It is this document, the revised guidelines, which Senator Stennis believes legally invalid because not approved by the President under § 602 of the Act. As the above analysis of their origin and application shows, the guidelines are not "rules, regulations, or orders" within the meaning of § 602. The guidelines are a statement of policies which the Commissioner has issued to fulfill his responsibilities, under the Presidentally-approved Regulation, to assist dual-structure districts in formulating steps to remain eligible for Federal financial assistance. This policy statement reflects the factors the Commissioner considers in making the determinations as to the adequacy of voluntary plans which it is his duty to make under the Presidentially-approved Regulation.

The guidelines then, are not intended to be and do not constitute a rule, regulation, or order as these terms are used in § 602 of the Act. There is thus no requirement for Presidential approval. The guidelines constitute a statement of policies issued pursuant to § 80.12(b) and in connection with § 80.4(c)(2) of the generally applicable and Presidentially-approved Regulation.

From the debate in the House on the amendment requiring Presidential approval of regulations under Title VI, it is clear that only rules, regulations or orders of general applicability were intended to be subject to Presidential approval. See the colloquy between Congressman Lindsay, Congressman Smith of Virginia, and Congressman Poff at 110 Cong. Rec. 2499–2500 (1964). Congressman Lindsay concluded this exchange by stating, "If it is not a rule, regulation, or order of general applicability, I would assume that the President would not have to put his approval on it." And Senator Humphrey had stated that it was "wise to leave the agencies a good deal of discretion" in operating under Title VI. See 110 Cong. Rec. 6545 (1964).

An understanding is indicated here that implementing documents of lesser stature than such rules, regulations and orders would be issued, and that such documents would not require Presidential approval. As is shown above, documents of this nature, e.g., "forms and detailed instructions and procedures" such as the guidelines, are specifically authorized by § 80.12(b) of the Presidentially-approved Title VI Regulation.

Senator Stennis indicates on page 5 of his letter a belief that the provisions of § 80.3 of the Regulation are less "extreme" than the guidelines, and he feels that § 80.3 cannot "support" the guidelines, which are "directly contrary" to the Regulation.

The guidelines do not stem from § 80.3 at all. They are issued under § 80.4 (c)(2) to have the effect of shielding those districts still in the process of desegregation from the immediate impact of the requirements for complete nondiscrimination set out in § 80.3, including those provisions quoted in the Senator's letter.

Section 80.3 contemplates the complete absence of racial discrimination, including that resulting from operating a dual school structure. The guidelines afford those districts unable immediately to comply with § 80.3 (that is, unable to eliminate completely the dual school structure overnight) a period of transition from the racial discrimination of the dual structure of schools to a single system of schools for all students. The guidelines thus cannot properly be considered more "extreme" than or "directly contrary" to the Regulation. Section 80.3 is in no way intended to "support" the guidelines. A school system operating under a plan conforming to the policies of the guidelines would probably fall far short of compliance with § 80.3. To put it another way, if a school system is in full compliance with § 80.3, it is in a position to file a Form 441 assurance, and does not need to operate under a plan leading toward such compliance.

The Senator further states that the guidelines "require" the assignment of pupils "on the basis of race" in order to "achieve a certain percentage of integration," while the statute and Regulation "require that no distinctions based on race be made" in Federally assisted programs.

The guidelines do not require the assignment of any particular student, or group of students, or number of students, to any particular school or schools, or to any type of types of schools. There is only one requirement in this connection for a determination of adequacy of a plan by the Commissioner under § 80.4(c)(2) of the Regulation, which requirement is reflected in the guidelines. This requirement is that the racial basis of the assignment of students must be completely ended, and that the several schools among which students may choose, or to which they may be assigned by the district must be rendered no longer identifiable as being intended for students of a particular race, especially on the basis of the composition of the faculty.