

EFFECTIVE DATE OF 1973 AMENDMENT

Amendment by Pub. L. 93-82 effective Sept. 1, 1973, see section 501 of Pub. L. 93-82, set out as a note under section 1701 of this title.

REGULATIONS

Pub. L. 106-117, title II, §207(d), Nov. 30, 1999, 113 Stat. 1567, provided that: "The Secretary [of Veterans Affairs] shall prescribe the initial regulations under subsection (a) of section 8134 of title 38, United States Code, as added by subsection (a), not later than April 30, 2000."

TRANSITION PROVISIONS

Provisions of this section in effect on Nov. 10, 1999, to continue in effect after that date with respect to certain applications described in section 8135(b)(2)(A) of this title that are identified in section 207(c)(2) of Pub. L. 106-117, see section 207(c) of Pub. L. 106-117, set out as a note under section 8135 of this title.

§ 8135. Applications with respect to projects; payments

(a) Any State desiring to receive assistance for a project for construction of State home facilities (or acquisition of a facility to be used as a State home facility) must submit to the Secretary an application. Such application shall set forth the following:

(1) The amount of the grant requested with respect to such project which may not exceed 65 percent of the estimated cost of construction (or of the estimated cost of facility acquisition and construction) of such project.

(2) A description of the site for such project.

(3) Plans and specifications for such project in accordance with regulations prescribed by the Secretary pursuant to section 8134(a)(2) of this title.

(4) Reasonable assurance that upon completion of such project the facilities will be used principally to furnish to veterans the level of care for which such application is made and that not more than 25 percent of the bed occupancy at any one time will consist of patients who are not receiving such level of care as veterans.

(5) Reasonable assurance that title to such site is or will be vested solely in the applicant, a State home, or another agency or instrumentality of the State.

(6) Reasonable assurance that adequate financial support will be available for the construction of the project (or for facility acquisition and construction of the project) by July 1 of the fiscal year for which the application is approved and for its maintenance and operation when complete.

(7) Reasonable assurance that the State will make such reports in such form and containing such information as the Secretary may from time to time reasonably require, and give the Secretary, upon demand, access to the records upon which such information is based.

(8) Reasonable assurance that the rates of pay for laborers and mechanics engaged in construction of the project will be not less than the prevailing local wage rates for similar work as determined in accordance with sections 3141-3144, 3146, and 3147 of title 40.

(9) In the case of a project for acquisition of a facility, reasonable assurance that the esti-

mated total cost of acquisition of the facility and of any expansion, remodeling, and alteration of the acquired facility will not be greater than the estimated cost of construction of an equivalent new facility.

(b)(1) Any State seeking to receive assistance under this subchapter for a project that would involve construction or acquisition of either nursing home or domiciliary facilities shall include with its application under subsection (a) the following:

(A) Documentation (i) that the site for the project is in reasonable proximity to a sufficient concentration and population of veterans who are 65 years of age and older, and (ii) that there is a reasonable basis to conclude that the facilities when complete will be fully occupied.

(B) A financial plan for the first three years of operation of such facilities.

(C) A five-year capital plan for the State home program for that State.

(2) Failure to provide adequate documentation under paragraph (1)(A) or to provide an adequate financial plan under paragraph (1)(B) shall be a basis for disapproving the application.

(c)(1) Upon receipt of an application under subsection (a) for financial assistance under this subchapter, the Secretary—

(A) shall determine whether the application meets the requirements of this section and of the regulations prescribed under section 8134 of this title;

(B) shall notify the State submitting the application whether the application conforms with those requirements and, if it does not, of the actions necessary to bring the application into conformance with those requirements; and

(C) shall determine the priority of the project described in the application in accordance with the provisions of this subsection.

(2) Subject to paragraphs (3) and (5)(C) of this subsection, the Secretary shall accord priority to applications in the following order:

(A) An application from a State that has made sufficient funds available for the project for which the grant is requested so that such project may proceed upon approval of the grant without further action required by the State to make such funds available for such purpose.

(B) An application from a State for a project at an existing facility to remedy a condition or conditions that have been cited by an accrediting institution, by the Secretary, or by a local licensing or approving body of the State as being threatening to the lives or safety of the patients in the facility.

(C) An application from a State that has not previously applied for award of a grant under this subchapter for construction or acquisition of a State nursing home.

(D) An application for construction or acquisition of a nursing home or domiciliary from a State that the Secretary determines, in accordance with regulations under this subchapter, has a great need for the beds to be established at such home or facility.

(E) An application from a State for renovations to a State home facility other than renovations described in subparagraph (B).

(F) An application for construction or acquisition of a nursing home or domiciliary from a State that the Secretary determines, in accordance with regulations under this subchapter, has a significant need for the beds to be established at such home or facility.

(G) An application that meets other criteria as the Secretary determines appropriate and has established in regulations.

(H) An application for construction or acquisition of a nursing home or domiciliary from a State that the Secretary determines, in accordance with regulations under this subchapter, has a limited need for the beds to be established at such home or facility.

(3) In according priorities to projects under paragraph (2) of this subsection, the Secretary—

(A) may not accord any priority to a project for the construction or acquisition of a hospital; and

(B) may not accord any priority to a project which would expand a State's capacity to furnish hospital care in a State home.

(4) The Secretary shall establish a list of approved projects (including projects that have been conditionally approved under paragraph (6) of this subsection), in the order of their priority, as of August 15 of each year. The Secretary shall award grants in the order of their priority on the list during the fiscal year beginning on October 1 of the calendar year in which the list was made.

(5)(A) The Secretary shall defer approval of an application that otherwise meets the requirements of this section if the State submitting the application does not, by the July 1 deadline (as defined in subparagraph (D) of this paragraph), demonstrate to the satisfaction of the Secretary that the State has provided adequate financial support for construction of the project.

(B) In a case in which approval of an application is deferred under subparagraph (A) of this paragraph, the Secretary shall select for award of a grant or grants under this subsection an application or applications which would not have been approved during the fiscal year but for the deferral and to which the Secretary accords the highest priority under paragraph (2) of this subsection.

(C) An application deferred in accordance with the requirements of this paragraph shall be accorded priority in any subsequent fiscal year ahead of applications that had not been approved before the first day of the fiscal year in which the deferred application was first approved.

(D) For the purposes of this paragraph, the term "July 1 deadline" means July 1 of the fiscal year in which the State is notified by the Secretary of the availability of funding for a grant for such project.

(6)(A) The Secretary may conditionally approve a project under this section, conditionally award a grant for the project, and obligate funds for the grant if the Secretary determines that the application for the grant is sufficiently complete to warrant awarding the grant and that,

based on assurances provided by the State submitting the application, the State will complete the application and meet all the requirements referred to in paragraph (1)(A) of this subsection by the date, not later than 180 days after the date of the conditional approval, specified by the Secretary.

(B) If a State does not complete the application and meet all the requirements referred to in such paragraph by the date specified by the Secretary under subparagraph (A) of this paragraph, the Secretary shall rescind the conditional approval and award under such subparagraph and deobligate the funds previously obligated in connection with the application. In the event the Secretary rescinds conditional approval of a project under this subparagraph, the Secretary may not further obligate funds for the project during the fiscal year in which the Secretary rescinds such approval.

(7)(A) Subject to subparagraph (B) of this paragraph, the Secretary may increase the amount of any grant awarded to any State for a project under this section by an amount by which the Secretary determines that the estimated cost of the construction or acquisition has increased from the estimated cost on which the Secretary based the determination to award the grant, without regard to the position of such project on the list established under paragraph (4) of this subsection, if the Secretary determines that the grant was awarded before the State entered into a contract for the construction or acquisition provided for in such project.

(B) A grant may not be increased under subparagraph (A) of this paragraph by more than 10 percent of the amount of the grant initially awarded for such project, and the amount of such grant, as increased, may not exceed 65 percent of the cost of the project.

(d) No application submitted to the Secretary under this section shall be disapproved until the Secretary has afforded the applicant notice and an opportunity for a hearing.

(e) The amount of a grant under this subchapter shall be paid to the applicant or, if designated by the applicant, the State home for which such project is being carried out or any other agency or instrumentality of the applicant. Such amount shall be paid, in advance or by way of reimbursement, and in such installments consistent with the progress of the project as the Secretary may determine and certify for payment to the Secretary of the Treasury. Funds paid under this section for an approved project shall be used solely for carrying out such project as so approved.

(f) Any amendment of any application, whether or not approved, shall be subject to approval in the same manner as an original application.

(Added Pub. L. 88-450, §4(a), Aug. 19, 1964, 78 Stat. 502, §5035; amended Pub. L. 89-311, §7(a), Oct. 31, 1965, 79 Stat. 1157; Pub. L. 93-82, title IV, §403(e), Aug. 2, 1973, 87 Stat. 196; Pub. L. 94-581, title II, §§206(b), 210(e)(10), Oct. 21, 1976, 90 Stat. 2859, 2865; Pub. L. 95-62, §3(7)-(12), July 5, 1977, 91 Stat. 262, 263; Pub. L. 97-295, §4(92), Oct. 12, 1982, 96 Stat. 1313; Pub. L. 98-528, title I, §105(3), Oct. 19, 1984, 98 Stat. 2689; Pub. L. 99-166, title II, §205, Dec. 3, 1985, 99 Stat. 953; Pub. L. 99-576, title II, §224(b), (c), Oct. 28, 1986, 100 Stat. 3262, 3263; Pub.

L. 100-322, title II, §206, May 20, 1988, 102 Stat. 513; renumbered §8135 and amended Pub. L. 102-40, title IV, §402(b)(1), (d)(1), May 7, 1991, 105 Stat. 238, 239; Pub. L. 102-54, §14(f)(7), June 13, 1991, 105 Stat. 288; Pub. L. 102-83, §4(b)(1), (2)(E), Aug. 6, 1991, 105 Stat. 404, 405; Pub. L. 102-585, title IV, §§403(a), 404(a), Nov. 4, 1992, 106 Stat. 4954; Pub. L. 103-446, title XII, §1201(d)(18), Nov. 2, 1994, 108 Stat. 4684; Pub. L. 104-262, title III, §342(b)(3), Oct. 9, 1996, 110 Stat. 3206; Pub. L. 106-117, title II, §207(b), Nov. 30, 1999, 113 Stat. 1565; Pub. L. 107-217, §3(j)(4), Aug. 21, 2002, 116 Stat. 1300.)

AMENDMENTS

2002—Subsec. (a)(8). Pub. L. 107-217 substituted “sections 3141-3144, 3146, and 3147 of title 40” for “the Act of March 3, 1931 (40 U.S.C. 276a-276a-5) (known as the Davis-Bacon Act)”.

1999—Subsec. (a). Pub. L. 106-117, §207(b)(1), in introductory provisions, substituted “set forth the following:” for “set forth—”, in pars. (1) to (7), capitalized the first letter of the first word and substituted a period for the comma at the end, in par. (8), capitalized the first letter of the first word and substituted a period for “, and” at the end, and in par. (9), capitalized the first letter of the first word.

Subsec. (b). Pub. L. 106-117, §207(b)(3), added subsec. (b). Former subsec. (b) redesignated (c).

Subsec. (c). Pub. L. 106-117, §207(b)(2), redesignated subsec. (b) as (c). Former subsec. (c) redesignated (d).

Subsec. (c)(1). Pub. L. 106-117, §207(b)(4)(A), in introductory provisions, substituted “under subsection (a) for financial assistance under this subchapter” for “for a grant under subsection (a) of this section”.

Subsec. (c)(2)(A). Pub. L. 106-117, §207(b)(4)(B)(i), struck out “the construction or acquisition of” after “sufficient funds available for”.

Subsec. (c)(2)(B) to (H). Pub. L. 106-117, §207(b)(4)(B)(ii), added subpars. (B) to (H) and struck out former subpars. (B) to (D) which read as follows:

“(B) An application from a State that does not have a State home facility constructed or acquired with assistance under this subchapter (or for which such a grant has been made).

“(C) An application from a State which the Secretary determines, in accordance with criteria and procedures specified in regulations which the Secretary shall prescribe, has a greater need for nursing home or domiciliary beds or adult day health care facilities than other States from which applications are received.

“(D) An application that meets such other criteria as the Secretary determines are appropriate and has established in regulations.”

Subsec. (c)(3)(A). Pub. L. 106-117, §207(b)(4)(C), added subpar. (A) and struck out former subpar. (A) which read as follows: “shall accord priority only to projects which would involve construction or acquisition of either nursing home or domiciliary buildings or construction (other than new construction) of adult day health care buildings; and”.

Subsecs. (d) to (f). Pub. L. 106-117, §207(b)(2), redesignated subsecs. (c) to (e) as (d) to (f), respectively.

1996—Subsec. (b)(2)(C). Pub. L. 104-262, §342(b)(3)(A), inserted “or adult day health care facilities” after “domiciliary beds”.

Subsec. (b)(3)(A). Pub. L. 104-262, §342(b)(3)(B), inserted “or construction (other than new construction) of adult day health care buildings” before semicolon.

1994—Subsec. (a)(3). Pub. L. 103-446 substituted “section 8134(a)(2)” for “section 8134(2)”.

1992—Subsec. (b)(6)(A). Pub. L. 102-585, §403(a), substituted “180 days” for “90 days”.

Subsec. (b)(6)(B). Pub. L. 102-585, §404(a), inserted at end “In the event the Secretary rescinds conditional approval of a project under this subparagraph, the Secretary may not further obligate funds for the project during the fiscal year in which the Secretary rescinds such approval.”

1991—Pub. L. 102-40, §402(b)(1), renumbered section 5035 of this title as this section.

Subsec. (a). Pub. L. 102-83 substituted “Secretary” for “Administrator” wherever appearing.

Pub. L. 102-54 amended subsec. (a) as in effect immediately before the enactment of Pub. L. 102-40 by substituting “Any State” for “After regulations have been prescribed by the Administrator under section 5034 of this title, any State”.

Pub. L. 102-40, §402(d)(1), substituted “8134(2)” for “5034(2)” in par. (3).

Subsec. (b). Pub. L. 102-83 substituted “Secretary” for “Administrator” wherever appearing.

Subsec. (b)(1)(A). Pub. L. 102-40, §402(d)(1), substituted “8134” for “5034”.

Subsecs. (c), (d). Pub. L. 102-83 substituted “Secretary” for “Administrator” wherever appearing.

1988—Subsec. (b)(4). Pub. L. 100-322, §206(a), (b)(1), inserted “(including projects that have been conditionally approved under paragraph (6) of this subsection)” after “projects” and substituted “August 15” for “July 1”.

Subsec. (b)(6), (7). Pub. L. 100-322, §206(b)(2), added pars. (6) and (7).

1986—Subsec. (b). Pub. L. 99-576, §224(b), amended subsec. (b) generally, substituting provisions consisting of pars. (1) to (5) for former provisions consisting of pars. (1) and (2).

Subsec. (d). Pub. L. 99-576, §224(c), struck out par. (1) designation, substituted “The amount of a grant under this subchapter shall be paid” for “Upon approving an application under this section, the Administrator shall certify to the Secretary of the Treasury the amount of the grant so approved, but in no event an amount greater than 65 percent of the estimated cost of construction (or of the estimated cost of facility acquisition and construction) of the project, and shall designate the appropriation from which it shall be paid. Such certification shall provide for payment” and struck out par. (2) which read as follows: “No one State may receive in any fiscal year in the aggregate under this subchapter more than one-third of the amount appropriated for carrying out this subchapter in such fiscal year.”

1985—Subsec. (a)(6). Pub. L. 99-166, §205(a), inserted “by July 1 of the fiscal year for which the application is approved”.

Subsec. (b). Pub. L. 99-166, §205(b), designated existing provisions as par. (1), redesignated cls. (1) to (4) as (A) to (D), respectively, and added par. (2).

1984—Subsec. (a). Pub. L. 98-528, §105(3)(A), inserted “(or acquisition of a facility to be used as a State home facility)” after “State home facilities” in provisions preceding par. (1).

Subsec. (a)(1). Pub. L. 98-528, §105(3)(B), inserted “(or of the estimated cost of facility acquisition and construction)” after “cost of construction”.

Subsec. (a)(6). Pub. L. 98-528, §105(3)(C), inserted “(or for facility acquisition and construction of the project)” after “construction of the project”.

Subsec. (a)(8). Pub. L. 98-528, §105(3)(D), substituted “the Act of March 3, 1931 (40 U.S.C. 276a-276a-5)” for “sections 276a through 276a-5 of title 40”.

Subsec. (a)(9). Pub. L. 98-528, §105(3)(E), added par. (9).

Subsec. (b)(2). Pub. L. 98-528, §105(3)(F), inserted “(or of the estimated cost of facility acquisition and construction)” after “cost of construction”.

Subsec. (b)(4). Pub. L. 98-528, §105(3)(G), substituted “the carrying out of such project” for “the construction of such project”.

Subsec. (d)(1). Pub. L. 98-528, §105(3)(H), inserted “(or of the estimated cost of facility acquisition and construction)” after “cost of construction” in first sentence, substituted “carried out” for “constructed” in second sentence, substituted “the project” for “construction” in third sentence, struck out “the construction of” before “an approved project” in fourth sentence.

1982—Subsecs. (a)(1), (4), (b)(2), (d)(1). Pub. L. 97-295 substituted “percent” for “per centum” wherever appearing.

1977—Subsec. (a). Pub. L. 95-62, §3(7), (8), substituted “State home facilities must submit” for “State home facilities for furnishing nursing home care must submit” in provisions preceding par. (1) and, “to furnish to veterans the level of care for which such application is made and that not more than 25 per centum of the bed occupancy at any one time will consist of patients who are not receiving such level of care as war veterans” for “to furnish nursing home care to veterans and that not more than 10 per centum of the bed occupancy at any one time will consist of patients who are not receiving nursing home care as veterans” in par. (4).

Subsec. (b)(3). Pub. L. 95-62, §3(9), substituted “reasonable assurances under subsection (a) of this section as the Administrator” for “reasonable assurances as to use, title, financial support, reports and access to records, and payment of prevailing rates of wages, as the Administrator”.

Subsec. (c). Pub. L. 95-62, §3(10), substituted “afforded the applicant notice and an opportunity for a hearing” for “afforded the applicant an opportunity for a hearing”.

Subsec. (d). Pub. L. 95-62, §3(11), designated existing provisions as par. (1), substituted “the Administrator shall certify to the Secretary of the Treasury the amount of the grant so approved” for “the Administrator shall certify to the Secretary of the Treasury the amount of the grant requested with respect to such project in such application”, and added par. (2).

Subsec. (e). Pub. L. 95-62, §3(12), substituted “amendment of any application, whether or not approved,” for “amendment of any approved application”.

1976—Subsec. (a)(4). Pub. L. 94-581, §206(b), substituted “veterans” for “war veterans” in two places.

Subsec. (b). Pub. L. 94-581, §§206(b), 210(e)(10), substituted “the Administrator” for “he” in provisions preceding par. (1) and “veterans” for “war veterans” in par. (4).

1973—Subsecs. (a)(1), (b)(2), (d). Pub. L. 93-82 substituted “65 per centum” for “50 per centum”.

1965—Subsec. (b). Pub. L. 89-311 repealed par. (3) which placed a limit of 10 per centum of the funds appropriated for any fiscal year pursuant to section 5033(a) of this title upon the amount which could be used to assist in the construction of facilities in any one state, and redesignated pars. (4) and (5) as pars. (3) and (4), respectively.

EFFECTIVE DATE OF 1992 AMENDMENT

Pub. L. 102-585, title IV, §403(b), Nov. 4, 1992, 106 Stat. 4954, provided that: “The amendment made by subsection (a) [amending this section] shall apply to projects that are conditionally approved after September 30, 1992.”

Pub. L. 102-585, title IV, §404(b), Nov. 4, 1992, 106 Stat. 4954, provided that: “The amendment made by subsection (a) [amending this section] shall apply to rescissions of conditional approval of projects after the date of the enactment of this Act [Nov. 4, 1992].”

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99-576 effective July 1, 1987, see section 224(e) of Pub. L. 99-576, set out as a note under section 8131 of this title.

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment by Pub. L. 95-62 effective Oct. 1, 1977, with provision for the continuing force and effect of the terms and conditions of grants made prior to Oct. 1, 1977, under former section 644 of this title and with additional provision for the modification of the terms and conditions of both grants made under former section 644 of this title prior to Oct. 1, 1977, and of grants made under this subchapter prior to Oct. 1, 1977, see section 5 of Pub. L. 95-62, set out as a note under section 8131 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by Pub. L. 94-581 effective Oct. 21, 1976, see section 211 of Pub. L. 94-581, set out as a note under section 111 of this title.

EFFECTIVE DATE OF 1973 AMENDMENT

Amendment by Pub. L. 93-82 effective Sept. 1, 1973, see section 501 of Pub. L. 93-82, set out as a note under section 1701 of this title.

REGULATIONS

Pub. L. 99-576, title II, §224(f), Oct. 28, 1986, 100 Stat. 3263, provided that: “The Administrator of Veterans' Affairs shall prescribe regulations not later than April 1, 1987, to implement the amendments made by this section [amending this section and sections 5031 and 5033 [now 8131 and 8133] of this title].”

TRANSITION PROVISIONS

Pub. L. 106-117, title II, §207(c), Nov. 30, 1999, 113 Stat. 1566, provided that:

“(1) The provisions of sections 8134 and 8135 of title 38, United States Code, as in effect on November 10, 1999, shall continue in effect after that date with respect to applications described in section 8135(b)(2)(A) of such title, as in effect on that date, that are identified in paragraph (2) (and to projects and grants pursuant to those applications). The Secretary [of Veterans Affairs] shall accord priority among those applications in the order listed in paragraph (2).

“(2) Applications covered by paragraph (1) are the following:

“(A) Any application for a fiscal year 1999 priority one project.

“(B) Any application for a fiscal year 2000 priority one project that was submitted by a State that (i) did not receive grant funds from amounts appropriated for fiscal year 1999 under the State home grant program, and (ii) does not have any fiscal year 1999 priority one projects.

“(3) For purposes of this subsection—

“(A) the term ‘fiscal year 1999 priority one project’ means a project on the list of approved projects established by the Secretary on October 29, 1998, under section 8135(b)(4) of title 38, United States Code, as in effect on that date that (pursuant to section 8135(b)(2)(A) of that title) is in the grouping of projects on that list designated as Priority Group 1;

“(B) the term ‘fiscal year 2000 priority one project’ means a project on the list of approved projects established by the Secretary on November 3, 1999, under section 8135(b)(4) of title 38, United States Code, as in effect on that date that (pursuant to section 8135(b)(2)(A) of that title) is in the grouping of projects on that list designated as Priority Group 1; and

“(C) the term ‘State home grant program’ means the grant program under subchapter III of chapter 81 of title 38, United States Code.”

§ 8136. Recapture provisions

(a) If, within the 20-year period beginning on the date of the approval by the Secretary of the final architectural and engineering inspection of any project with respect to which a grant has been made under this subchapter (except that the Secretary, pursuant to regulations which the Secretary shall prescribe, may at the time of such grant provide for a shorter period than 20, but not less than seven, years, based on the magnitude of the project and the grant amount involved, in the case of the acquisition, expansion, remodeling, or alteration of existing facilities), the facilities covered by the project cease to be operated by a State, a State home, or an agency or instrumentality of a State principally for furnishing domiciliary, nursing home, or hospital care to veterans, the United States shall be entitled to recover from the State which was the recipient of the grant under this subchapter, or from the then owner of such fa-