

APPENDIX

The following Appendix pertains to a Public Notice submitted by the Department of State and printed in the Miscellaneous Notice/Hearings section of this issue of the Register.

COMMUNITY SERVICES BLOCK GRANT MANAGEMENT PLAN AMENDMENT
ASSESSMENT OF PUBLIC COMMENT

The New York State Department of State, as the designated lead agency for Community Service Block Grant (CSBG) and related programs in New York, is responsible for the development and implementation of this state's Management Plan and any amendments thereto. For the purpose of fostering greater innovation and effectiveness in combating poverty within the State of New York, the New York State Department of State has prepared a proposed CSBG Management Plan Amendment for Federal Fiscal Years 2008-2009. The proposed Management Plan Amendment will make available additional discretionary remainder funds and target those funds toward projects addressing priority areas identified by the Governor's Economic Security Cabinet.

Pursuant to 42 U.S.C. § 9908(e)(1), this proposed Management Plan Amendment was made available for public inspection in the following ways: (1) a copy of the amendment was sent to eligible entities with a cover letter on June 20, 2008, and (2) the amendment and the June 20, 2008 cover letter were posted on the Department of State's public website on June 23, 2008, and (3) the amendment was published in the July 2, 2008 edition of the New York State Register. During the public comment period, which closed with the close of business on July 21, 2008, five comments were received. All comments received are considered and discussed in detail below.

The first comment stated opposition to the amendment to the extent that it proposed a decrease in the percentage of total CSBG funds made available to eligible entities. This comment was general in tone, and after consideration and response as provided below, it is determined that this comment does not require any changes to the proposed Management Plan Amendment. The second comment received presented an objection to the targeting of discretionary funds distributed under phase 2 of the proposed Management Plan Amendment. Following consideration and review of this comment, it has been determined that no additional changes to the proposed Management Plan Amendment are necessary. The third comment opposed the proposed Management Plan Amendment on various grounds. This comment is responded to in detail below and, upon consideration of this comment, it has been determined that no additional changes to the proposed Management Plan Amendment are necessary. Comment 4 opposes the proposed Management Plan Amendment to the extent that the amendment directs discretionary remainder funds toward specified priority areas discussed by the Governor's Economic Security Cabinet on grounds the use of funds is a matter best left to local discretion. Upon consideration of this comment it is determined that no change to the proposed Management Plan Amendment is necessary. Comment 5 was submitted by two community based organizations from New York City which oppose the proposed Management Plan Amendment because it will not provide distributions of discretionary remainder funds to the New York City Department of Youth and Community Development. It is determined that no changes to the proposed Management Plan Amendment are necessary after consideration of Comment 5.

COMMENTS & RESPONSES TO THE PROPOSED MANAGEMENT PLAN AMENDMENT

COMMENT 1 (Karl Reutling, via email from kreutling@twcny.rr.com): "The way I read the amended plan, it proposes a negative change in the percent of federal CSBG funding that goes to eligible entities by formula, from 94+-% to 91+-%. I am very opposed to this proposal."

RESPONSE TO COMMENT 1: Pursuant to New York State Executive Law section 159-f, the Secretary of State is authorized and empowered to "allocate federal community services block grant (CSBG) funds pursuant to contracts with recipients of such funds in the manner required by federal law." Federal law provides in pertinent part that, "Not less than 90 percent of the funds made available to a State under section 675A or 675B shall be used by the State to make grants for the purposes described in section 672 to eligible entities" (42 U.S.C. § 9907(a)(1); see also NY Exec. Law § 159-i). Therefore, it is within the parameters of the applicable federal and state law for the Secretary of State to distribute 91.4% of the federal CSBG funds to eligible entities. Further, the Secretary is empowered by federal and State law to use remaining grant funds for activities "supporting innovative programs and activities conducted by community action agencies or other neighborhood-based organizations to eliminate poverty, promote self-sufficiency, and promote community revitalization" (42 U.S.C. § 9907(b)(1)(F); see NY Exec. Law § 159-i). The Secretary of State has determined that the needs of the most disadvantaged New Yorkers would be best served by targeting a portion of CSBG funds to priority areas discussed by the Governor's Economic Security Cabinet. To effectuate this goal and achieve greater efficiency and effectiveness in the battle against poverty in the State of New York, a modification of distribution percentages was required. It should be noted that under the proposed Management Plan Amendment, the total funding received by an eligible entity may actually increase should that entity make an application for discretionary funds to implement an innovative program to combat poverty. Further, it should also be noted that this comment, while voicing general opposition, proposes no alternatives nor offers any facts to support its implied position that continuing the allocation percentage presently in place would represent a more effective way to support innovative programs to combat poverty.

COMMENT 2 (James H. Norman, President & CEO, Action for a Better Community, Inc. ("ABC")): This comment was made via letter dated July 14, 2008. The comment compliments the Department of State's past approach to addressing the needs of the poor in New York State through the allocation of CSBG funds to eligible entities. The comment notes that the proposed amendment will devote discretionary funds to priority areas, and states that "ABC supports the initiative to target discretionary funds to the designated priority areas". However, the comment expresses concern regarding the distribution of discretionary remainder funds, opposes any constraints placed on the use of discretionary funds, and proposes that "grantees should be permitted to use the new funds for other purposes" beyond the targeted priority areas, when grantees demonstrate that they have already devoted annual funds to the targeted areas.

RESPONSE TO COMMENT 2: Initially, the Department of State appreciates the complimentary remarks of ABC and acknowledges that it is the dedicated work of eligible entities, grantees,

community based organizations and their respective staffs and volunteers that fuel the many successes in the effort to combat poverty in New York State. With regard to the proposed distribution of discretionary remainder funds, the Secretary of State may utilize remaining grant funds for activities “supporting innovative programs and activities conducted by community action agencies or other neighborhood-based organizations to eliminate poverty, promote self-sufficiency, and promote community revitalization” (42 U.S.C. § 9907(b)(1)(F); see NY Exec. Law § 159-i). As these funds are provided by block grant, it is within the reasonable discretion of the Secretary to place parameters upon the use of such discretionary remainder funds in order to ensure that they are used in a manner which furthers the goals of the program. The Secretary of State has determined that the needs of the most disadvantaged New Yorkers would be best served by targeting a portion of CSBG funds to priority areas discussed by the Governor’s Economic Security Cabinet. While the comment notes that certain grantees may have already devoted significant funds to addressing the targeted priority areas, no claim has been made that community needs in these priority areas have been satisfied or are no longer unmet.

COMMENT 3 (Jeanne B. Mullgrav, Commissioner, New York City Department of Youth and Community Development): This comment was made via letter dated July 18, 2008 and was received by the New York State Department of State (NYS DOS) on July 21, 2008. The comment was submitted on behalf of the New York City Department of Youth and Community Development (DYCD), which is a New York City governmental entity and a Community Action Agency (CAA), in opposition to the proposed Management Plan Amendment and requesting that NYSDOS “revisit” and “reconsider” the proposed Management Plan Amendment. Several points of opposition are raised by DYCD in the comment. Initially, DYCD notes that the proposed Management Plan Amendment does not provide for distributions of discretionary remainder funds to DYCD or Livingston County Planning Department (a governmental entity and a CAA). DYCD states that it does not understand why it is not scheduled to receive disbursements of discretionary remainder funds in the proposed Management Plan Amendment and contends that its inability to receive distributions of these additional funds amounts to geographic “discrimination” which will result in an “improper racially discriminatory impact.” DYCD further states that the proposed Management Plan Amendment “undermines the CSBG statute’s admonition that no person on the basis of race or national origin ‘be excluded from participation in, be denied the benefits of, or be subjected to discrimination under this subtitle’”. In addition, DYCD argues that a failure to receive disbursements of discretionary remainder funds will impermissibly alter its “proportional share” of CSBG funding. At the conclusion of the comment, DYCD requests a hearing prior to the Management Plan Amendment being put into effect. Additionally, DYCD has submitted a statement explaining its reasons for “carrying a \$3.5 million rollover in CSBG funds from FFY 2007”.

RESPONSE TO COMMENT 3: The Secretary of State is authorized to “allocate federal community services block grant (CSBG) funds pursuant to contracts with recipients of such funds in the manner required by federal law” (Exec. Law § 159-f(2); see 42 U.S.C. § 9908(a)(1); Exec. Law § 159-f; see also Exec. Law § 159-e(6)). Federal and State law provide that “not less than 90 percent of the funds made available to a State under section 675A or 675B shall be used by the State to make grants for the purposes described in section 672 to eligible entities” (42 U.S.C. § 9907(a)(1); see Exec. Law § 159-i). It is within the authority of the Secretary of State

to amend the Management Plan to allow for the distribution 91.4 percent of the funds received by the State to eligible entities as opposed to 94.77 percent (see 42 U.S.C. § 9907(a)(1); Exec. Law § 159-i).

DYCD contends that a reduction of the percentage of total CSBG funds distributed to eligible entities from 94.77 percent to 91.4 percent will impermissibly alter its “proportional share” of funding (see 42 U.S.C. § 9908(b)(8); Exec. Law § 159-i). Federal law mandates that “any eligible entity in the State that received funding in the previous fiscal year through a community services block grant ... will not have its funding ... reduced below the proportional share of funding the entity received in the previous fiscal year” without notice and an opportunity for a hearing on the record (42 U.S.C. § 9908(b)(8)). New York State law has incorporated this assurance (see Exec. Law § 159-i). State law describes the proportional share as “the same proportion of community services block grant funds as was the proportion of funds received in federal fiscal year nineteen hundred eighty-one by such grantee ... as compared to the total amount received by all [eligible entities] ... in federal fiscal year nineteen hundred eighty-one” (Exec. Law § 159-i; see also Exec. Law § 159-e(1)). Therefore, the proportional share, which may not be reduced without notice and opportunity for a hearing, refers to the proportion of CSBG funds received by an eligible entity as compared to the total amount of CSBG funds distributed to all eligible entities by statutory allocation (see 42 U.S.C. § 9907(a)(1)). The proposed Management Plan Amendment will decrease the percentage of total CSBG funds to be distributed to eligible entities from 94.77 percent to 91.4 percent. Under the proposed Management Plan Amendment, 91.4 percent of the CSBG funds received by the State will be distributed to eligible entities. Each eligible entity will receive its due proportional share, which is equivalent to the amount distributed to it in the previous federal fiscal year by statutory allocation as compared to the total funds distributed to all eligible entities through statutory allocation not including supplemental grant awards. Thus, under the proposed Management Plan Amendment, the proportional share of each eligible entity will not be altered, in compliance with 42 U.S.C. § 9908(b)(8) and Executive Law § 159-i. Further, the distribution of discretionary funds, whether unencumbered prior year funds or a supplemental allocation, does not affect an eligible entity’s proportional share.

In its comment, DYCD “formally requests a hearing” pursuant to 42 U.S.C. § 9908(b)(8) and 42 U.S.C. § 9915(b), based on its contention that the proposed Management Plan Amendment would impermissibly reduce DYCD’s proportional share of funding. Federal law requires that “notice and an opportunity for a hearing on the record” be provided to determine whether “cause exists” prior to a state’s reduction of an eligible entity’s proportional share of CSBG funding (42 U.S.C. § 9908(b)(8); see 42 U.S.C. §§ 9915(a)(5), 9915(b)). Further, a determination to reduce the proportional share of funding of an eligible entity is reviewable by the Secretary of the Department of Health and Human Services upon request (see 42 U.S.C. § 9915(b)). Here, as described above, the proposed Management Plan Amendment will not reduce DYCD’s proportional share of CSBG funding. As no reduction in the proportional share of funding is intended or will be affected by the proposed Management Plan Amendment, no hearing pursuant to 42 U.S.C. § 9908(b)(8) is warranted.

DYCD contends that geographic or racial discrimination will result from the proposed Management Plan Amendment’s failure to include DYCD in distributions of discretionary remainder funds. This contention is misplaced, as the application of State Law requires this result. DYCD and Livingston County Planning Department (located in Western New York State) are both ineligible to receive distributions of discretionary remainder funds by operation of

New York State law (see Exec. Law § 159-i; see also Exec. Law § 159-e(4)). Additional “remainder” funds will be created under the proposed Management Plan Amendment due to the proposed change of total CSBG funds to be used for grants to eligible entities pursuant to 42 U.S.C. § 9907(a)(1) from 94.77 percent to 91.4 percent (42 U.S.C. §9907(b); Exec. Law § 159-i). Where a remainder of CSBG funds exists, a state may use that amount for “activities that may include ... supporting innovative programs and activities conducted by community action agencies or other neighborhood-based organizations to eliminate poverty, promote self-sufficiency, and promote community revitalization” or other activities fulfilling the purposes of the federal block grant program (42 U.S.C. § 9907(b)(1)(F); see 42 U.S.C. § 9907(b)(1)(H)). The State of New York, by statute, has placed additional restrictions on the use of such remainder funds (see Exec. Law § 159-i). State law requires the remainder of CSBG funds to be distributed in a distinct order of preference as follows: (1) “to Indian tribes and tribal organizations”; (2) to “community action agencies established in federal fiscal year nineteen hundred eighty-three”; (3) to “counties which do not have a community action agency in existence and seek to establish an organization which is consistent with the objectives of an eligible entity”; (4) to “limited purpose agencies which had received funding during federal fiscal year nineteen hundred eighty-one”; and (5) to “community based organizations” (Exec. Law § 159-i). No entities currently fall within categories (2), (3), or (4). Therefore, distribution of remainder funds must be made to Indian tribes, tribal organizations, and “community based organizations” (Exec. Law § 159-i). A “community based organization” is defined as “any organization *incorporated* for the purpose of providing services or other assistance to economically or socially disadvantaged persons within its designated community” (Exec. Law § 159-e(4) (emphasis added); see Exec. Law § 159-i). To be eligible to receive remainder funds under the laws of the State of New York, an organization must be incorporated for the purposes stated in Executive Law §159-e(4). Because DYCD is a governmental entity and not an “incorporated” organization, DYCD is not a community based organization and may not receive distributions of remainder funds under New York State law (see Exec. Law §§ 159-e(4), 159-i). Therefore, it is neither geographic nor racial animus that has prompted the proposed Management Plan Amendment's distribution formula for remainder funds, but, rather, compliance with applicable New York State law.

DYCD has also alleged that the proposed Management Plan Amendment will violate the federal mandate prohibiting discrimination on the basis of “race, color, national origin, or sex” (42 U.S.C. § 9918(c)(1)). No aspect of, or change within, the proposed Management Plan Amendment calls for, supports, intends or condones discrimination on the basis of “race, color, national origin, or sex” in any form. To that end, it should be noted that DYCD does not allege any discriminatory intent on the part of the Department of State. DYCD does, however, predict that the proposed Management Plan Amendment will have a disproportionate impact based on race and supports this supposition by citing recent census data concerning the City of New York. Under the proposed Management Plan Amendment, DYCD will receive \$30,313,080 dollars in federal fiscal year 2008. As described above, due to the constraints of Executive Law § 159-i and Executive Law § 159-e(4), DYCD and Livingston County Planning Department—as governmental entities—are not eligible to receive distributions of additional discretionary remainder funds. It is within the reasonable discretion of the Secretary of State to use remainder CSBG funds to assist programs throughout the State of New York which address those priority areas discussed by the Governor’s Economic Security Cabinet.

COMMENT 4 (Aaron E. Wicks, Ph.D., Rochester, New York 14620): This comment was submitted by a member of the general public via e-mail on July 20, 2008. The comment opposes the proposed Management Plan Amendment. The comment states that "The proposed CSBG Management Plan Amendment for Fiscal years 2008-2009 represents a chilling departure from the history of community action" and voices extreme displeasure with the proposed targeting of discretionary remainder fund distributions towards projects addressing specific priority areas discussed by the Governor's Economic Security Cabinet.

RESPONSE TO COMMENT 4: The Secretary of State may utilize remaining grant funds for activities "supporting innovative programs and activities conducted by community action agencies or other neighborhood-based organizations to eliminate poverty, promote self-sufficiency, and promote community revitalization" (42 U.S.C. § 9907(b)(1)(F); see NY Exec. Law § 159-i). As these funds are provided by block grant, it is within the reasonable discretion of the Secretary to place parameters upon the use of such discretionary remainder funds in order to ensure that they are used in a manner which furthers the goals of the program. This comment does not argue that the priority areas specified by the Secretary of State are inapplicable to certain localities or that needs in the specified priority areas have been fully satisfied in any area within the State of New York.

COMMENT 5 (Ronald Soloway, Managing Director, Government and External Relations, UJA-Federation of New York, and Nancy Wackstein, Executive Director, United Neighborhood Houses): This comment is was submitted by letter dated July 21, 2008 on behalf of two New York City community based organizations served by New York City Department of Youth and Community Development. The comment opposes the distribution formula for discretionary remainder funds proposed by the Management Plan Amendment, stating, "this would deprive New York City of \$1,025,021 dollars, and we respectfully urge you to re-consider the proposed allocations to include this amount for DYCD." The comment also states that federal law requires that the State provide an assurance that the proportional share of funds distributed to each eligible entity will not be in violation of 42 U.S.C. § 9908(b)(8) and New York State Executive Law § 159-i.

RESPONSE TO COMMENT 5: As addressed in the Department of State's "Response to comment 3," to be eligible to receive remainder funds under the laws of the State of New York, an organization must be incorporated for the purposes stated in Executive Law §159-e(4). Because DYCD is a governmental entity and not such an "incorporated" organization, DYCD is not a community based organization and may not receive distributions of remainder funds under New York State law (see Exec. Law §§ 159-e(4), 159-i). Additionally, and also as described in the "Response to Comment 3," the proposed Management Plan Amendment will not reduce the proportional share of funds received by DYCD in violation of the assurance mandated by 42 U.S.C. § 9908(b)(8) and Executive Law § 159-i.