

nondiscrimination, labor standards, and the environment)."

The Department finds that the following waivers and alternative requirements (together with previously granted waivers and alternative requirements) are necessary to facilitate the use of the \$700 million awarded to New York State's Empire State Development Corporation (ESDC) and the \$2.0 billion awarded and \$783 million awaiting award to New York State's Lower Manhattan Development Corporation (LMDC) (collectively, the grantees).

The Department also finds that such uses of funds, as described below, are not inconsistent with the overall purpose of the Housing and Community Development Act of 1974 (42 U.S.C. 5301 *et seq.*), or the Cranston-Gonzalez National Affordable Housing Act (42 U.S.C. 12701 *et seq.*).

Except as noted by published waivers and alternative requirements, statutory and regulatory provisions governing the Community Development Block Grant program for states, including those at 24 CFR part 570, subpart I, shall apply to the use of these funds.

In **Federal Register** notices of March 18, 2002, at 67 FR 12042 (effective March 25, 2002) and May 22, 2002, at 67 FR 36017 (effective May 28, 2002), the Department promulgated waivers and alternative requirements necessary to facilitate the use of both \$700 million in disaster recovery funds awarded to New York State's Empire State Development Corporation and \$2.0 billion awarded to New York State's Lower Manhattan Development Corporation.

This notice waives requirements at 42 U.S.C. 5305(a)(15) to the extent necessary to allow a national for-profit community development institution that otherwise meets CDBG eligibility requirements to qualify as a local development corporation. The entity seeking to participate in the ESDC business recovery loan program does not qualify because it is both national and for-profit. This waiver is necessary to support the unique circumstances of this grant: ESDC is a state grantee carrying out activities in an entitlement jurisdiction. The law permits states to select national nonprofits to carry out activities under this provision. The CDBG entitlement regulation, which serves as a guide for state grantees, permits either non- or for-profit local development corporations and neighborhood based organizations to qualify, if they otherwise meet regulatory qualification requirements. ESDC competitively selected several organizations to carry out community

development lending activities under this provision. All but one of the organizations qualify under either the state approach or the entitlement approach. This waiver permits ESDC to fund one organization that is similar in purpose and function to the other groups and has a similar scope of activities.

This notice also modifies the published alternate requirements related to reports and documentation for the bridge loan program implemented by ESDC in the immediate wake of the disaster. The bridge loan program is unlike the other activities because ESDC is not providing assistance directly to affected businesses; lending institutions are. What ESDC provides is a loss reserve account, designed to support private sector lenders that wished to take more risks in the wake of the disaster than would otherwise be permitted such institutions by oversight regulatory agencies. These lenders collected information sufficient to meet core CDBG requirements related to a special economic development activity undertaken under the urgent need national objective, but the program was implemented so rapidly that it predated the additional requirements of the referenced notices related to documentation of salary ranges and job types. HUD approved the action plan containing the bridge loan activity and is now clarifying in this notice what documentation requirements apply.

This notice also waives the CDBG regulations at 24 CFR 570.489(a)(2) to allow the grantees to charge registration fees where such fees are nominal and intended to discourage frivolous applications. The provision in the regulations banning fees for applications is intended to keep states from charging fees to units of general local government seeking to participate in the CDBG program. Such local governments carry out activities directly and may charge application fees. A previously granted waiver allows the state to carry out activities directly under these grants. This waiver is a companion to the previously granted waiver and it allows the state the same opportunity to charge application fees allowed other entities carrying out state CDBG activities directly.

Finally, this notice makes the waivers and requirements of this notice and of the previous notices cited above applicable to funds appropriated under the 2002 Supplemental Appropriations Act for Further Recovery From and Response to Terrorist Attacks on the United States (Pub. L. 107-206, approved August 2, 2002). This law provides an additional \$783 million to

the state of New York through the LMDC for the same uses as the previous CDBG disaster appropriations to New York, including restoration of utility infrastructure, of which \$33 million is directed by the relevant conference report to assist World Trade Center firms that suffered a disproportionate loss of their workforce and that intend to reestablish operations in New York City.

The text below indicates the paragraph being updated.

Description of Modifications

1. Paragraph 12 of the notice published at FR 67 FR 36017 (May 22, 2002) is amended to read as follows:

12. Public benefit standards for economic development activities. Currently, grantees are limited in the amount of CDBG assistance they may spend per job retained or created (or per low- and moderate-income person to whom goods or services are provided by the activity) that will be considered to meet public benefit standards. Public benefit standards at 42 U.S.C. 5305(e)(3) and 24 CFR 570.482(f)(1), (2), (3), (4)(i), (5), and (6) are waived, except that, the grantee shall report and maintain documentation on the creation and retention of (a) total jobs, (b) number of jobs within certain salary ranges, and (c) types of jobs. For the bridge loan program included in the Empire State Development Corporation's January 30, 2002, Action Plan, the grantee shall report and maintain public benefit documentation only on the total number of jobs created and retained. Paragraph (g) of 24 CFR 570.482, regarding amendments to economic development projects after review determinations, is also waived to the extent its provisions are related to public benefit.

Paragraph 16 of the notice published at 67 FR 36017 (May 22, 2002) is amended to read as follows:

16. Performance reports. Generally, grantees submit an annual performance report ninety days after the jurisdiction's program year. The conferees for Pub. L. 107-73 directed that HUD submit reports to the Committees on Appropriations quarterly on the obligation and expenditure of the CDBG funds appropriated under the Emergency Response Fund. Therefore, 42 U.S.C. 12708(a)(1) and 24 CFR 91.520 are waived with respect to these funds, and HUD is establishing an alternative requirement that the State must submit a quarterly report, as HUD prescribes, no later than 30 days following each calendar quarter, beginning after the first full calendar quarter after grant award and continuing until all funds have been expended and the