

**WEST VIRGINIA  
SECRETARY OF STATE  
JOE MANCHIN, III  
ADMINISTRATIVE LAW DIVISION**

Form #2

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2004 MAY 24 P 3:28

OFFICE WEST VIRGINIA  
SECRETARY OF STATE

**NOTICE OF A COMMENT PERIOD ON A PROPOSED RULE**

AGENCY: Department of Administration TITLE NUMBER: 148

RULE TYPE: Legislative CITE AUTHORITY: 5A-3-42

AMENDMENT TO AN EXISTING RULE: YES  NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: 2

TITLE OF RULE BEING AMENDED: Leasing space on behalf of state spending units

IF NO, SERIES NUMBER OF RULE BEING PROPOSED: \_\_\_\_\_

TITLE OF RULE BEING PROPOSED: \_\_\_\_\_

IN LIEU OF A PUBLIC HEARING, A COMMENT PERIOD HAS BEEN ESTABLISHED DURING WHICH ANY INTERESTED PERSON MAY SEND COMMENTS CONCERNING THESE PROPOSED RULES. THIS COMMENT PERIOD WILL END ON July 22, 2004 AT 10:00 a.m. ONLY WRITTEN COMMENTS WILL BE ACCEPTED AND ARE TO BE MAILED TO THE FOLLOWING ADDRESS:

Donna Lipscomb, Exec. Coordinator

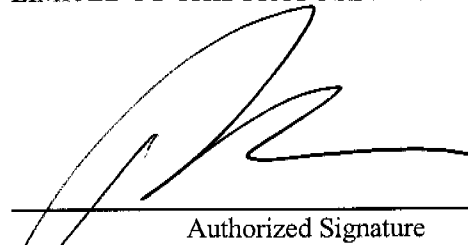
Department of Administration

1900 Kanawha Boulevard, East

Building 1, Room E-119

Charleston, WV 25305

THE ISSUES TO BE HEARD SHALL BE LIMITED TO THIS PROPOSED RULE.

  
\_\_\_\_\_  
Authorized Signature

ATTACH A **BRIEF** SUMMARY OF YOUR PROPOSAL

**Agency:** Department of Administration  
**Rule Type:** Legislative

**Title Number:** 148  
**Cite Authority:** 5A-3-42

## **STATEMENT OF CIRCUMSTANCE AND BRIEF SUMMARY**

The Department of Administration proposes revising its Legislative Rules on Leasing Space on Behalf of State Spending Units in order to further define the acquisition, negotiation and inspection aspects of leasing; to establish compliance standards for structures to be leased; and to require additional requirements by the Department of Administration prior to entering into leases. The promulgation of the rules will assure better working conditions for our employees and will give the leasing section the ability to negotiate for the best price for office space.

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2004 MAY 24 P 3:28

OFFICE WEST VIRGINIA  
SECRETARY OF STATE

TITLE 148  
LEGISLATIVE RULE  
DEPARTMENT OF ADMINISTRATION  
LEASING SECTION

SERIES 2  
LEASING SPACE ON BEHALF OF STATE SPENDING UNITS

§148-2-1. General.

1.1. Scope. -- This Legislative Rule provides for the selection, negotiation and acquisition by contract or lease of all grounds, buildings, office space or other space required by any spending unit of the executive branch of State government, except for the division of highways, the higher education policy commission, the lottery commission, or a spending unit of the state with independent leasing authority pursuant to the code of West Virginia. This exemption does not apply to the office space of spending units of the executive branch.

1.2. Authority. -- W. Va. Code §5A-3-42.

1.3. Filing Date. --

1.4. Effective Date. --

§148-2-2. Request for Space.

2.1. Generally.

2.1.a A spending unit desirous of leasing any ground, building, office space or other space shall submit to the Leasing ~~Officer~~ Section of the Department of Administration a completed Requisition for Space on the form provided by the Leasing ~~Office~~, Section, signed by the chief executive officer spending unit or his/her designee, no later than two (2) months six (6) months prior the date the space is required, ~~except as provided in Section 8 of these regulations. Whenever possible, alternate space should be listed on the requisition.~~

2.1.b The requisition shall contain a certification by the chief executive officer of the spending unit or his/her designee that the space is necessarily required for the proper function of the spending unit, that the spending unit will be responsible for all rent and other necessary payments in connection with the contract or lease, and that satisfactory space is not available on grounds or in buildings now owned or leased by the State.

~~2.2. New Leases:~~

~~----- A request for new space shall include a floor plan, specifications and any other available information describing the space, and a letter justifying the agency's need for leasing the new space.~~

~~2.3. Renewal of Existing Leases:~~

2.1.c A request to renew an existing lease with or without changes shall be submitted by requisition no later than ~~two (2)~~ six (6) months prior to expiration of the existing lease. The Leasing Section shall determine if it is necessary to seek proposals for new leases. Spending units seeking a new lease must give the Leasing Section six (6) months notice.

§148-2-3. Fair Rental Market Value and Appraisals.

3.1 Before executing any rental contract or lease, the Secretary of Administration shall determine the fair rental market value for the rental of the requested grounds, buildings, office space or other space, in the condition in which they exist. To determine the fair rental market value of the

space requested, the Leasing Section shall conduct market surveys prior to award. If a market survey is impracticable, an appraisal shall be conducted by a licensed real estate appraiser, the Secretary of Administration may appoint a real estate appraiser to make such determination. The cost of the appraisal shall be borne by the spending unit requesting the space and the appraisal shall be based on the condition in which the space exists and any improvements required by the spending unit. If an appraisal is conducted, the Leasing Section may require the spending unit to pay for the cost of the appraisal.

3.2 No contract or lease shall be entered into if the rental exceeds the fair rental market value of the space requested, unless approved by the Secretary of Administration with proper written justification, such justification may include, but is not limited to, the specifications outlined in 4.2.d.

#### **§148-2-4. Authority, Selection Acquisition, Negotiation, Preparation and Occupancy Inspection and Award.**

##### 4.1. Authority.

The Secretary of Administration shall have the sole authority to select and to acquire by contract or lease, in the name of the State, all grounds, buildings, office space or other space for and on behalf of any spending unit except those spending units that are exempt by West Virginia State Code.

##### 4.2. Selection- Acquisition

4.2.a The spending unit shall notify the Leasing Officer at the earliest possible date of any interest to lease space or to relocate from an existing lease. This notice will allow the Leasing Officer to better assist the spending unit and determine space that may be available in a given area. The spending unit shall provide the Leasing Section with a request on a form provided by the Leasing Section to justify their request. The Leasing Section may require further justification or may approve the request as written.

~~4.2.b The Leasing Officer shall solicit proposals on any space to be leased when considered by the Leasing Officer in the best interest of the State. If the request is approved, the spending unit may submit criteria for rental space. The Leasing Section shall review criteria and may include this criteria in the bid specifications requirements.~~

~~4.2.c The Leasing Officer shall put a Class II legal advertisement in the newspaper soliciting proposals for any office space that is 10,000 square foot or more prior to entering into any lease agreements. The Leasing Section shall issue a solicitation of interest in the State Purchasing Bulletin and by whatever other means it so chooses in order to elicit responses from the largest number of qualified bidders for office space in excess of 10,000 square feet net. Renting space under 10,000 square feet net does not have to be bid but must meet all specifications and other requirements.~~

~~4.2.d. The Leasing Section shall provide bid specifications to all bidders. Specifications may include consideration for revitalization of downtown areas and historical areas. Special consideration may also be given to facilities that are on the National Register of Historic Places. The Leasing Section will evaluate and rate all bid proposals. If the spending has requested a sole source, it must be approved by the Secretary of Administration with written justification. The spending unit may request to participate in this process.~~

~~4.2.e. The spending unit may select any bidder from the top three rated bidders, provided that the bid selected shall not exceed the low bid by more than 5%. If the spending unit elects not to select a bidder, the Leasing Section shall make the selection on behalf of the spending unit.~~

##### 4.3. Negotiation.

~~4.3.a. The Leasing Officer shall have full authority to negotiate with a prospective lessor for a price that does not exceed the fair rental value of the space or the estimated cost submitted by the~~

requesting agency: The Leasing Section and/or spending unit may negotiate a rental agreement with the selected bidder. If a negotiated rental agreement cannot be reached, the Leasing Section and/or spending unit shall enter into negotiations with one of the remaining top three bidders. The successful bid shall not exceed 5% of any remaining bid.

4.3.b. Any escalation clauses during the negotiation shall require supporting documentation as evidence of the escalation prior to issuance of a rental increase based on the escalation.

4.3.c. A letter of intent shall be issued to the successful bidder. All bids shall remain confidential until the issuance of a letter of intent.

#### 4.4. Notification.

The Leasing Office Section shall provide written notification of its site selection recommendation to the spending unit within thirty (30) days of the evaluation of the spending unit's request for space which includes the review of bids, evaluation of bids by the Leasing Office Section and any negotiations conducted by the Leasing Office pursuant to Subsection 4.3 of this rule prior to final location selection.

#### 4.5 Preparation Inspection and Award

~~Preparation and improvements to a prospective location shall be the responsibility of the lessor, unless otherwise agreed. When the prospective location is to be newly constructed or renovated office space, the layout and specifications shall generally be in accordance with Section 5 of these regulations, as determined by the Leasing Officer.~~

~~The Leasing Officer may request the representative of the requesting agency to coordinate preparation of the space and report when the space complies with the spending unit's specifications and is suitable for occupancy.~~

Prior to the award of a contract the Leasing Section shall inspect the potential site to insure that all bid specifications have been met. If the site does not meet bid specifications the bidder shall correct said deficiencies at bidder's sole expense. If said deficiencies are not corrected, negotiation may begin with another vendor as described in section 4.3. Once all deficiencies, if any, are corrected, execution of a lease may proceed.

#### 4.6. ~~Occupancy.~~

~~One of the requirements issued to the prospective lessor during negotiation will be to prepare the space for occupancy, allowing approximately two (2) weeks for the agency to establish the offices and make final adjustments prior to formal opening. The spending unit will not occupy the leased premises until authorized to do so by the Leasing Officer. The Leasing Office shall provide written notification to the spending unit regarding the agency's authorization to occupy the space within thirty (30) days of an evaluation period.~~

#### **§148-2-5. ~~Office Space Layout and Specifications. Protests~~**

5.1. ~~When a requisition for new office space is submitted, it shall specify the types of offices needed, including layout and specifications. Prior to space being renovated, detailed scale drawings shall be submitted to the Leasing Officer, and prior to space being newly constructed, detailed scale drawings or architectural and/or engineering specifications shall be submitted to the Leasing Officer for approval. Leased premises must comply with all state and local laws and regulations. The Leasing Section shall establish a process by which a vendor/lessor may protest the selection of a lease. Protests must be made, in writing, to the Leasing Section, within ten (10) days of the award of a lease. The Leasing Section shall consider the protest but may deny the protest as determined by the Leasing Section. Should the protestor so choose, they may request an administrative hearing on the protest.~~

~~5.2 The Leasing Officer shall establish a uniform standard of measurement for all leased property:~~

**§148-2-6. Lease.**

6.1. General.

A lease shall be prepared by the Leasing ~~Officer~~ Section. The term of the lease shall not exceed forty (40) years. Leases for a term of more than six (6) months, including any options, shall be filed with the State Auditor. If the term of the lease is for a period longer than one fiscal year, the following terms and conditions, in substance, shall be included in the lease:

6.1.a The Department of Administration shall have the right to cancel the lease without further obligation on the part of the State upon thirty (30) days prior written notice, such notice being given at least thirty (30) days prior to the last day of the succeeding month.

6.1.b The Department of Administration shall have the right to immediately cancel the lease without further obligation on the part of the State in the event the West Virginia Legislature or the federal government fails to appropriate sufficient funds with which to pay the rentals and other sums reserved in the lease, or otherwise acts to impair the lease or causes it to be canceled.

6.1.c The lease shall be considered renewed for each fiscal year during the term of the lease unless canceled by the Department of Administration before the end of the then current fiscal year.

6.1.d The lease may be executed in any number of counterparts, as determined by the Leasing ~~Officer~~ Section, each of which shall constitute an original and which taken together shall constitute one and the same lease. All leases shall be acknowledged before a notary public by each signatory.

6.2. Execution by the Lessor.

6.2.a When the lessor is a corporation, the lease shall be executed by its president or vice president and duly attested to by another officer of the corporation, usually the secretary. The corporate seal shall be affixed, when available.

6.2.b When the Lessor is a company, the lease shall be executed by the owner thereof.

6.2.c When the lessor is a partnership, any partner authorized to bind the partnership shall execute the lease, and, if possible, all partners should execute. In a limited partnership, the general partner may execute the lease on behalf of the limited partners.

6.2.d When a lessor is an individual, his/her marital status must be stated on the request for space form. If a lessor is married, his/her spouse must also execute the lease, even if the subject property has been deeded to only one of the parties.

6.2.e If an individual or corporation other than the owner of the property is authorized to execute the lease on behalf of the owner and/or receive rentals and notices, written authorization, duly signed by the property owner, shall be filed with the Leasing Officer at the time of execution of the lease by the lessor.

6.3. Execution by Lessee.

The Secretary of Administration or the Director of the Purchasing Division of the Department of Administration shall execute each contract of lease in the name of the State for and on behalf of the spending unit requesting the space after execution by the lessor. Execution of a lease by the Secretary of Administration or his/her designee or Director of Purchasing on behalf of a spending unit will in no way make either the Secretary or the Department of Administration responsible for the payment of any rentals or other sums contemplated by the lease. All rentals and other sums shall be paid by the spending unit on whose behalf the Secretary or his/her designee or Director executed the lease.

#### 6.4. Approval as to Form and Distribution.

After execution by the Secretary of Administration or his/her designee or the Director of the Purchasing Division, the lease shall be transmitted to the office of the Attorney General for approval as to form. Leases that have been approved as to form by the Attorney General shall be filed with the Leasing ~~Officer~~ Section, with copies being sent to the lessor, office of the Auditor if the term of the lease, including any options, is for more than six months, and the spending unit.

#### §148-2-7. Cancellation.

7.1 In order to allow sufficient delivery time and to comply with the conditions of the lease, the spending unit requesting cancellation must submit a letter requesting cancellation to the Leasing ~~Officer~~ Officer. The letter must be signed by the chief executive officer of the spending unit or his/her designee. The Secretary of Administration or his/her designee or the Director of the Purchasing Division shall send a certified letter to the lessor at the last known address on file with the Leasing ~~Officer~~ Officer, notifying the lessor of the cancellation and the effective date of the cancellation. This request should be sent to the Leasing ~~Officer~~ Section no later than forty-five (45) days prior to the requested cancellation date.

#### §148-2-8. Permanent Changes.

8.1 A spending unit shall not order or make permanent changes of any type to space that is leased in accordance with these regulations without the prior approval of the Secretary of Administration. The Secretary of Administration shall determine that the change is necessary for the proper, efficient and economically sound operation of the spending unit before granting such approval.

8.2 A permanent change means any addition, alteration, improvement, remodeling, repair or other change involving the expenditure of State funds for the installation of any tangible thing which cannot be economically removed when the space is vacated by the spending unit.

#### §148-2-9. Delegation of Authority for Leasing of Temporary Space.

9.1 The Secretary of Administration may authorize spending units to lease temporary space, other than office space, including conference meeting rooms, as well as for athletic events, seminars or other educational, recreational or social events, when the rental and other costs for that space do not exceed two thousand dollars (\$2,000.00) ~~or when necessary to meet bona fide emergencies arising from unforeseen causes~~, unless an agreement or contract must be executed. Such leases shall not have a term exceeding six (6) months. If an agreement or contract must be executed to obtain the space, the agreement or contract must be approved by the Leasing ~~Officer~~ Section. The spending unit shall utilize the form made available by the Leasing ~~Officer~~ Section to process payment.

#### §148-2-10. Agreements Between State Spending Units.

10.1 Leases between spending units of the State shall be prepared by the Leasing ~~Officer~~ Section, unless otherwise directed by the Leasing ~~Officer~~ Section, and shall be signed by the Secretary of Administration or his/her designee or the Director of the Purchasing Division on behalf of the lessee and by the chief executive officer of the lessor.

#### §148-2-11 Emergency Situations.

11.1 In the event of a natural disaster or other emergency situation as determined by the Secretary, the Department of Administration shall be exempt from the normal Leasing rules and procedures. In the event of a natural disaster or emergency situation, the Secretary of Administration shall continue to have the authority to select and to acquire by contract or lease, in the name of the State, all grounds, buildings, office space or other space for and on behalf of any spending unit.

11.2 The spending unit shall notify the Leasing Officer Section at the earliest possible date of any emergency situation and need to lease space or to relocate from an existing lease. This notice will allow the Leasing Officer Section to better assist the spending unit and determine space that may be available in a given area if necessary.

11.3 The spending unit does not have the authority to negotiate with a prospective lessor on behalf of the State without the consent of the Leasing Office Section or the Secretary of the Department of Administration.

11.4 When possible, the Department of Administration, with assistance of the spending unit, will obtain three proposals in writing prior to entering into lease agreements.

11.5 When possible, the Department of Administration will put a Class II legal advertisement in the newspaper soliciting proposals for space over 10,000 square foot prior to entering into lease agreements.

**§148-2-12. Compliance.**

12.1 The Leasing Section shall develop compliance standards and shall monitor all leased properties on a systematic and regular basis to insure that all properties continue to conform to these standards. The compliance standards will be included as part of bid selections. A procedure for processing violations shall be developed by the Leasing Section and shall include: penalties up to and including an amount not to exceed the amount of the monthly rental (or the ability to withhold that amount); cancellation of the lease agreement; and relocation of the spending unit at the discretion of the Secretary of Administration.

12.2 The compliance standards shall include, at a minimum:

A. Codes and Standards

1. Facilities shall conform to the requirements of the State Building Code, which incorporates the following:

a. The International Building Code\*,

First Edition, 2000.

b. The International Plumbing Code, First Edition, 2000.

c. The International Mechanical Code, First Edition, 2000.

d. The International Fuel Gas Code\*, First Edition, 2000.

e. The International Property Maintenance Code, First Edition, 2000.

f. The International Energy Conservation Code, First Edition, 2000.

\*See the State Building Code for exceptions.

2. Facilities shall conform to the requirements of the WV State Fire Code (effective May 1, 1998).

3. Changes in the State Building Code or State Fire Code will be automatically adopted as new leasing standards.

B. Quality and Appearance

1. The building must be well maintained and should project a professional and aesthetically pleasing appearance, including adequate landscaping and grounds maintenance if applicable.

C. Minimum Heating, Ventilating and Air Conditioning Requirements

1. All occupied spaces shall meet the following design conditions:

a. Winter Design Conditions - 75 deg F DB at an outside temperature of 7 deg F DB. Those areas to be heated and ventilated, or heated only, to be maintained at 68 deg F DB.

b. Summer Design Conditions - 75 deg F DB at 50% RH at outside temperature of 94 deg F DB and 78 deg F WB.

2. Minimum Indoor Air Quality Requirements (IAQ)

The lessor shall control contaminants at the source and/or operate the leased space in such a manner that the indicator levels for Carbon monoxide (CO), carbon dioxide (CO2), and formaldehyde (HCHO) are not exceeded. The indicator levels for office areas are as follows: CO- 9 parts per million (PPM) time weighted average (TWA-8-hour sample); CO2-1,000 PPM (TWA); HCHP-0.1 PPM (TWA). The Lessor shall promptly investigate IAQ complaints and shall implement controls including alteration of building

operating procedures (e.g. adjusting fresh air intakes, adjusting air distribution, cleaning and maintaining HVAC equipment etc.). The Leasing Section reserves the right to conduct independent IAQ assessments and detailed studies in space it occupies, as well as in space serving the leased space (e.g. common use areas, mechanical rooms, HVAC systems, etc.). The lessor shall assist the Leasing Section in making said assessments by making available information on building operations and Lessor activities, and by providing access to space for assessment and testing, if required, and by implementing corrective measures when needed.

#### D. Lighting

1. The following light levels shall be provided: Interior Offices-50 footcandles at working surface height throughout. Exterior Spaces-2.5 footcandles (average) at five feet above grade in all parking and pedestrian areas.

2. Lighting Fixtures: General Office fixtures shall be 2' x 2' and/or 2' x 4' recessed parabolic fluorescent fixtures and recessed downlights on dimmers at Conference Rooms (preferred).

#### E. Fire Protection

The building shall provide a complete, automatic fire protection system including fire sprinklers and alarms, standpipe and fire department connections where required by the State Fire Code. A Certificate of Occupancy and any subsequent inspection reports from the office of the State Fire Marshal shall be available for review by the agency prior to occupancy. At the spending unit's request, an inspection by the State Fire Marshal may be required prior to occupancy and the expense shall be borne by the lessor.

12.3 The Secretary of Administration or his designee shall disbar the lessor from entering into any other lease with the State of West Virginia for failing to meet the standards set forth herein or failing to comply with all applicable rules and regulations.

12.4 All lessors shall comply with the Purchasing Division vendor registration requirements, workers compensation requirements,

and all other applicable statutes and regulations.

12.5 The Leasing Section shall send a report to the Secretary of Administration or his/her designee providing compliance information regarding all lessors on an annual basis.

#### 148-2-13 Existing Leases

All existing leases which do not meet the compliance standards established by the Leasing Section, must submit a timetable for compliance at least 6 months prior to the expiration of an existing lease or by July 1, 2008 whichever comes first. This timetable must be approved by the Leasing Section prior to execution of a new lease agreement with an existing lessor. All existing lease holders will be notified by the Leasing Section of compliance criteria prior to implementation of the standards.

## APPENDIX B

### FISCAL NOTE FOR PROPOSED RULES

Rule Title: Title 148, Series 2, Leasing Space on Behalf of State Spending Units

Type of Rule:  X  Legislative        Interpretive        Procedural

Agency: Department of Administration

Address: 1900 Kanawha Boulevard, East

Building 1, Room E-119

Charleston, WV 25305

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1. **Effect of Proposed Rule:**

	ANNUAL FISCAL YEAR				
	Increase	Decrease	Current	Next	Thereafter
ESTIMATED TOTAL COST	40,000	-0-	-0-	40,000	40,000
PERSONAL SERVICES	40,000				
CURRENT EXPENSE					
REPAIRS & ALTERATIONS					
EQUIPMENT					
OTHER					

2. **Explanation of Above Estimates:**

There will be minimal costs associated with the passage of the proposed rule changes as the Department of Administration plans to move employees from the General Services Division into the Leasing positions. However, it may be necessary to hire additional staff depending upon the requirements of the rule changes.

**3. Objectives of These Rules:**

To address concerns regarding the fair market value; to further define the acquisition, negotiation and inspection aspects of leasing; to establish compliance standards for structures to be leased; and to provide for additional requirements by the Department of Administration.

**4. Explanation of Overall Economic Impact of Proposed Rule:**

**A. Economic Impact on State Government:**

Minimal fiscal impact as a result of the proposed rule changes. The proposed changes will have a positive impact upon the quality of buildings being leased for our public employees and will help the Department of Administration in the negotiation process to obtain the best price possible.

**B. Economic Impact on Political Subdivisions; Specific Industries; Specific Groups of Citizens:**

None

**C. Economic Impact on Citizens/Public at Large.**

None

Date:

5/21/04

**Signature of Agency Head or Authorized Representative:**

  
\_\_\_\_\_  
Tom Susman, Acting Cabinet Secretary  
Department of Administration



STATE OF WEST VIRGINIA  
DEPARTMENT OF ADMINISTRATION  
OFFICE OF THE CABINET SECRETARY

BOB WISE  
GOVERNOR

TOM SUSMAN  
ACTING CABINET SECRETARY

May 21, 2004

**Via Hand-Delivery**

The Honorable Joe Manchin, III  
Secretary of State  
Building 1, Suite 157K  
1900 Kanawha Boulevard, East  
Charleston, WV 25305

FILED  
2004 MAY 24 P 3:28  
OFFICE WEST VIRGINIA  
SECRETARY OF STATE

**Re: Legislative Rules**

Dear Secretary Manchin,

I am enclosing an original and one copy of the documents listed below for filing. The proposed rules are being filed in regard to Leasing Space on Behalf of State Spending Units. I will provide a copy of the enclosed documents to the Legislative Rule Making Review Committee once they are marked filed by your office.

The documents enclosed consist of the following:

1. Notice of Comment Period on a Proposed Rule,
2. Statement of Circumstance and Brief Summary,
3. Proposed Rules, and
4. Fiscal Note for Proposed Rules.

Thank you very much for your assistance. If you have any questions, or need any additional information, please do not hesitate to give me a call.

Sincerely,

Donna M. Lipscomb  
Executive Coordinator

Enclosures