Strengthening Historically Black Colleges and Universities Program and Strengthening Historically Black Graduate Institutions Program

AGENCY: Department of Education.

ACTION: Final regulations.

SUMMARY: The Secretary issues final regulations to govern the Strengthening Historically Black Colleges and Universities (HBCU) Program and the Strengthening Historically Black Graduate Institutions Program. The regulations are needed to implement these two new programs, each of which is authorized under Part B of Title III of the Higher Education Act of 1965 (HEA), as amended by the Higher Education Amendments of 1986, Pub. L. 99-498, by the Omnibus Budget Reconciliation Act of 1986, Pub. L. 99-509, and by the Higher Education Technical Amendments Act of 1987, Pub. L. 100-50.

EFFECTIVE DATE: These regulations take effect either 45 days after publication in the Federal Register or later if 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:

Dr. Caroline J. Gillin, Director, Institutional Aid Programs, U.S. Department of Education, L'Enfant Plaza, Post Office Box 23868, Washington, DC 20038. Telephone: (202) 732-3308.

SUPPLEMENTARY INFORMATION:**Strengthening Historically Black Colleges and Universities (HBCUs) Program**

Under this program, the Secretary awards grants to historically Black colleges and universities to assist these institutions in establishing and strengthening their physical plants, academic resources and student services so that they may continue to participate in fulfilling the goals of quality of educational opportunity. Grants are awarded based on a statutory formula which is set forth in § 608.31.

In order to receive a grant under section 322 of the HEA, under the HBCU Program, an institution must be accredited or preaccredited and it must be either a junior or community college or an institution which provides an educational program for which it awards a bachelor's degree. In addition, the institution must qualify as a historically Black college or university that was

established before 1964 and has a principal mission that was, and is, the education of Black Americans. In interpreting section 322(2) of the HEA to determine whether an institution qualifies as a historically Black college or university, the Secretary relied heavily on the intent of the Congress as expressed in the legislative history. A detailed discussion, with information from congressional reports, was published in the notice of proposed rulemaking in the Federal Register of June 10, 1987, 52 FR 22274-22275.

As part of the grant award process, the Secretary will accept applications for grants under the HBCU Program from institutions that satisfy all the eligibility requirements except the requirement dealing with accreditation or pre-accreditation status. The Secretary will notify these institutions of the date by which the appropriate accrediting association must formally accord the accredited or pre-accredited status in order for the institutions to receive a grants under the HBCU Program. If accredited or pre-accredited status is formally given an institution by that date, the institution will receive a grant. If that status is not formally given to the institution by that date, the institution will not receive a grant.

Strengthening Historically Black Graduate Institutions Program

Under the Strengthening Historically Black Graduate Institutions Program, the Secretary may award grants to Morehouse School of Medicine, Meharry Medical School, Charles R. Drew Postgraduate Medical School, Atlanta University, and Tuskegee Institute School of Veterinary Medicine to assist these institutions in establishing and strengthening their physical plants, development offices, endowment funds, academic resources and student services so that they may continue to participate in fulfilling the goal of equality of educational opportunity in graduate education.

Provisions Common to Both Programs

Under each program, and in contrast to the Strengthening Institutions Program authorized under Part A of Title III of the HEA as well as the Strengthening Institutions and Special Needs Programs previously authorized under Title III of the HEA, a grantee may use grant funds to carry out operational as well as developmental activities. However, a grantee may only use grant funds to supplement and in no case supplant funds that would otherwise be made available by the institution for grant activities.

The Secretary published a Notice of Proposed Rulemaking (NPRM) for the Strengthening Historically Black Colleges and Universities Program and the Strengthening Historically Black Graduate Institutions Program in the Federal Register on June 10, 1987, 52 FR 22274. Interested parties were provided 30 days to submit their comments to the Secretary. A summary of the significant comments received and the Secretary's response to those comments as well as changes made under the Higher Education Technical Amendments Act of 1987, Pub. L. 100-50, are included below.

Waiver of Notice of Proposed Rulemaking

In addition to the changes made to Part 608 and Part 609 based on public comment to the notice of proposed rulemaking, the Secretary has amended § 609.30 to implement a new statutory provision added by the Higher Education Technical Amendments Act of 1987, Pub. L. 100-50. In accordance with section 431(b)(2)(A) of the General Education Provisions Act and the Administrative Procedure Act, 5 U.S.C. 553, it is the practice of the Secretary to offer interested parties the opportunity to comment on proposed regulations. However, this change does not implement substantive policy, but merely implements a statutory change contained in Pub. L. 100-50. Therefore, the Secretary has determined that publication of proposed regulations is unnecessary and contrary to the public interest under 5 U.S.C. 553(b)(B).

Revisions to the Notice of Proposed Rulemaking*Changes made as a result of the Higher Education Technical Amendments Act of 1987, Pub. L. 100-50*

The Higher Education Technical Amendments Act of 1987, Pub. L. 100-50, amended section 326(a)(2) of the HEA by directing the Secretary to award Morehouse School of Medicine a grant of at least \$3,000,000 provided that it satisfies the cost-sharing requirement also set forth in section 326(a)(2). Accordingly, the Secretary has revised § 609.30(a) and § 609.30(c) and added § 609.30(d) to reflect this statutory change.

Changes made to the list of institutions qualifying as a "historically Black college or university"

After the proposed regulations were published, many institutions submitted documents to the Secretary seeking to have the Secretary designate them as "historically Black colleges or

universities" under the statutory definition of that term. After evaluating the documentation submitted by these institutions, the Secretary has determined that several of the institutions qualify as a "historically Black college or university" and has added those institutions to the list of qualifying institutions set out in § 608.2(b). These institutions include: Carver State Technical College, Fredrick Technical College, J. F. Drake Technical College, Trenholm State Technical College, Alabama; Lewis College of Business, Michigan; Harris-Stowe State College, Missouri; Denmark Technical College, South Carolina; and Saint Philip's College, Texas.

Comments and Responses

The following is a summary of the public comments received on the proposed regulations and the Secretary's response to those comments:

General Comments

Comment: One commenter questioned whether the comprehensive development plan should be evaluated under the Historically Black Colleges and Universities Program.

Response: No change was made. Under the statute governing the HBCU Program, section 325 of the HEA, such a review is not required and the Secretary does not believe that such a review is necessary.

Comment: The same commenter asked for a clarification of whether historically Black colleges and universities can apply for simultaneous grants under the Strengthening Institutions Program and the Historically Black Colleges and Universities Program.

Response: No change was made. The statute does not prohibit an historically Black college or university from applying under the Strengthening Institutions Program if the institution meets the applicable eligibility requirements.

Comment: One commenter stated that section 358 of the statute was explicit regarding penalties for embezzlement, willful misapplication, theft and fraud. The commenter noted that this section was included in the regulations for the Strengthening Institutions Program and asked whether it should be included in the HBCU Program regulations.

Response: No change was made. Since the provision is contained in the statute, the Secretary does not believe it is useful to merely repeat it in this regulation or in Part 609. In addition, the Secretary is removing it from the Strengthening Institutions Program regulation, 34 CFR Part 607.

Section 608.2 What institutions are eligible to receive a grant under the HBCU Program?

Comment: One commenter requested a waiver of the accreditation requirement in order to be considered an eligible institution.

Response: No change was made. The definition of an eligible institution is statutory and requires all institutions to be accredited or preaccredited.

Section 608.4 What definitions apply?

Comment: One commenter asked whether the term "fiscal year" was its fiscal year (July 1 through June 30) or the government fiscal year (October 1 through September 30).

Response: No change was made. Under 34 CFR 77.1(c), the fiscal year is the government fiscal year.

Comment: Several commenters suggested changes in the definitions of the terms "graduate student," "junior or community college" and "school year."

Response: No change was made. These definitions are statutory and cannot be changed by regulation.

Comment: Two commenters asked for a clarification of the accreditation and pre-accreditation eligibility requirement. The commenters stated that the requirement as stated in the regulations is unduly narrow.

Response: No change was made. The statutory definition of a Part B institution requires that the institution be accredited by a nationally recognized accrediting agency or association (accredited) or be determined by a nationally recognized accrediting agency or association to be making reasonable progress toward accreditation (preaccredited) to receive funds under this part.

Section 608.10 What activities may be carried out under a grant?

Comment: Many commenters requested a clarification of allowable activities. Most questioned whether improving funds management or institutional management, assisting in the establishment or maintenance of an institution's endowment, fundraising capabilities, and improvement of a development office to strengthen and increase contributions from alumni are allowable.

Response: No change was made. The statute does not authorize funds to be used on these activities under this part.

Comment: Three commenters wanted a clarification on whether improving academic programs was allowable under this part.

Response: No change has been made. The regulations allow grant funds to be

used for the improvement of academic instruction and programs.

Comment: Another commenter requested that grant funds be used for construction, renovation, and improvement of non-academic facilities.

Response: No change is made. The statute does not authorize the use of grant funds for those purposes.

Comment: One commenter asked whether a grantee may use funds it received under Part 608 to carry out allowable activities in its graduate program.

Response: No change was made. A grantee may use funds it received under Part 608 to carry out allowable activities in its graduate program.

Section 608.10 What activities may be carried out under a grant?

Comment: One commenter asked how the Secretary judges the effectiveness of the proposed activities under § 608.10.

Response: No change was made. The Secretary does not evaluate the effectiveness of an applicant's proposed activities in a formula grant program such as the HBCU Program.

Section 608.30 What is the procedure for approving and disapproving grant applications?

Comment: One commenter recommended that since the amount of a grant award is based on the number of students entering graduate school, a separate formula should be established for junior or community colleges because the formula as stated discriminates against these institutions.

Response: No change is made. The formula is statutory and cannot be changed by regulations.

Section 608.31 How does the Secretary determine the amount of a grant?

Comment: Several commenters noted that a part of the formula was not printed.

Response: A change was made. The printing error has been corrected.

Comment: One commenter requested a clarification regarding the formula for calculating grant funds and the \$350,000 minimum award provision.

Response: No change was made. Under § 608.31, grant awards are calculated as follows: The Secretary first applies the statutory formula. If an institution under the formula would receive less than \$350,000, its grant is increased to \$350,000. Funds for that increase are made available by ratably reducing grant awards exceeding the \$350,000 minimum under the formula.

Section 608.40 What are allowable costs and what are the limitations on allowable costs?

Comment: Several commenters questioned the statutory basis in section 351(b)(2) of the HEA for applying the supplement and no supplant provision to the HBCU Program.

Response: No change is made. Section 351(b)(2) of the HEA by its very terms makes it applicable to the HBCU Program. That section provides in pertinent part that "Federal funds made available under this title for any fiscal year will be used to supplement and, to the extent practical, increase the funds that would otherwise be made available for the purposes of section 323, and in no case supplant those funds." Section 323 of the HEA lists the activities that may be carried out under this part.

Section 608.41 What are the audit and repayment requirements?

Comment: One commenter asked that since a project must be audited every two years, could the expense of such an audit be paid from grant funds.

Response: No change is necessary. The audit requirements are an administrative responsibility of the institution. Grant funds may not be used to pay for the cost of an audit.

Executive Order 12291

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

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 being gathered by or is available from any other agency or authority of the United States.

Based on the response to the proposed rules and on its own review, the Secretary has determined that the regulations in this document do not require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

List of Subjects in 34 CFR Parts 608 and 609

College and universities, Education, Reporting and recordkeeping requirements.

(Catalog of Federal Domestic Assistance Number 84.031B—Strengthening Historically Black Colleges and Universities Program)

Dated: July 29, 1987.

William J. Bennett,
Secretary of Education.

The Secretary of Education amends Title 34 of the Code of Federal Regulations by adding new Parts 608 and 609 to read as follows:

PART 608—STRENGTHENING HISTORICALLY BLACK COLLEGES AND UNIVERSITIES PROGRAM

Subpart A—General

- Sec.
- 608.1 What is the Strengthening Historically Black Colleges and Universities (HBCU) Program?
- 608.2 What institutions are eligible to receive a grant under the HBCU Program?
- 608.3 What regulations apply?
- 608.4 What definitions apply?

Subpart B—What Kind of Projects Does the Secretary Fund?

- 608.10 What activities may be carried out under a grant?
- 608.11 What is the duration of a grant?

Subpart C—How Does an Eligible Institution Apply for a Grant?

- 608.20 What are the application requirements for a grant under this part?

Subpart D—How Does the Secretary Make a Grant?

- 608.30 What is the procedure for approving and disapproving grant applications?
- 608.31 How does the Secretary determine the amount of a grant?

Subpart E—What Conditions Must a Grantee Meet?

- 608.40 What are allowable costs and what are the limitations on allowable costs?
- 608.41 What are the audit and repayment requirements?
- 608.42 Under what conditions does the Secretary terminate a grant?

Authority: 20 U.S.C. 1060 through 1063a, 1063c and 1069c, unless otherwise noted.

Subpart A—General

§ 608.1 What is the Strengthening Historically Black Colleges and Universities (HBCU) Program?

The Strengthening Historically Black Colleges and Universities Program, hereafter called the HBCU Program, provides grants to Historically Black Colleges and Universities (HBCUs) to assist these institutions in establishing and strengthening their physical plants, academic resources and student services so that they may continue to participate in fulfilling the goal of equality of educational opportunity.

(Authority: 20 U.S.C. 1060)

§ 608.2 What Institutions Are Eligible To Receive a Grant Under the HBCU Program?

(a) To be eligible to receive a grant under this part, an institution of higher education must—

- (1) Be a historically black college or university;
- (2) Have been established before 1964;
- (3) Have a principal mission that was, and is, the education of Black Americans; and
- (4) Be, and have been for five academic years preceding the academic year for which it seeks a grant under this part—

(i) Legally authorized by the State in which it is located to be a junior or community college or to provide an educational program for which it awards a bachelor's degree; and

(ii) Accredited or preaccredited by a nationally recognized accrediting agency or association that the Secretary has determined to be a reliable authority as to the quality of education or training offered.

(b) The Secretary has determined that the following institutions satisfy the requirements contained in paragraphs (a)(1) through (a)(3) of this section.

Alabama	
Alabama A & M University	Huntsville.
Alabama State University	Montgomery.
Carver State Technical College	Mobile.
Concordia College	Selma.
Fredd State Technical College	Tuscaloosa.
J.F. Drake State Technical College	Huntsville.
S.D. Bishop State Junior College	Mobile.
Lawson State College	Birmingham.
Miles College	Birmingham.
Oakwood College	Huntsville.
Selma University	Selma.
Stillman College	Tuscaloosa.
Talladega University	Talladega.
Trenholm State Technical College	Montgomery.
Tuskegee University	Tuskegee.
Arkansas	
Arkansas Baptist College	Little Rock.
Philander Smith College	Little Rock.
Shorter College	Little Rock.
University of Arkansas at Pine Bluff	Pine Bluff.
Delaware	
Delaware State College	Dover.
District of Columbia	
Howard University	
University of the District of Columbia	
Florida	
Bethune Cookman College	Daytona Beach.
Edward Waters College	Jacksonville.
Florida A & M University	Tallahassee.
Florida Memorial College	Miami.
Georgia	
Albany State C. ...	Albany.
Atlanta University	Atlanta.
Clark College	Atlanta.
Fort Valley State College	Fort Valley.
Interdenominational Theological Center	Atlanta.
Morehouse College	Atlanta.
Morris Brown College	Atlanta.
Palme College	Augusta.

Savannah State College.....	Savannah.
Spelman College.....	Atlanta.
Kentucky	
Kentucky State University.....	Frankfort.
Louisiana	
Dillard University.....	New Orleans.
Grambling State University.....	Grambling.
Southern University A & M College.....	Baton Rouge.
Southern University at New Orleans.....	New Orleans.
Xavier University of Louisiana.....	New Orleans.
Maryland	
Bowie State College.....	Bowie.
Coppin State College.....	Baltimore.
Morgan State University.....	Baltimore.
University of Maryland-Eastern Shore.....	Princess Anne.
Michigan	
Lewis College of Business.....	Detroit.
Mississippi	
Alcorn State University.....	Lorman.
Coahoma Junior College.....	Clarksdale.
Jackson State University.....	Jackson.
Mary Holmes College.....	West Point.
Mississippi Valley State University.....	Itta Bona.
Prentiss Normal and Industrial Institute.....	Prentiss.
Rust College.....	Holly Springs.
Tougaloo College.....	Tougaloo.
Hinds Junior College (Utica Jr Coll).....	Raymond.
Missouri	
Lincoln University.....	Jefferson City.
Harris-Stowe State College.....	St. Louis.
North Carolina	
Barber-Scotia College.....	Concord.
Bennett College.....	Greensboro.
Elizabeth City State University.....	Elizabeth City.
Fayetteville State University.....	Fayetteville.
Johnson C. Smith University.....	Charlotte.
Livingstone College.....	Salisbury.
North Carolina A & T State University.....	Greensboro.
North Carolina Central University.....	Durham.
Saint Augustine's College.....	Raleigh.
Shaw University.....	Raleigh.
Winston-Salem State University.....	Winston Salem.
Ohio	
Central State University.....	Wilberforce.
Wilberforce University.....	Wilberforce.
Oklahoma	
Langston University.....	Langston.
Pennsylvania	
Cheyney State University.....	Cheyney.
Lincoln University.....	Lincoln.
South Carolina	
Allen University.....	Columbia.
Benedict College.....	Columbia.
Claffin College.....	Orangeburg.
Clinton Junior College.....	Rock Hill.
Denmark Technical College.....	Denmark.
Morris College.....	Sumter.
South Carolina State College.....	Orangeburg.
Voorhees College.....	Denmark.
Tennessee	
Fisk University.....	Nashville.
Knoxville College.....	Knoxville.
Lane College.....	Jackson.
LeMoine-Owen College.....	Memphis.
Meharry Medical College.....	Nashville.
Morristown College.....	Morristown.
Tennessee State University.....	Nashville.

Texas	
Bishop College.....	Dallas.
Huston-Tillotson College.....	Austin.
Jarvis Christian College.....	Hawkins.
Paul Quinn College.....	Waco.
Prairie View A & M University.....	Prairie View.
Saint Philip's College.....	San Antonio.
Southwestern Christian College.....	Terrill.
Texas College.....	Taylor.
Texas Southern University.....	Houston.
Wiley College.....	Marshall.
U.S. Virgin Islands	
College of the Virgin Islands.....	St. Thomas.
Virginia	
Hampton University.....	Hampton.
Norfolk State University.....	Norfolk.
Saint Paul's College.....	Lawrenceville.
Virginia State University.....	Petersburg.
Virginia Union University.....	Richmond.
West Virginia	
Bluefield State College.....	Bluefield.
West Virginia State College.....	Institute.

(c) If an institution has merged with another institution, and, as a result of the merger, would not otherwise qualify to receive a grant under this part, that institution may nevertheless qualify to receive a grant under this part if—

- (1) The institution would have qualified to receive a grant before the merger; and
- (2) The institution was eligible to receive a grant under the Special Needs Program in any fiscal year prior to fiscal year 1986.

(d) For the purpose of paragraph (a)(4)(ii) of this section, the Secretary publishes a list in the Federal Register of the nationally recognized accrediting agencies and associations that he has determined to be a reliable authority as to the quality of education or training offered.

(e) Notwithstanding any other provision of this section, for each fiscal year—

(1) The University of the District of Columbia is eligible to receive a grant under this part only if the amount of the grant it is scheduled to receive under § 608.31 exceeds the amount it is scheduled to receive in the same fiscal year under the District of Columbia Self-Government and Governmental Reorganization Act; and

(2) Howard University is eligible to receive a grant under this part only if the amount of the grant it is scheduled to receive under § 608.31 exceeds the amount it is scheduled to receive in the same fiscal year under the Act of March 2, 1867, 20 U.S.C. 123.

(Authority: 20 U.S.C. 1061 and 1063(f); House Report 99-861, 99th Cong., 2d Sess. p. 307, September 22, 1986; Senate Report 99-296, 99th Cong., 2d Sess. p. 23, May 12, 1986; Cong. Rec. of June 3, 1986, pp. 6586-6589)

§ 608.3 What regulations apply?

The following regulations apply to this part:

(a) The Department of Education General Administrative Regulations (EDGAR) in 34 CFR Part 74 (Administration of Grants); the following sections in 34 CFR Part 75 (Direct Grant Programs): §§ 75.1-75.104, 75.125-75.129, 75.190-75.192, 75.500, 75.524-75.534, 75.580-75.903; 34 CFR Part 77 (Definitions That Apply to Department Regulations); and 34 CFR Part 78 (Education Appeal Board).

(b) The regulations in this part. (Authority: 20 U.S.C. 1060-1063a, 1063c)

§ 608.4 What definitions apply?

The following definitions apply to this part:

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

- Applicant
- Application
- Award
- Budget
- EDGAR
- Equipment
- Fiscal year
- Grant period
- Private
- Project
- Project period
- Public
- Secretary

(b) The following definitions also apply to this part:

"Accredited" means the status of public recognition which a nationally recognized accrediting agency or association grants to an institution which meets certain established qualifications and educational standards.

"Graduate" means a student who has attended an institution for at least three semesters and fulfilled academic requirements for undergraduate studies in not more than five consecutive school years.

"Junior or community college" means an institution of higher education—

(1) That admits as regular students persons who are beyond the age of compulsory school attendance in the State in which the institution is located and who have the ability to benefit from the training offered by the institution;

(2) That does not provide an educational program for which it awards a bachelor's degree or an equivalent degree; and

(3) That provides an educational program of not less than 2 years that is acceptable for full credit toward such a degree; or offers a 2-year program in

engineering, mathematics, or the physical or biological sciences, designed to prepare a student to work as a technician or at the semiprofessional level in engineering, scientific, or other technological fields requiring the understanding and application of basic engineering, scientific, or mathematical principles of knowledge.

"Pell Grant" means the grant program authorized by Title IV-A-1 of the Higher Education Act of 1965, as amended.

"Preaccredited" means a status, also called candidacy status, that a nationally recognized accrediting agency or association, recognized by the Secretary to grant that status, has accorded an unaccredited institution that is making reasonable progress toward accreditation.

"School year" means the period of time from July 1 of one calendar year through June 30 of the subsequent calendar year. (A "school year" is equivalent to an "award year" under the Pell Grant Program.)

(Authority: 20 U.S.C. 1060-1063)

Subpart B—What Kind of Projects Does the Secretary Fund?

§ 608.10 What activities may be carried out under a grant?

(a) *Allowable activities.* Except as provided in paragraph (b) of this section, a grantee may carry out the following activities under this part—

(1) Purchase, rental, or lease of scientific or laboratory equipment for educational purposes, including instructional or research purposes;

(2) Construction, maintenance, renovation, and improvement in classroom, library, laboratory, and other instructional facilities;

(3) Support of faculty exchanges and faculty fellowships to assist these faculty members in attaining advanced degrees in their fields of instruction;

(4) Academic instruction in disciplines in which Black Americans are underrepresented;

(5) Purchase of library books, periodicals, microfilm, and other educational materials; and

(6) Tutoring, counseling, and student service programs designed to improve academic success.

(b) *Unallowable activities.* A grantee may not carry out the following activities under this part—

(1) Activities that are not included in the grantee's approved application;

(2) Activities that are inconsistent with any State plan of higher education that is applicable to the institution;

(3) Activities that are inconsistent with a State plan for desegregation of higher education that is applicable to the institution;

(4) Activities or services that relate to sectarian instruction or religious worship; and

(5) Activities provided by a school or department of divinity. For the purpose of this section, a "school or department of divinity" means an institution, or a department of an institution, whose program is specifically for the education of students to prepare them to become ministers of religion or to enter upon some other religious vocation, or to prepare them to teach theological subjects.

(Authority: 20 U.S.C. 1062, 1063a and 1069c)

§ 608.11 What is the duration of a grant?

The Secretary may award a grant under this part for a period of up to five academic years.

(Authority: 20 U.S.C. 1063b(b))

Subpart C—How Does an Eligible Institution Apply for a Grant?

§ 608.20 What are the application requirements for a grant under this part?

In order to receive a grant under this part, an institution must submit an application to the Secretary at such time and in such manner as the Secretary may prescribe. The application must contain—

(a) A description of the activities to be carried out with grant funds;

(b) A description of how the grant funds will be used so that they will supplement and, to the extent practical, increase the funds that would otherwise be made available for the activities to be carried out under the grant and in no case supplant those funds;

(c) An assurance that the institution will provide the Secretary with an annual report on the activities carried out under the grant;

(d) An assurance that the institution will provide for, and submit to the Secretary, the compliance and financial audit described in § 608.41;

(e) An assurance that the proposed activities in the application are in accordance with any State plan that is applicable to the institution;

(f) The number of graduates of the applicant institution during the school year immediately preceding the fiscal year for which grant funds are requested; and

(g) The percentage of graduates of the applicant institution who are in attendance at a graduate or professional school in a degree program in a discipline in which Blacks are underrepresented.

(Authority: 20 U.S.C. 1063, 1063a and 1066(b)(2))

(Approved by the Office of Management and Budget under control number 1840-0113)

Subpart D—How Does the Secretary Make a Grant?

§ 608.30 What is the procedure for approving and disapproving grant applications?

The Secretary approves any application which satisfies the requirements of § 608.20 and does not disapprove any application, or any modification of an application, without affording the applicant reasonable notice and opportunity for a hearing.

(Authority: 20 U.S.C. 1063a)

§ 608.31 How does the Secretary determine the amount of a grant?

(a) Except as provided in paragraph (b) of this section, for each fiscal year, the Secretary determines the amount of a grant under this part by—

(1) Multiplying fifty percent of the amount appropriated for the HBCU Program by the following fraction—

Number of Pell Grant recipients at the applicant institution during the school year immediately preceding that fiscal year;

Number of Pell Grant recipients at all applicant institutions during the school year immediately preceding that fiscal year;

(2) Multiplying twenty-five percent of the amount appropriated for the HBCU Program by the following fraction—

Number of graduates of the applicant institution during the school year immediately preceding that fiscal year;

Number of graduates of the applicant institution during the school year immediately preceding that fiscal year.

(3) Multiplying twenty-five percent of the amount appropriated for the HBCU Program by the following fraction

The percentage of graduates of the applicant institution who are in attendance at a graduate or professional school in a degree program in a discipline in which Blacks are underrepresented.

The sum of the percentages of those graduates of all applicant institutions; and;

(4) Adding the amounts obtained in paragraphs (a)(1), (a)(2), and (a)(3) of this section.

(b) For the purpose of paragraph (a)(3) of this section—

(1) The percentage of graduates of an applicant institution who are in attendance at a graduate or professional school in disciplines in which Blacks are underrepresented is measured by the following fraction:

The number of graduates of an applicant institution who are in attendance at a graduate or professional school in disciplines in which Blacks are underrepresented

The number of graduates in the graduating classes of the graduates included in the numerator;

(2) The Secretary considers that Blacks are underrepresented in a professional or academic discipline if the percentage of Blacks in that discipline is less than the percentage of Blacks in the general population of the United States; and

(3) The Secretary, after consultation with the Commissioner of the Bureau of Labor Statistics, through a notice in the Federal Register, notifies prospective applicants of the disciplines in which Blacks are underrepresented.

(c) Notwithstanding the formula in paragraph (a) of this section—

(1) For each fiscal year, each eligible institution with an approved application must receive at least \$350,000; and

(2) If the amount appropriated for a fiscal year for the HBCU Program is insufficient to provide \$350,000 to each eligible institution with an approved application, each grant is ratably reduced. If additional funds become available for the HBCU Program during a fiscal year, each grant is increased on the same basis as it was decreased until the grant amount reaches \$350,000.

(d) The amount of any grant that the Secretary determines will not be required by a grantee for the period for which the grant was made is available for reallocation by the Secretary during that period to other eligible institutions under the formula set forth in paragraph (a) of this section.

(Authority: 20 U.S.C. 1063)

Subpart E—What Conditions Must a Grantee Meet?

§ 608.40 What are allowable costs and what are the limitations on allowable costs?

(a) *Allowable costs.* Except as provided in paragraph (b) of this section, a grantee may expend grant funds for activities that are related to carrying out the allowable activities included in its approved application.

(b) *Supplement and not supplant.* Grant funds shall be used so that they supplement, and to the extent practical, increase the funds that would otherwise be available for the activities to be carried out under the grant, and in no case supplant those funds.

(c) *Limitations on allowable costs.* A grantee may not—

(1) Spend more than fifty percent of its grant award in each fiscal year for costs relating to constructing or maintaining a classroom, library, laboratory, or other instructional facility; or

(2) Use an indirect cost rate to determine allowable costs under its grant.

(Authority: 20 U.S.C. 1062)

§ 608.41 What are the audit and repayment requirements?

(a)(1) A grantee shall provide for the conduct of a compliance and financial audit of any funds it receives under this part of a qualified, independent organization or person in accordance with the *Standards for Audit of Governmental Organizations, Programs, Activities, and Functions*, 1981 revision, established by the Comptroller General of the United States.

(2) The grantee shall have an audit conducted at least once every two years, covering the period since the previous audit, and the grantee shall submit the audit to the Secretary.

(3) If a grantee is audited under Chapter 75 of Title 31 of the United States Code, the Secretary considers that audit to satisfy the requirements of paragraph (a)(1) of this section.

(b) An institution awarded a grant under this part must submit to the Education Department Inspector General three copies of the audit required in paragraph (a) of this section within 6 months after completion of the audit.

(c) Any individual or firm conducting an audit described in § 626.42(a) shall give the Department of Education's Inspector General access to records or other documents necessary to review the results of the audit.

(d) A grantee shall repay to the Treasury of the United States any grant funds it received that it did not expend

or use to carry out the allowable activities included in its approved application within ten years following the date of the initial grant it received under this part.

(Authority: 20 U.S.C. 1063a and 1063c)

§ 608.42 Under what conditions does the Secretary terminate a grant?

If an institution loses its accreditation status, or its State authority, the Secretary terminates any existing grant that was made under this part.

(Authority: 20 U.S.C. 1063a)

PART 609—STRENGTHENING HISTORICALLY BLACK GRADUATE INSTITUTIONS PROGRAM

Subpart A—General

Sec.

609.1 What is the Strengthening Historically Black Graduate Institutions Program?

609.2 What institutions are eligible to receive a grant under this Part?

609.3 What regulations apply?

609.4 What definitions apply?

Subpart B—What Kind of Project Does the Secretary Fund?

609.10 What activities may be carried out under a grant?

609.11 What is the duration of a grant?

Subpart C—How Does an Eligible Institution Apply for a Grant?

609.20 What are the application requirements for a grant under this part?

Subpart D—How Does the Secretary Make a Grant?

609.30 How does the Secretary determine the amount of a grant?

Subpart E—What Conditions Must a Grantee Meet?

609.40 What are the matching requirements?

609.41 What are allowable costs and what are the limitations on allowable costs?

609.42 What are the audit and repayment requirements?

Authority: 20 U.S.C. 1063b and 1069c, unless otherwise noted.

Subpart A—General**§ 609.1 What Is the Strengthening Historically Black Graduate Institutions Program?**

The Strengthening Historically Black Graduate Institutions Program provides grants to the institutions listed in § 609.2 to assist these institutions in establishing and strengthening their physical plants, development offices, endowment funds, academic resources and student services so that they may continue to participate in fulfilling the goal of equality of educational opportunity in graduate education.

(Authority: 20 U.S.C. 1060 and 1063b)

§ 609.2 What institutions are eligible to receive a grant under this Part?

(a) An institution listed in paragraph (b) of this section is eligible to receive a grant under this part if the Secretary determines that the institution is making a substantial contribution to the legal, medical, dental, veterinary or other graduate education opportunities for Black Americans.

(b) The institutions referred to in paragraph (a) of this section are—

- (1) Morehouse School of Medicine;
- (2) Meharry Medical School;
- (3) Charles R. Drew Postgraduate Medical School;
- (4) Atlanta University; and
- (5) Tuskegee Institute School of Veterinary Medicine.

(Authority: 20 U.S.C. 1063b(e))

§ 609.3 What regulations apply?

The following regulations apply to this part:

(a) The Department of Education General Administrative Regulations (EDGAR) in 34 CFR Part 74 (Administration of Grants); the following sections in 34 CFR Part 75 (Direct Grant Programs) §§ 75.1–75.104, 75.125–75.129, 75.190–75.192, 75.500, 75.524–75.534, 75.580–75.903; 34 CFR Part 77 (Definitions That Apply to Department Regulations); and 34 CFR Part 78 (Education Appeal Board).

(b) The regulations in this part.

(Authority: 20 U.S.C. 1063b)

§ 609.4 What definitions apply?

The following definitions apply to this part: *Definitions in EDGAR*. The following terms used in this part are defined in 34 CFR 77.1:

Applicant
Application
Award
Budget
EDGAR
Equipment
Fiscal year
Grant period
Private
Project
Project period
Public
Secretary

Subpart B—What kind of Projects Does the Secretary Fund?**§ 609.10 What activities may be carried out under a grant?**

(a) *Allowable activities.* Except as provided in paragraph (b) of this section, a grantee may carry out the following activities under this part—

- (1) Purchase, rental, or lease of scientific or laboratory equipment for educational purposes, including instructional or research purposes;
- (2) Construction, maintenance, renovation, and improvement in classroom, library, laboratory, and other instructional facilities;
- (3) Support of faculty exchanges and faculty fellowships to assist the faculty members in attaining advanced degrees in their fields of instruction;
- (4) Academic instruction in disciplines in which Black Americans are underrepresented;
- (5) Purchase of library books, periodicals, microfilm, and other educational materials;
- (6) Tutoring, counseling, and student service programs designed to improve academic success;
- (7) Establishing or improving a development office to strengthen and increase contributions from alumni and the private sector; and
- (8) Establishing and maintaining an institutional endowment under 34 CFR Part 628 to facilitate financial independence.

(b) *Unallowable activities.* A grantee may not carry out the following activities under this part—

- (1) Activities that are not included in the grantee's approved application;
- (2) Activities that are inconsistent with any State plan of higher education that is applicable to the institution;
- (3) Activities that are inconsistent with a State plan for desegregation of

higher education that is applicable to the institution;

(4) Activities or services that relate to sectarian instruction or religious worship; and

(5) Activities provided by a school or department of divinity. For the purpose of this provision, a "school or department of divinity" means an institution, or a department of an institution, whose program is specifically for the education of students to prepare them to become ministers of religion or to enter upon some other religious vocation, or to prepare them to teach theological subjects.

(Authority: 20 U.S.C. 1062, 1063a and 1069c)

§ 609.11 What is the duration of a grant?

The Secretary may award a grant under this part for a period of up to five academic years.

(Authority: 20 U.S.C. 1063b)(b))

Subpart C—How Does an Eligible Institution Apply for a Grant?**§ 609.20 What are the application requirements for a grant under this part?**

In order to receive a grant under this part, an institution must submit an application to the Secretary at such time and in such manner as the Secretary may prescribe. The application must contain—

(a) A description of the activities to be carried out with grant funds and how those activities will improve graduate educational opportunities for Black and low-income students and lead to greater financial independence for the applicant;

(b) A description of how the applicant is making a substantial contribution to the legal, medical, dental, veterinary or other graduate education opportunities for Black Americans;

(c) An assurance from each applicant requesting in excess of \$500,000 that 50 percent of the costs of all the activities to be carried out under the grant will come from non-Federal sources; and

(d) A description of how the grant funds will be used so that they will supplement, and to the extent practical, increase the funds that would otherwise be made available for the activities to be carried out under the grant and in no case supplant those funds, for the activities described in § 609.10(a)(1) through (a)(8).

(e) An assurance that the proposed activities in the application are in accordance with any State plan that is applicable to the institution.

(Authority: 20 U.S.C. 1063d and 1066(b)(2))
(Approved by the Office of Management and Budget under control number 1040-0113)

Subpart D—How Does the Secretary Make a Grant?

§ 609.30 How does the Secretary determine the amount of a grant?

(a) For each year for which funds are appropriated for this program, the Secretary awards a grant of \$3,000,000 to the Morehouse School of Medicine if it submits an approved application, and with the remaining funds, a grant to each other eligible institution that submits an approved application.

(b) If the sum of the approved applications does not exceed the amount appropriated, the Secretary awards a grant in the amount requested and approved.

(c) If the sum of the approved requests exceeds the sum appropriated, and Morehouse School of Medicine submits an approved request for \$3,000,000, and the amount appropriated exceeds \$3,000,000, each grant to Meharry Medical School, Charles F. Drew Medical School, Atlanta University and Tuskegee Institute School of Veterinary Medicine is reduced as the Secretary considers appropriate, so that the sum of the approved grants equals the amount appropriated.

(d) If Morehouse School of Medicine submits an approved request for \$3,000,000 and the amount appropriated does not exceed \$3,000,000, Morehouse School of Medicine receives all the appropriated funds.

(Authority: 20 U.S.C. 1063b)

Subpart E—What Conditions Must a Grantee Meet?

§ 609.40 What are the matching requirements?

If an institution receives a grant in excess of \$500,000, it must spend non-Federal funds to meet the cost of at least 50 percent of the activities approved in its application.

(Authority: 20 U.S.C. 1063b)

§ 609.41 What are allowable costs and what are the limitations on allowable costs?

(a) *Allowable costs.* Except as provided in paragraph (b) of this section, a grantee may expand grant funds for activities that are reasonably related to carrying out the allowable activities included in its approved application.

(b) *Supplement and not supplant.* Grant funds shall be used so that they supplement, and to the extent practical, increase the funds that would otherwise be available for the activities to be carried out under the grant, and in no case supplant those funds.

(c) *Limitations on allowable costs.* A grantee may not—

(1) Spend more than fifty percent of its grant award in each fiscal year for costs relating to constructing or maintaining a classroom, library, laboratory, or other instructional facility.

(2) Use an indirect cost rate to determine allowable costs under its grant.

(Authority: 20 U.S.C. 1062 and 1063b)

§ 609.42 What are the audit and repayment requirements?

(a)(1) A grantee shall provide for the conduct of a compliance and financial

audit of any funds it receives under this part by a qualified, independent organization or person in accordance with the *Standards for Audit of Governmental Organizations, Programs, Activities, and Functions*, 1981 revision, established by the Comptroller General of the United States.

(2) The grantee shall have an audit conducted at least once every two years, covering the period since the previous audit, and the grantee shall submit the audit to the Secretary.

(3) If a grantee is audited under Chapter 75 of Title 31 of the United States Code, the Secretary considers that audit to satisfy the requirements of paragraph (a)(1) of this section.

(b) An institution awarded a grant under this part must submit to the Education Department Inspector General three copies of the audit required in paragraph (a) of this section within 6 months after completion of the audit.

(c) Any individual or firm conducting an audit described in § 626.42(a) shall give the Department of Education's Inspector General access to records or other documents necessary to review the results of the audit.

(d) A grantee shall repay to the Treasury of the United States any grant funds it received that it did not expend or use to carry out the allowable activities included in its approved application within ten years following the date of the initial grant it received under this part.

(Authority: 20 U.S.C. 1063a and 1063c)

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