

**DEPARTMENT OF HOUSING AND
URBAN DEVELOPMENT**

[Docket No. FR-4732-N-01]

**Statutory and Regulatory Waivers
Granted to New York State for
Recovery From the September 11, 2001
Terrorist Attacks**

AGENCY: Office of Community Planning and Development, HUD.

ACTION: Notice of waivers granted.

SUMMARY: This notice advises the public of waivers of regulations and statutory provisions granted to the State of New York for the purpose of assisting in the recovery from the September 11, 2001, terrorist attacks on New York City. As described in the **SUPPLEMENTARY INFORMATION** section of this notice, HUD is authorized by statute to waive statutory and regulatory requirements for this purpose. This notice lists the provisions being waived.

FOR FURTHER INFORMATION CONTACT: Jan C. Opper, Senior Program Officer, Office of Block Grant Assistance, Department of Housing and Urban Development, Room 7286, 451 Seventh Street, SW., Washington, DC 20410, telephone number (202) 708-3587. Persons with hearing or speech impairments may access this number via TTY by calling the Federal Information Relay Service at (800) 877-8339. FAX inquiries may be sent to Mr. Opper at (202) 401-2044. (Except for the "800" number, these telephone numbers are not toll-free.)

SUPPLEMENTARY INFORMATION:

Authority to Grant Waivers

Section 434 of the Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 2002 (Public Law 107-73, approved November 26, 2001) provides for the use of Community Development Block Grant (CDBG) funds made available from the Emergency Response Fund by the 2001 Emergency Supplemental Appropriations Act for Recovery from and Response to Terrorist Attacks on the United States (Public Law 107-38, approved September 18, 2001) to New York State for properties and businesses damaged by, and economic revitalization related to, the September 11, 2001, terrorist attacks on New York City. Section 434 authorizes the Secretary of HUD to waive, or specify alternative requirements for, any provision of any statute or regulation that the Secretary administers in connection with the obligation by the Secretary or use by the recipient of these funds, except for requirements related to

fair housing, nondiscrimination, labor standards, and the environment. The Department finds that the following waivers and alternative requirements are necessary to facilitate the use of the initial \$700 million in CDBG funds made available from the Emergency Response Fund, and that such use is not inconsistent with the overall purpose of the Housing and Community Development Act of 1974, as amended, or the Cranston-Gonzalez National Affordable Housing Act, as amended.

**Description and Justification of
Requirements Waived or Alternative
Requirements Specified**

1. Waiver of the Requirement That 70% of the CDBG Funds Received by the State Over a One-to-Three Year Period be for Activities That Benefit Persons of Low and Moderate Income

The provisions of 42 U.S.C. 5301(c) and 5304(b)(3), and 24 CFR 570.484 and 24 CFR 91.325(b)(4)(ii) with respect to the 70% overall benefit requirement are waived with respect to CDBG funds appropriated under the Emergency Response Fund. HUD expects the grantee will make a good faith effort to maximize benefits to low- and moderate-income persons, and maintain documentation of such efforts.

2. Waiver and Alternative Requirement—Streamlined Citizen Participation Requirements

The provisions of 42 U.S.C. 5304(a)(2) and (3), 42 U.S.C. 12707, and 24 CFR 91.115(b) with respect to citizen participation requirements are waived and replaced by the requirements below. The streamlined requirements do not mandate public hearings, but do provide for a reasonable opportunity for citizen comment and for ongoing citizen access to information about the use of grant funds. The streamlined requirements for this grant are:

a. Before the state adopts the action plan for or any substantial amendment to this grant, the state will publish the proposed plan or amendment (including the information required in waiver eight (8) below). Publication will be carried out in a manner that affords citizens, New York City, and other interested parties a reasonable opportunity to examine the plan or amendment's contents and to submit comments. The state's plans to minimize displacement of persons or entities and to assist any persons or entities displaced must be published with the action plan. Subsequent to publication, the state must provide a reasonable period to receive comments on the plan or substantial amendment.

b. In the action plan, the state will specify the criteria for determining what changes in the state's activities constitute a substantial amendment to the plan. At a minimum, adding or deleting an activity or changing the planned beneficiaries of an activity will constitute a substantial change.

c. The state must consider all comments received on the action plan or any substantial amendment and submit to HUD a summary of these comments and the state's response with the action plan or substantial amendment.

d. The state must make the action plan, any substantial amendments, and all performance reports available to the public, on request. Also on request, the state must make these documents available in a form accessible to persons with disabilities. During the term of this grant, the state will provide citizens, New York City, and other interested parties reasonable and timely access to information and records relating to the action plan and the state's use of this grant.

e. The state will provide a timely written response to every citizen complaint. Such response will be provided within 15 working days, if practicable, of the complaint.

3. Waiver and Alternative Requirement—Modification of Requirement for Consultation With Local Governments

Currently statute and regulations require consultation with affected units of local government in the non-entitlement area of the state regarding the state's proposed method of distribution. HUD is waiving 42 U.S.C. 5306(d)(2)(C)(iv), 24 CFR 91.325(b), and 24 CFR 91.110, with the alternative requirement that the state consult with New York City in determining the use of funds.

4. Waiver of Requirements for Consistency With the Consolidated Plan

Requirements at 42 U.S.C. 12706 and 24 CFR 91.325(a)(6), that require that housing activities undertaken with CDBG, HOME, ESG, and HOPWA funds be consistent with the strategic plan, are waived. Also, 24 CFR 570.903, which requires HUD to annually review grantee performance under the consistency criteria is also waived.

5. Alternative Requirement—Revision of the Process for Environmental Release of Funds so the State May Carry Out Activities Directly

Usually, a state distributes CDBG funds to units of local government and serves in HUD's place as the responsible federal official reviewing environmental

determinations made by the grant recipients and approving releases of funds. For this grant, waiver seven (7) below allows New York State to also carry out activities directly instead of distributing them to other governments. According to the environmental regulations at 24 CFR 58.4, when a state carries out activities directly, HUD must serve as the responsible federal official and approve releases of funds.

6. Waiver and Alternative Requirement—Allowance for Reimbursement for Pre-Agreement Costs

The provisions of 24 CFR 570.489(b) are modified to permit New York State or New York City to reimburse itself for otherwise allowable costs incurred on or after September 11, 2001.

7. Waiver and Alternative Requirement—Distribution and Use of Funds to and in a Metropolitan City

Provisions of 42 U.S.C. 5306 currently require a state to distribute CDBG funds to units of general local government in nonmetropolitan areas for use in nonmetropolitan areas rather than carrying activities out directly. These provisions are waived with alternative requirements with respect to CDBG funds appropriated under the Emergency Response Fund to permit the state of New York to carry out activities directly in New York City and to permit the state to distribute these funds to New York City. Additionally, because New York State may carry out activities directly, HUD is waiving the regulations at 24 CFR 570.494 regarding timely distribution of funds. However, HUD expects New York State to expeditiously obligate and expend all funds, including any recaptured funds or program income, in carrying out activities in a timely manner.

8. Waiver and Alternative Requirement—Action Plan for Disaster Recovery

Current state CDBG requirements for an action plan envision a state using a method for distributing substantially all CDBG funds received to other governments and not carrying out activities directly. This waiver allows the state to submit an action plan that may include activities directly undertaken by the state. With respect to CDBG funds appropriated under the Emergency Response Fund, the last sentence of 42 U.S.C. 5304 (a)(1), 42 U.S.C. 12705, and provisions of 24 CFR 91.320 and 91.325(a)(5) are waived with alternative requirements that the state submit an action plan for disaster recovery that includes the following:

a. Information specified at 24 CFR 91.220(a),(b),(d) and (g).

b. A description of the activities the state will assist with grant funds. This description of activities shall estimate the number and type of beneficiaries of the proposed activities, proposed accomplishments, and a target date for completion of each activity. This information must be submitted in a form prescribed by HUD.

9. Waiver and Alternative Requirement—Changing Limitations on Administrative and Planning Expenses

The current law and regulations require that 50 percent of any administrative expenses, in excess of \$100,000, that do not exceed 2 percent of the grant be paid from the grant. Provisions at 42 U.S.C. 5306(d)(3)(A), 24 CFR 570.489(a)(1)(i) and 24 CFR 570.489(a)(3) are waived to allow use of CDBG disaster grant funds for planning and administrative expenses that do not exceed 10 percent of the grant amount plus 10 percent of program income.

10. Waiver—Public Benefit Standards for Economic Development Activities

Currently, grantees are limited in the amount of CDBG assistance per job retained or created, or amount of CDBG assistance per low- and moderate-income person to which 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), (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. Paragraph (g) of 24 CFR 570.482 is also waived to the extent its provisions are related to public benefit.

11. Waiver of Duplication of Benefits

The CDBG funds appropriated under the Emergency Response Fund may not be used to provide funds for the same specific uses as disaster loans made available by the Small Business Administration (SBA), in compliance with 15 U.S.C. 636(b)(1)(A). If the needs for assistance are more than the SBA disaster loan amount, CDBG disaster assistance may be used to fund such additional need. New York State should encourage the use of SBA physical damage and economic injury disaster loans; they offer low interest rates and favorable terms. Additionally, CDBG disaster assistance may not be used for the same specific uses as disaster assistance made available by the Federal Emergency Management Agency, e.g.,

for public works and facilities, in compliance with duplication of benefits prohibitions of 42 U.S.C. 5155 (section 312 of the Robert T. Stafford Disaster Assistance and Emergency Relief Act, as amended).

12. Waiver and Alternative Requirements—Performance Reports

Generally, grantees submit an annual performance report 90 days after the jurisdiction's program year. The conferees for Public Law 107-73 requested 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 that expenditure reported. Each quarterly report will include information on the project name, activity, location, national objective, funds budgeted and expended, Federal source and funds (other than CDBG disaster funds), numbers and North American Industry Classification System (NAICS) codes of businesses assisted by activity, total number of jobs created and retained by activity, numbers of such jobs by salary ranges (to be defined by HUD), numbers of properties and housing units assisted; for activities benefiting low- and moderate income persons, the number of jobs taken by persons of low- and moderate-income, and numbers of low- and moderate-income households benefiting. Quarterly reports must be submitted using HUD's web-based Disaster Recovery Grant Reporting system. Annually (i.e., with every fourth submission), the report shall include a financial reconciliation of funds budgeted and expended, and calculation of the status of administrative costs.

13. Waiver and Alternative Requirements—Allow Flexibility in Use of Program Income During Grant and Provide for Disposition at Grant Closeout

A combination of CDBG provisions limits the flexibility available to the state and city for the use of program income. Generally, program income earned on disaster grants has been program income to the regular CDBG program of the applicable entitlement or state and has lost its disaster grant

identity, thus losing use of the waivers and streamlined alternative requirements. Also, the state CDBG program rule and law are designed for a program in which the state distributes all funds rather than carrying out activities directly and the law specifically provides for local governments receiving grants to retain program income if they use it for additional eligible activities under the regular CDBG program. This waiver and the alternate requirements allow program income to the disaster grant to be governed by the original grant's requirements and waivers and to remain the state's until grant closeout, at which point any program income on hand or received subsequently will become program income to New York City's regular entitlement CDBG program. Therefore, 42 U.S.C. 5304(j), 24 CFR 570.481(a) to the extent it relates to defining program income, and 24 CFR 570.489(e) are waived and the following alternative requirements apply:

a. Program income is defined at 24 CFR 570.500(a);

b. The requirements of 24 CFR 570.504(a) and (c);

c. Program income received before grant closeout may be retained by the recipient if the income is treated as additional funds under this grant subject to all of this grant's applicable requirements;

d. Substantially all program income other than any held in revolving funds shall be disbursed for eligible activities before additional cash withdrawals are made from the U.S. Treasury. Program income in the form of repayments to, or interest earned on, a revolving fund as defined in 24 CFR 570.500(b) shall be substantially disbursed from the fund before additional cash withdrawals are made from the U.S. Treasury for the same activity; and

e. Program income on hand at the time of grant closeout and program income received after grant closeout shall be program income to the ongoing CDBG entitlement program of New York City.

14. Waiver—Modification of the Anti-Pirating Clause to Permit Assistance to Help a Business Return

42 U.S.C. 5305(h) is hereby waived only to allow the state to provide assistance under this grant to any business that was operating in the covered disaster area before September 11, 2001, and has since moved in whole or in part from the affected area to continue business.

The Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 2002 (Public Law 107-73) requires HUD to publish these waivers in the **Federal Register** no later than five days before their effective date. The effective date of these waivers is February 2, 2002.

Dated: January 22, 2002.

Roy A. Bernardi,

Assistant Secretary for Community Planning and Development.

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