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**DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT**

**[Docket No. FR-5977-N-01]**

**Waiver of Requirements for the State of New York  
CDBG Disaster Recovery Grants for Recovery of Lower Manhattan**

**AGENCY:** Office of the Assistant Secretary for Community Planning and Development, HUD.

**ACTION:** Notice.

**SUMMARY:** This notice advises the public of an additional waiver applicable to the Community Development Block Grant Disaster Recovery (CDBG-DR) grants provided 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 “Background” section of this notice, HUD is authorized by statute and regulations to waive statutory and regulatory requirements and specify alternative requirements for this purpose upon the request of the grantee.

**DATES:** Effective Date: **[INSERT DATE 5 DAYS FROM DATE OF PUBLICATION IN THE FEDERAL REGISTER.]**

**FOR FURTHER INFORMATION CONTACT:** Stanley Gimont, Director, Office of Block Grant Assistance, Department of Housing and Urban Development, 451 7th Street, SW, Room 7286, Washington, DC 20410, telephone number 202-708-3587. Persons with hearing or speech impairments may access this number via TTY by calling the Federal Relay Service at 800-877-8339. Facsimile inquiries may be sent to Mr. Gimont at 202-401-2044. (Except for the "800" number, these telephone numbers are not toll-free.) Email inquiries may be sent to [disaster\\_recovery@hud.gov](mailto:disaster_recovery@hud.gov).

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### **I. Background**

Provisions of four public laws (the Appropriation Acts) govern the Community Development Block Grant Disaster Recovery (CDBG-DR) grants covered by this Notice:

- The fifth proviso under the 2001 Emergency Supplemental Appropriations Act for Recovery from and Response to Terrorist Attacks on the United States (Pub. L. 107–38, approved September 18, 2001);
- Section 434 of title IV of the Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 2002 (Pub. L. 107–73, approved November 26, 2001);
- Chapter 13 of division B of the Department of Defense and Emergency Supplemental Appropriations for Recovery from and Response to Terrorist Attacks on the United States Act, 2002 (Pub. L. 107–117, approved January 10, 2002); and
- Chapter 13 of title II of 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).

These Appropriation Acts funded three CDBG-DR grants: a single grant of \$700 million awarded to Empire State Development Corporation (ESDC); and two grants of \$2.0 billion and \$783 million, respectively, awarded to the Lower Manhattan Development Corporation

(LMDC). ESDC is a political subdivision and public benefit corporation of the state of New York and LMDC is a subsidiary of ESDC.

This Notice specifies waivers and alternative requirements and modifies previous requirements applicable to LMDC's grants under the Appropriation Acts, which are described in **Federal Register** Notices published by the Department on January 28, 2002 (67 FR 4164), February 7, 2002 (67 FR 5845), March 18, 2002 (67 FR 12042), May 22, 2002 (67 FR 36017), May 16, 2003 (68 FR 26640), April 12, 2004 (69 FR 19211), and August 22, 2011 (76 FR 52340) (referred to collectively in this Notice as the "prior Notices.'). The requirements of the prior Notices continue to apply, except as modified by this Notice.<sup>1</sup>

LMDC administers CDBG-DR funds allocated to the organization for emergency expenses and economic revitalization in response to the September 11, 2001, terrorist attacks in New York City. LMDC is charged with assisting New York City in recovering from the terrorist attacks on the World Trade Center (WTC), in part by working with the Port Authority of New York and New Jersey (Port Authority). There are two components to this effort. The first is a "Memorial Program," carried out by LMDC, that includes the construction of a Memorial and Memorial Museum (completed), and the planning and construction of other Memorial-related improvements to complement further redevelopment in the immediate area. The second component is a "Redevelopment Program," carried out by the Port Authority, which includes commercial and retail space, open space areas, and other improvements. LMDC works closely with the Port Authority to effectuate the Redevelopment Program. For additional information regarding the roles and responsibilities of LMDC and the Port Authority and the World Trade

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<sup>1</sup> Links to the prior notices, the text of the Appropriations Act, and additional guidance prepared by the Department for CDBG-DR grants are available on the HUD Exchange Web site: <https://www.hudexchange.info/cdbg-dr/cdbg-drlaws-regulations-and-federal-register-notices/>.

Center Memorial and Cultural Program General Project Plan (GPP), please refer to the LDMC website at: [http://www.renewnyc.com/ThePlan/general\\_project\\_plan.asp](http://www.renewnyc.com/ThePlan/general_project_plan.asp).

Consistent with its approved CDBG-DR action plan and amendments, LMDC used CDBG-DR funds to acquire and clear real property identified in the GPP as 130 Liberty Street and 140 Liberty Street. In order to enable LDMC to fully implement its Memorial Program and to enable the Port Authority to pursue its Redevelopment Program, LMDC proposes an exchange of real property interests with the Port Authority. The Port Authority will provide LMDC or its designee with a lease (up to 99 years) and purchase option for Port Authority-owned property that will be used for memorial and cultural facilities that are part of LMDC's Memorial Program, most specifically a performing arts center. This ownership structure will parallel a prior plan governing the site of the Memorial Museum, which was also part of the larger exchange of memorial and cultural properties dedicated for the Memorial Program. In the first phase of this exchange, the Port Authority will obtain title to the portions of 130 and 140 Liberty Street parcels necessary to finalize the below-grade WTC Vehicle Security Center with a public park, known as Liberty Park, at and above street level, and the St. Nicholas National Shrine at the World Trade Center, all of which are part of the Redevelopment Program. These portions of 130 and 140 Liberty Street have already been partially redeveloped by the Port Authority pursuant to an access agreement with LMDC. HUD must waive certain regulations applicable to the reuse of 130 and 140 Liberty Street to facilitate the current exchange between LMDC and the Port Authority and future development of the rest of the 130 Liberty Street site. The current transfer of property to the Port Authority explicitly excludes that portion of 130 Liberty Street that is labeled as "Tower 5" on Attachment 1 to the GPP as LMDC will retain the Tower 5 site for future transfer and redevelopment.

The proposed property exchange is a step toward finalizing a new site for St. Nicholas Greek Orthodox Church (St. Nicholas), which was destroyed by the collapse of the South Tower of the World Trade Center on September 11, 2001. St. Nicholas had been located at 155 Cedar Street, which is adjacent to the 130 and 140 Liberty Street parcels, but the WTC Memorial and Redevelopment Plan provides for reconstruction of St. Nicholas (as the St. Nicholas National Shrine at the World Trade Center) on a portion of 130 Liberty Street. To carry out this plan, the Port Authority entered into an agreement with St. Nicholas that will permit the Port Authority to acquire 155 Cedar Street from St. Nicholas in exchange for a long-term lease and purchase agreement on a portion of 130 Liberty Street.

As discussed below, reliable valuations of these properties are difficult to obtain but some components of the overall transaction can be evaluated in a more traditional manner. One such component involves the property interest that St. Nicholas will receive from the Port Authority in exchange for 155 Cedar Street. LMDC has carried out an analysis and determined that the properties are comparable, in part due to a permanent restrictive declaration limiting development of the property that will be transferred to St. Nicholas.

As part of the larger planned exchange between the Port Authority and LMDC, LMDC is transferring to the Port Authority the portions of 130 and 140 Liberty Street parcels necessary to finalize the WTC Vehicle Security Center, Liberty Park, and the St. Nicholas National Shrine at the World Trade Center. This transfer will not be considered to be CDBG-assisted and, therefore, will not be subject to CDBG requirements. As a result, the Port Authority's conveyance of a portion of 130 Liberty Street to St. Nicholas for the St. Nicholas National Shrine at the World Trade Center will not be assisted with CDBG-DR funds. Additionally, the Port Authority's proposed use of 155 Cedar Street and the portion of 130 and 140 Liberty Street that

it receives from LMDC (minus the St. Nicholas transfer site) will not be subject to CDBG requirements.

HUD notes that LMDC never intended to retain long-term ownership of 130 and 140 Liberty Street. The properties were purchased with CDBG-DR funds to address conditions that developed as a result of the collapse of the Towers and to obtain open space adjacent to the World Trade Center site. Neither LMDC nor its parent organization, ESDC, holds real property for the long-term and it is LMDC's intention to transfer ownership of its holdings on the World Trade Center site in the future for eligible uses in support of long-term recovery.

**II. Applicable Rules, Statutes, Waivers, and Alternative Requirements.** The Appropriation Acts authorize the Secretary 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 grant funds, except for requirements related to fair housing, nondiscrimination, labor standards, and the environment, upon a finding that such waiver is required to facilitate the use of such funds, and would not be inconsistent with the overall purpose of the statute or regulation. Regulatory waiver authority is also provided by 24 CFR 5.110, 91.600, and 570.5.

The following waiver and alternative requirement (together with previously granted waivers and alternative requirements) is necessary to facilitate the use of these funds, and is not inconsistent with the overall purposes of the regulation or title I of the Housing and Community Development Act of 1974, as amended (42 U.S.C. 5301 et seq.). Under the requirements of the

Appropriations Acts, waivers and alternative requirements must be published in the **Federal Register** no later than 5 days before the effective date of such waiver.

1. *Waiver to allow the Lower Manhattan Development Corporation (LMDC) to Transfer Property Acquired and Cleared with CDBG-DR funds in Exchange for Other Property Interests.*

Because the 130 and 140 Liberty Street parcels were acquired and cleared using CDBG-DR funds, LMDC's use of these parcels is subject to the CDBG "change of use of real property" provision at 24 CFR 570.489(j), which prohibits grantees from changing the use or planned use of a property acquired with CDBG-DR funds unless the new use of the property qualifies as meeting a national objective, or the grantee reimburses its program in the amount of the current fair market value of the property. This regulatory provision does not accommodate unique aspects present in LMDC's charge to undertake the Memorial Program and cooperate with the Port Authority in its implementation of the Redevelopment Program, and the realities associated with redevelopment of a nationally significant site in the heart of Lower Manhattan. For these reasons, the Department has determined that good cause exists to grant a waiver of 24 CFR 570.489(j) and establish an alternative requirement to facilitate the use of LMDC's CDBG-DR funds, allow the proposed property exchanges, and promote completion of the Memorial and Redevelopment Programs.

As an alternative requirement, HUD will permit LMDC to compensate its CDBG-DR program for funds expended on acquisition and clearance of 130 and 140 Liberty Street through acquisition (via long-term lease and purchase) of properties on the World Trade Center site from the Port Authority that are sufficient as sites for various memorial and cultural facilities, including the September 11 Memorial and Museum and the yet to be built performing arts center, as described in the GPP and LMDC's applicable Action Plan, as amended. The Department's

decision is based on its finding that the properties involved in this transfer present unique valuation difficulties. The portions of 130 and 140 Liberty Street that LMDC will transfer will not be redeveloped for commercial uses but will serve public and non-profit purposes. Given that these parcels are located in Lower Manhattan, their value as commercial properties would be substantial but use for public and non-profit purposes alters their valuation. As a result, common appraisal approaches are not applicable to establishing current fair market valuations.

Concurrently, the World Trade Center site is unique and venerated by the city and state of New York as well as the nation as a result of the tragedy that transpired on September 11, 2001. This status makes it exceptionally difficult, if not impossible, to establish reliable valuations of the real property interests on the World Trade Center site that are to be conveyed to LMDC. The difficulties in establishing current fair market valuations of the various parts of this transaction and the strong desire of all parties (including HUD) to facilitate redevelopment progress on and adjacent to the World Trade Center site more than fifteen years after the events of September 11, 2001, create a situation in which the waiver and alternative requirement represent the most practical and feasible path forward.

HUD finds that good cause exists to waive 24 CFR 570.489(j) and impose an alternative requirement to the extent necessary to allow LMDC to transfer the portions of 130 and 140 Liberty Street necessary to finalize the WTC Vehicle Security Center, Liberty Park, and the St. Nicholas National Shrine at the World Trade Center to the Port Authority without reimbursing the CDBG-DR program for the fair market value of the properties. HUD is therefore waiving section 570.489(j) for this purpose and establishing an alternative requirement to permit LMDC to acquire from the Port Authority property on the World Trade Center site, via long-term lease and purchase, sufficient to carry out the memorial and cultural facilities on the World Trade

Center site that are contemplated in the GPP and LMDC's applicable Action Plan, as amended. Additionally, the property to be acquired by LMDC on the World Trade Center site will be subject to CDBG-DR programmatic requirements upon transfer to LMDC. HUD recognizes the phased nature of the transactions contemplated by various parties pursuant to this alternative requirement. However, as part of this alternative requirement, if LMDC does not acquire property that is sufficient to carry out the memorial and cultural facilities on the World Trade Center site as contemplated in the GPP and LMDC's applicable Action Plan, as amended, before LMDC closes out its grants, HUD may pursue appropriate remedial actions.

This waiver and alternative requirement are consistent with the provisions of the Appropriation Acts and are necessary to facilitate LMDC's use of CDBG-DR funds for its Memorial Program.

### **III. Catalog of Federal Domestic Assistance**

The Catalog of Federal Domestic Assistance numbers for the disaster recovery grants under this Notice is 14.218 and 14.228.

### **VI. Finding of No Significant Impact**

A Finding of No Significant Impact (FONSI) with respect to the environment has been made in accordance with HUD regulations at 24 CFR part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)). The FONSI is available for public inspection between 8 a.m. and 5 p.m. weekdays in the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street, SW, Room 10276, Washington, DC 20410-0500. Due to security measures at the HUD Headquarters building, an advance appointment to review the docket file must be scheduled by calling the Regulations Division at 202-708-3055 (this is not a toll-free number). Hearing or

speech-impaired individuals may access this number through TTY by calling the toll-free Federal Relay Service at 800-877-8339.

Dated: January 9, 2017

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Nani Coloretti,  
Deputy Secretary

**[FR-5977-N-01]**

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