

# RULE MAKING ACTIVITIES

Each rule making is identified by an I.D. No., which consists of 13 characters. For example, the I.D. No. AAM-01-96-00001-E indicates the following:

- AAM -the abbreviation to identify the adopting agency  
01 -the *State Register* issue number  
96 -the year  
00001 -the Department of State number, assigned upon receipt of notice.
- E -Emergency Rule Making—permanent action not intended (This character could also be: A for Adoption; P for Proposed Rule Making; RP for Revised Rule Making; EP for a combined Emergency and Proposed Rule Making; EA for an Emergency Rule Making that is permanent and does not expire 90 days after filing.)

Italics contained in text denote new material. Brackets indicate material to be deleted.

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## Department of Audit and Control

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### PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

#### Eligible Rollover Distributions

**I.D. No.** AAC-17-12-00006-P

PURSUANT TO THE PROVISIONS OF THE State Administrative Procedure Act, NOTICE is hereby given of the following proposed rule:

**Proposed Action:** This is a consensus rule making to amend section 356.3 of Title 2 NYCRR.

**Statutory authority:** Retirement and Social Security Law, sections 11 and 311

**Subject:** Eligible rollover distributions.

**Purpose:** To conform the current regulation with the provisions of the Federal pension Protection Act of 2006.

**Text of proposed rule:** PART 356. NEW ROLLOVER AND WITHHOLDING RULES PURSUANT TO THE UNEMPLOYMENT COMPENSATION AMENDMENTS OF 1992 AND THE PENSION PROTECTION ACT OF 2006

\* Section 356.3.\* Definitions.

(a) Eligible rollover distribution. An eligible rollover distribution is any distribution of all or any portion of the balance to the credit of the distributee, except that an eligible rollover distribution does not include: any distribution that is one of a series of substantially equal periodic payments (not less frequently than annually) made for the life (or life expectancy) of the distributee or the joint lives (or joint life expectancies) of the distributee and the distributee's designated benefi-

ciary, or for a specified period of 10 years or more; any distribution to the extent such distribution is required under section 401(a)(9) of the *Internal Revenue Code*; and the portion of any distribution that is not includible in gross income; and any other distribution(s) that is reasonably expected to total less than \$200.00 during a year (determined without regard to the exclusion for net unrealized appreciation with respect to employer securities). A portion of a distribution shall not fail to be an eligible rollover distribution merely because the portion consists of after-tax employee contributions which are not includible in gross income. However, such portion may be transferred only to an eligible plan if the plan provides for separate accounting for amounts so transferred (including interest thereon) including separately accounting for the portion of such distribution which is includible in gross income and the portion of such distribution which is not so includible.

(b) Eligible retirement plan. An eligible retirement plan is an individual retirement account described in section 408(a) of the *Internal Revenue Code*, an individual retirement annuity described in section 408(b) of the *Internal Revenue Code*, an annuity plan described in section 403(a) of the *Internal Revenue Code*, an annuity contract described in section 403(b) of the *Internal Revenue Code* which is maintained by a state, political subdivision of a state, or any agency or instrumentality of a state or political subdivision of a state and which agrees to separately account for amounts transferred into such plan, effective January 1, 2008, a Roth IRA subject to the limitations set forth in section 408A of the *Internal Revenue Code*, or a qualified trust described in section 401(a) of the *Internal Revenue Code*, that accepts the distributee's eligible rollover distribution. [However, in the case of an eligible rollover distribution to the surviving spouse, an eligible retirement plan is an individual retirement account or individual retirement annuity.]

(c) Distributee. A distributee includes a member or former member. In addition, the member's or former member's surviving spouse and the member's or former member's spouse or former spouse who is the alternate payee under a qualified domestic relations order, as defined in section 414(p) of the *Internal Revenue Code*, are distributees with regard to the interest of the spouse or former spouse. Effective April 1, 2010, a distributee also includes the member's non-spouse designated beneficiary. In the case of a non-spouse beneficiary, the direct rollover may be made only to an individual retirement account or annuity described in section 480(a) or section 408(b) of the *Internal Revenue Code* ("IRA"), that is established on behalf of the designated beneficiary and that will be treated as an inherited IRA pursuant to the provisions of section 402(c)(11) of the *Internal Revenue Code*, as added by the Pension Protection Act of 2006.

(d) Direct rollover. A direct rollover is a payment by the New York State and Local Retirement Systems to an eligible retirement plan specified by the distributee.

**Text of proposed rule and any required statements and analyses may be obtained from:** Jamie Elacqua, Office of the State Comptroller, 110 State Street, Albany, NY 12236, (518) 473-4146, email: jelacqua@osc.state.ny.us

**Data, views or arguments may be submitted to:** Same as above.

**Public comment will be received until:** 45 days after publication of this notice.

#### Consensus Rule Making Determination

This is a consensus rulemaking proposed for the sole purpose of conforming the existing text of Section 356.3 of Title 2 of NYCRR to the require-

ments of the Federal Pension Protection Act of 2006. These technical amendments relate to eligible rollover distributions and it has been determined that no person is likely to object to the adoption of the rule as written.

### PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

#### Loans to Members of the Retirement System

**I.D. No.** AAC-17-12-00017-P

PURSUANT TO THE PROVISIONS OF THE State Administrative Procedure Act, NOTICE is hereby given of the following proposed rule:

**Proposed Action:** This is a consensus rule making to amend Part 351 of Title 2 NYCRR.

**Statutory authority:** Retirement and Social Security Law, sections 11 and 311

**Subject:** Loans to members of the retirement system.

**Purpose:** To implement the procedural rules necessary to administer the loans provisions of the RSSL for Tiers 5 and 6.

**Text of proposed rule:** PART 351. LOANS TO TIER 3, [AND] 4, 5 AND 6 MEMBERS

Section 351.1.\* Background.

(a) Chapter 920 of the Laws of 1990 created a statutory program under which Tier 3 (Retirement and Social Security Law, section 517-c) and Tier 4, 5 and 6 (Retirement and Social Security Law, section 613-b) members of the New York State and Local Employees' Retirement System may borrow from their accumulated member contributions. *Chapter 171 of the Laws of 2011 created such a program for Tier 5 and 6 (Retirement and Social Security Law, section 1207) members of the New York State and Local Police and Fire Retirement System.* Sections 517-c, [and] 613-b and 1207 expressly authorize the retirement systems to adopt rules and regulations for administering the provisions of those sections. Sections 519 and 614 of the Retirement and Social Security Law authorize the Comptroller to adopt rules and regulations governing procedural matters applicable to Tier 3 and 4 members of the retirement system.

(b) Pursuant to such authority, this Part is being promulgated to implement procedural rules the retirement systems find necessary to administer the loan provisions, and to provide a clear and consolidated restatement of the rules provided in Retirement and Social Security Law, sections 517-c, [and] 613-b and 1207.

Section 351.2.\* Maximum loan amount.

A member may not borrow more than 75 percent of his or her accumulated contributions. In the case of a loan to a member who already has an outstanding loan balance from a previous loan or loans, the amount of such loan may not exceed an amount, which when added to the outstanding balance of previous loans, will exceed 75 percent of the member's accumulated contributions. *The amount of all loans outstanding shall not exceed the limitations of Internal Revenue Code section 72(p).*

Section 351.3.\* Application for loans.

Applications for loans shall be executed by members on forms prepared by the retirement system.

Section 351.4.\* Frequency of loans.

A member may only borrow once during any 12-month period.

Section 351.5.\* Rate of interest.

The rate of interest payable upon loans made pursuant to this section shall be one percent less than the valuation rate of interest adopted for the retirement systems. However, in no event shall such rate be less than the rate set forth in subdivision (c) of section 517 of the Retirement and Social Security Law, with respect to Tier 3 members of the *New York State and Local Employees' Retirement System*, or the rate set forth in subdivision (c) of section 613 of the Retirement and Social Security Law, with respect to Tier 4, 5 and 6 members of the *New York State and Local Employees' Retirement System*. Any change in the interest rate shall become effective on April 1st. However, the rate of interest applicable to any loan shall be fixed at the time the loan is made and shall not be affected by subsequent changes in the rate of interest applicable to new loans.

Section 351.6.\* Repayment.

(a) Amounts borrowed, together with interest on any unpaid balance, shall be repaid in equal installments which shall be in such amount as the retirement system shall approve; however, they shall be at least two percent of the member's salary and sufficient to repay the amount borrowed, together with interest on the unpaid balances thereof, within a period not in excess of five years.

(b) In the case of a member employed in public service of the State or a participating employer in the retirement system, repayment in such installments shall be made through regular payroll deductions.

(c) In the case of a member who has separated from the service of the State or participating employer in the retirement system, payment shall be made directly to the retirement system in installments of not less than \$50; provided further that only one payment may be made during any calendar month.

(d) The member shall pay a service charge on each loan, to be deducted at the time the loan is made. The service charge on loans shall be at a rate to be determined, from time to time, by the Comptroller. Any change in the applicable service charge shall become effective on April 1st and applicable to all loans made during the fiscal year (April 1st - March 31st).

(e) *Loan repayments will be suspended during a member's period of military service in accordance with the provisions of Section 414(u) of the Internal Revenue Code of 1986, as amended.*

Section 351.7.\* Loan insurance.

All loans shall be covered by loan insurance commencing 30 days following the date of the making of the loan, as required by sections 517-c, [and] 613-b and 1207 of the Retirement and Social Security Law. Changes in the loan insurance rate shall become effective on April 1st.

**Text of proposed rule and any required statements and analyses may be obtained from:** Jamie Elacqua, Office of the State Comptroller, 110 State Street, Albany, NY 12236, (518) 473-4146, email: jelacqua@osc.state.ny.us

**Data, views or arguments may be submitted to:** Same as above.

**Public comment will be received until:** 45 days after publication of this notice.

#### Consensus Rule Making Determination

This is a consensus rulemaking proposed for the purpose of implementing the procedural rules of the retirement system necessary to administer the loan provisions of the RSSL. These amendments solely relate to such procedural rules and it has been determined that no person is likely to object to the adoption of the rule as written.

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## Education Department

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### EMERGENCY RULE MAKING

#### Annual Professional Performance Reviews for Classroom Teachers and Building Principals

**I.D. No.** EDU-23-11-00006-E

**Filing No.** 280

**Filing Date:** 2012-04-04

**Effective Date:** 2012-04-04

PURSUANT TO THE PROVISIONS OF THE State Administrative Procedure Act, NOTICE is hereby given of the following action:

**Action taken:** Amendment of section 100.2(o); and addition of Subpart 30-2 to Title 8 NYCRR.

**Statutory authority:** Education Law, sections 101(not subdivided), 207(not subdivided), 215(not subdivided), 305(1) and (2), and 3012-c(1)-(8), as added by L. 2010, ch. 103, and amended by L. 2012, ch. 21 (as enacted by S.6732/A.9554)

**Finding of necessity for emergency rule:** Preservation of general welfare.

**Specific reasons underlying the finding of necessity:** The proposed rule is necessary to implement Education Law section 3012-c, as added by Chapter 103 of the Laws of 2010 and amended by Chapter 21 of the Laws of 2012 (as enacted by S.6732/A.9554), relating to the annual professional performance review of classroom teachers and building principals. The proposed rule implements the statute by adding a new Subpart 30-2 to the Rules of the Board of Regents to establish the requirements for the evaluation system pursuant to the statute and make conforming amendments to section 100.2(o) of the Regulations of the Commissioner of Education.

On May 28, 2010, the Governor signed Chapter 103 of the Laws of 2010, which added a new section 3012-c to the Education Law, establishing a comprehensive evaluation system for classroom teachers and building principals. An emergency rule was adopted at the May 2011 Regents meeting to implement Chapter 103 of the Laws of 2010, with the provisions regarding a new Subpart 30-2 becoming effective on May 20, 2011 and the amendments to section 100.2(o) becoming effective on July 1, 2011.

On June 28, 2011, litigation was commenced against the proposed rule in State Supreme Court. On August 24, 2011, State Supreme Court, Albany County (Lynch, J.) issued a Decision and Order in *New York State United Teachers, et al. v. Board of Regents, et al.* finding sections 30-2.4(c)(3)(d), 30-2.4(d)(1)(iii), 30-2.4(d)(1)(iv)(c), 30-2.12(b), 30-2.1(d) and 2.11(c), and 30-2.6(a)(1) of the proposed regulations invalid to the extent set forth in the Decision and Order. An appeal is being taken from that Decision and Order. The appeal has been held in abeyance due to settlement negotiations and in anticipation of legislation to address the issues in the litigation.

The proposed rule was subsequently readopted by emergency action at the July 18-19, 2011, September 12-13, 2011, November 14, 2011 and January 9-10, 2012 Regents meetings.

Substantial revisions have now been made to the proposed rule in order to conform the rule to and implement the provisions of Chapter 21 of the Laws of 2012 as enacted in S.6732/A.9554, which law is made immediately effective; except for the appeals process in the City of New York as prescribed in the law, which is generally made effective on January 16, 2013, subject to collective bargaining. The appeals process in the city of New York is not included in the proposed rule.

Since the Board of Regents meets only at prescribed intervals, the earliest the revised proposed rule can be presented for adoption, after publication of a Notice of Revised Rule Making in the State Register and expiration of the 30-day public comment period prescribed in State Administrative Procedure Act (SAPA) section 202(4-a), is the May 21-22, 2012 Regents meeting. However, the January emergency adoption was filed with the Department of State on February 3, 2012 and will expire on April 3, 2012. A lapse in the rule's effective date will disrupt administration of the annual professional performance review of classroom teachers and building principals required under Education Law section 3012-c. Another emergency adoption is therefore necessary at the March 19-20, 2012 Regents meeting to ensure the emergency rule, as revised, remains continuously in effect until it can be adopted as a permanent rule.

The rule is being adopted as an emergency measure upon a finding by the Board of Regents that such action is necessary for the preservation of the general welfare in order to immediately revise the rule to conform to and implement the provisions of Chapter 21 of the Laws of 2012 (as enacted in S.6732/A.9554) relating to the annual professional performance review of classroom teachers and building principals and thereby ensure that school districts and BOCES are given sufficient notice of the new APPR requirements to timely implement them in accordance with the statute, and to otherwise ensure that the emergency rule, as revised, remains continuously in effect until it can be adopted as a permanent rule.

It is anticipated that the proposed rule will be presented for adoption as a permanent rule at the May 21-22, 2012 Regents meeting, which is the first scheduled meeting after publication of a Notice of Revised Rule Making in the State Register and expiration of the 30-day public comment period prescribed in State Administrative Procedure Act section 202(4-a).

**Subject:** Annual professional performance reviews for classroom teachers and building principals.

**Purpose:** Establish standards and criteria for conducting annual professional performance reviews of classroom teachers and building principal.

**Substance of emergency rule:** The Commissioner of Education proposes to amend section 100.2(o) of the Commissioner's Regulations and add a new Subpart 30-2 to the Rules of the Board of Regents, to implement Education Law section 3012-c, as added by Chapter 103 of the Laws of 2010 and as amended by a Chapter of the Laws of 2012 (S.6732/ A.9554), by establishing standards and criteria for conducting annual professional performance reviews of classroom teachers and building principals employed by school districts and boards of cooperative educational services.

Since publication of a Notice of Emergency Adoption and Proposed Rule Making in the State Register on June 8, 2011, substantial revisions have been made to the proposed rule as set forth in the Revised Regulatory Impact Statement submitted herewith. The following is a summary of the substance of the revised proposed rule.

Section 100.2(o) is amended to clarify that classroom teachers who are not subject to the provisions of Education Law section 3012-c in

the 2011-2012 school year must still comply with the existing annual professional performance review set forth in section 100.2(o). A new provision was also added to section 100.2(o) to require that beginning July 1, 2011, all building principals that are not required to be evaluated under Education Law § 3012-c must be evaluated on an annual basis based on a plan agreed to by the building principal and the governing body of the school district or BOCES.

A new Subpart 30-2 is added to the Rules of the Board of Regents to establish requirements for the new annual professional performance review (APPR) system established by Education Law section 3012-c.

Section 30-2.1 sets forth applicability provisions. For the 2011-2012 school year, school districts shall ensure that the APPR of all classroom teachers of common branch subjects or English language arts or mathematics in grades four to eight, and of all building principals of schools in which such teachers are employed, are conducted in accordance with the requirements of section 3012-c and Subpart 30-2; and that reviews of classroom teachers and building principals (other than classroom teachers in the common branch subjects or English language arts (ELA) or mathematics in grades four to eight) are conducted in accordance with section 100.2(o) of the Commissioner's regulations.

For an APPR conducted in the 2012-2013 school year and thereafter, the school district or BOCES shall ensure that the reviews of all classroom teachers and building principals are conducted in accordance with the requirements of section 3012-c and Subpart 30-2. However, nothing shall be construed to preclude a school district or BOCES from adopting an APPR for the 2011-2012 school year that applies to all classroom teachers and building principals in accordance with this Subpart or for BOES, for classroom teachers of common branch subjects or English language arts or mathematics in grades four to eight and all building principals in which such teachers are employed.

The section also provides that nothing in Subpart 30-2 shall abrogate any conflicting provisions of any collective bargaining agreement in effect on July 1, 2010 during the term of such agreement and until the entry into a successor collective bargaining agreement, at which time the provisions in Subpart 30-2 will apply.

This section further provides that nothing shall be construed to affect the statutory rights of a school district or BOCES to terminate a probationary teacher or principal for statutorily and constitutionally permissible reasons other than the performance of the teacher or principal in the classroom or school, including but not limited to misconduct.

Section 30-2.2 provides definitions for certain terms used in the Subpart.

Section 30-2.3 sets forth the content requirements for APPR plans submitted under Subpart 30-2. By September 1, 2011, each school district shall adopt an APPR plan for its classroom teachers of common branch subjects, ELA or mathematics in grades four to eight and building principals of schools in which such teachers are employed. By July 1, 2012, each school district/BOCES shall adopt and submit an APPR plan to the Commissioner for approval, on a form prescribed by the Commissioner, which may be an annual or multi-year plan, for the APPR of all of its classroom teachers and building principals. The Commissioner shall be required to approve or reject the plan by September 1, 2012. To the extent that by July 1, 2012 or by July 1 of any subsequent year, any of the items required to be included in the plan are not finalized by such date, as a result of unresolved collective bargaining negotiations, the entire plan shall be submitted to the Commissioner upon resolution of its terms.

Section 30-2.4 sets forth requirements for evaluating classroom teachers of common branch subjects, ELA or mathematics in grades four to eight for the 2011-2012 school year. 20 points of the evaluation will be based on student growth on State assessments or other comparable measures and 20 points will be based on locally selected measures as described in the section. 60 points of the evaluation will be based on multiple measures of teacher and principal effectiveness as described in this section. A teacher's performance must be assessed based on a teacher practice rubric(s) approved by the Department. A principal's performance must be assessed based on an approved

principal practice rubric. Provision is made for granting a variance for use of existing rubrics. At least 31 of the 60 points for teachers shall be based on multiple classroom observations. At least 31 of the 60 points for principals shall be based on a broad assessment of the principal's leadership and management actions by the principal's supervisor or a trained independent evaluator. This section also prescribes options for any remaining points of the 60 points.

Section 30-2.5 sets forth requirements for evaluating all classroom teachers and building principals for the 2012-2013 school year and thereafter. The section explains how the requirements for the State assessment and locally selected measures subcomponents will differ, including the points assigned for each subcomponent, depending on whether the Board of Regents has approved a value-added growth model for particular grades, courses. This section also describes the options that may be used for the State assessment subcomponent for non-tested subjects, the options for locally selected measures and the other measures of teacher and principal effectiveness.

Section 30-2.6 describes the procedures for scoring and rating the evaluations, including a requirement that the rating category ("Highly Effective", "Effective", "Developing", or "Ineffective") assigned to teacher and building principal is determined by a single composite effectiveness score that is calculated based on the scores received by the teacher or principal in each of the subcomponents. This section prescribes specific scoring ranges for each rating category for the State assessment subcomponent and the locally selected measures subcomponent and the overall rating categories.

Section 30-2.7 describes the criteria and approval process for teacher and principal practice rubrics to be used in the evaluation of teachers and building principals.

Section 30-2.8 describes the criteria and approval process for student assessments to be used in the evaluation of teachers and building principals.

Section 30-2.9 describes requirements for the training of evaluators and the training and certification of lead evaluators.

Section 30-2.10 describes requirements for teacher and principal improvement plans.

Section 30-2.11 describes requirements for appeals procedures through which an evaluated teacher or principal may challenge their APPR and provides that appeals must be timely and expeditious.

Section 30-2.12 provides that the Department will annually monitor and analyze trends and patterns in teacher and principal evaluation results and data to identify districts, BOCES and/or schools where evidence suggests that a more rigorous evaluation system is needed to improve educator effectiveness and student learning outcomes. A school, district or BOCES identified by the Department may be highlighted in public reports and/or the Commissioner may order a corrective action plan, which may include, but not be limited to, a requirement that the school district or BOCES arrange for additional professional development, provide in-service training and/or utilize independent trained evaluators to review the efficacy of the evaluation system, where appropriate.

**This notice is intended** to serve only as a notice of emergency adoption. This agency intends to adopt the provisions of this emergency rule as a permanent rule, having previously submitted to the Department of State a notice of proposed rule making, I.D. No. EDU-23-11-00006-EP, Issue of June 8, 2011. The emergency rule will expire June 2, 2012.

**Text of rule and any required statements and analyses may be obtained from:** Mary Gammon, NYS Education Department, Office of Counsel, 89 Washington Avenue, Room 112, Albany, NY 12234, (518) 474-6400, email: legal@mail.nysed.gov

#### **Regulatory Impact Statement**

##### **1. STATUTORY AUTHORITY:**

Education Law section 101 charges the Department with the general management and supervision of the educational work of the State and establishes the Regents as head of the Department.

Education Law section 207 grants general rule-making authority to the Regents to carry into effect State educational laws and policies.

Education Law section 215 authorizes the Commissioner to require reports from schools under State educational supervision.

Education Law section 305(1) authorizes the Commissioner to

enforce laws relating to the State educational system and execute Regents educational policies. Section 305(2) provides the Commissioner with general supervision over schools and authority to advise and guide school district officers in their duties and the general management of their schools.

Education Law section 3012-c, as added by Chapter 103 of the Laws of 2010 and amended by Chapter 21 of the Laws of 2012, establishes requirements for the conduct of annual professional performance reviews (APPR) of classroom teachers and building principals employed by school districts and boards of cooperative educational services (BOCES).

##### **2. LEGISLATIVE OBJECTIVES:**

The proposed rule is consistent with the above authority vested in the Regents and Commissioner to carry into effect State educational laws and policies, and is necessary to implement Education Law section 3012-c, as amended by Chapter 21 of the Laws of 2012, by prescribing criteria for APPR of classroom teachers and building principals.

##### **3. NEEDS AND BENEFITS:**

Education Law section 3012-c establishes a comprehensive evaluation system for classroom teachers and building principals. This evaluation system is a critical element of the Regents reform agenda—an agenda aimed at improving teaching and learning in New York and increasing the opportunity for all students to graduate from high school ready for college and careers.

A primary objective of the evaluation system is to foster a culture of continuous professional growth. The system's three components are designed to complement one another:

- Statewide student growth measures will identify those educators whose students' progress exceeds that of their peers, as well as those whose students are falling behind compared to similar students.

- Locally selected measures of student achievement will reflect local priorities, needs, and targets.

- Teacher observations, school visits, and other measures will provide educators with detailed, structured feedback on their professional practice.

Together, this information will be used to tailor professional development and support for educators to grow and improve their instructional practices, with the ultimate goal of ensuring an effective teacher in every classroom and an effective leader in every school.

##### **4. COSTS:**

###### **a. Costs to State government:**

The rule implements Education Law section 3012-c and does not impose any costs on State government, including the State Education Department, beyond those costs imposed by the statute.

###### **b. Costs to local government:**

Education Law section 3012-c, as added by Chapter 103 of the Laws of 2010 and as amended by Chapter 21 of the laws of 2012 as proposed by S.6732/A.9554, establishes requirements for the conduct of annual professional performance reviews (APPR) of classroom teachers and building principals employed by school districts and boards of cooperative educational services (BOCES).

The estimated value of staff time discussed here are based on the following: (1) an estimated hourly rate for teachers of \$46.46 (based on an average annual teacher salary of \$66,902 divided by 1,440 hours per school year); (2) an estimated hourly rate for principals of \$71.90 (based on an average annual principal salary of \$126,544 divided by 1,760 hours per school year); and (3) an estimated hourly rate for superintendents of \$85.71 (based on a median annual superintendent of schools salary of \$150,850 divided by 1,760 hours per school year). The Department anticipates that the proposed rule will require the estimated value of staff time of school districts/BOCES employees. The estimated value of staff time below assume that school districts and BOCES employees will need to dedicate extra time to accomplish the duties required by the statute and/or the proposed rule. However, most districts and BOCES are or should be performing these activities currently, but the State does not have data on the amount of hours currently dedicated to these activities. Moreover, in 2010, the Depart-

ment was awarded a nearly \$700 million in Race to the Top grant award, of which it is estimated that approximately \$460 million of these funds have been or will be made available to school districts and BOCES and portions of those monies will be available to offset some of the estimated value of staff time.

#### State assessments or Other Comparable Measures

The statute requires that 20% of a teacher or principal's evaluation be based on student growth on State assessments or other comparable measures (increases to 25% upon implementation of a value-added growth model). There are no additional costs or staff time beyond that time imposed by statute for evaluating a teacher based on State assessments.

For non-tested subjects where there is no approved growth or value-added model for such grade/subject, the proposed amendment requires the district/BOCES to evaluate teachers and principals using a State-determined district- or BOCES-wide student growth goal setting process with an approved student assessment or a district, BOCES or regional assessment provided that it is rigorous and comparable across classrooms. The Department estimates that for non-tested subjects, a teacher or principal will spend approximately 4 hours to set his/her goals for the year and that a principal/superintendent will take approximately 1 hour per year to work with a teacher/principal on the goal setting process. Based on the estimated hourly rates described above, the Department estimates that the goal-setting process will require an estimated value of school district/BOCES staff time of \$257.74 per teacher (4 teacher hours to set goals plus 1 principal hour to review goals with teacher) and \$373.31 per principal (4 principal hours to set goals plus 1 superintendent hour to review goals with principal).

The goal-setting process also requires the use of a student assessment. In core subjects where no State assessment or Regents examination exists for such grades/subjects, the district/BOCES must use the goal setting process with an approved third-party assessment (at a cost per student of \$10-\$20 per student) or a Department-approved alternative examination (which the Department expects would have no additional cost) or a district, regional or BOCES-developed assessment (which the Department expects would have minimal costs, if any). For all other non-tested grades/subjects, districts must use the goal-setting process with either a State assessment (which will have no additional cost), an approved third-party assessment (at a cost of \$10-\$20 per student), a district-, regional or BOCES-created assessment or a school- or BOCES-wide, group or team results based on State assessments.

#### Locally Selected Measures

An additional 20% of the evaluation must be based on locally selected measures. The statute provides districts/BOCES with several options for this component in the 2012-2013 school year (decreases to 15% upon implementation of a value-added growth model). For teacher evaluations in the 2012-2013 school year and thereafter, the statute provides the following options: approved third-party assessments; district-, regional- or BOCES-developed assessments; a school-wide measure of student growth or achieved based on prescribed options; student achievement or growth on State assessments, Regents examinations and/or Department approved alternative examinations based on prescribed options listed in the statute, using a measure that is different from the growth score used for purposes of the state assessment or other comparable measures component; and where applicable, for teachers in any grade or subject where there is no growth or value-added growth model approved by the board of regents at that grade level or in that subject, a structured district-wide student growth goal-setting process to be used with any State assessment, or an approved student assessment or a district, regional or BOCES developed assessment. The proposed amendment does not impose costs beyond those costs imposed by the statute. If districts/BOCES select the State assessment option or use of the group or team metric, the Department estimates that there are no additional costs or estimated value of staff time. If the district/BOCES uses the goal-setting process, the estimated value of staff time is the same as those described above for a goal-setting process. If the district/BOCES already uses a student assessment from the State's approved list, which

the Department expects will be the case in many instances, there will be no additional costs imposed by the proposed amendment. If a district/BOCES does not already use an approved local assessment and does not opt to use a measure based on a State assessment, the Department estimates the cost of purchasing a third-party student assessment will cost approximately \$10-\$20 per student, depending on the particular assessment selected.

For principals, the statute provides many options for the locally selected measures subcomponent for the 2012-2013 school year, which include, but are not limited to, student achievement on State assessments in grades 4-8 ELA and/or math for certain subgroups and/or based on the percentage of students in the school at certain performance levels and/or for students in each of the performance levels on the State assessments (proficient or advanced), student performance on district-wide locally selected measures approved for use in teacher evaluations, graduation and drop out rates for high school grades, progress toward graduation, etc. The proposed amendment does not impose costs or staff time beyond those imposed by the statute. As described above, if the district/BOCES selects a locally selected measure based on State assessments, Regents examinations, graduation rates, the percent of students who earn a Regents diploma, Department approved alternative examination or progress toward graduation rates, the Department expects these costs and staff time to be negligible and to be absorbed by existing staff. If the district/BOCES selects student performance on any or all of the district-wide locally selected measures for teachers, the Department expects that there will be no additional cost or estimated value of staff time for principals if the costs or estimated value of staff time were already incurred for teachers.

#### Other Measures

For the remaining 60% of the evaluation, the statute requires that a majority (31) of a teacher's 60 points be based on multiple classroom observations for teachers by a principal or other trained administrator, at least one of which must be unannounced in the 2012-2013 school year and a majority (31) of a principal's 60 points be based on a broad assessment of the principal's leadership and management actions by the building principal's supervisor, a trained administrator or a trained independent evaluator which incorporates multiple school visits, with at least one visit by the supervisor, and at least one unannounced visit in the 2012-2013 school year. The statute also prescribes specific requirements for the remaining portion of the 60 points for teachers and principals and the proposed amendment merely reiterates those requirements. Therefore, the proposed amendment does not impose any additional estimated value of staff time beyond that staff time imposed by statute.

The proposed amendment also requires that the 60 points be assessed based on a teacher or principal practice rubric approved by the Department or a rubric approved through a variance process. The Department estimates that more than one rubric on the State's approved list will be available to districts/BOCES at no cost. While some rubrics may offer training for a fee and others may require proprietary training, any costs incurred for training are costs imposed by the statute. Many rubric providers do not require a school district/BOCES to receive training through the provider and some providers even provide free online training. The Department estimates that districts/BOCES can obtain a principal practice in the following range: \$0-\$360 per principal evaluated. Some principal practice rubrics may charge an additional fee for training on the rubric, although most rubric providers do not require a user to receive training through the rubric provider.

#### Reporting and Data Collection

The proposed amendment requires that school districts or BOCES annual professional performance review plan describe how the district or BOCES will report information to the Department on enrollment and attendance data and any other student, teacher, school, course and teacher/student linkage data. The majority of this data is required to be reported under the America COMPETES Act (20 U.S.C. 9871). Therefore, no additional costs are imposed by the proposed amendment. To the extent that such information is not required to be reported under federal law, the Department expects that most districts/

BOCES already compile this information and, therefore, these reporting requirements are minimal and should be absorbed by existing district or BOCES resources.

The proposed amendment also requires that every teacher and principal be provided an opportunity to verify the subjects and/or student rosters assigned to them. The Department estimates that it will take a teacher 4 hours to review his/her student roster. This will require an estimated value of staff time of \$185.84 per teacher. For principals, the Department estimates that it will take a principal 8 hours to review his/her student roster. This will require an estimated value of staff time of \$575.20 per principal.

As for the additional reporting requirements contained in section 30-2.3 of the Rules of the Board of Regents, school districts or BOCES are required to report many of these requirements under the existing APPR regulations (section 100.2[o]) - i.e., explanation of evaluation system used and description of timely and constructive feedback) and the Department expects that most districts or BOCES would put their evaluation process, including appeal procedures in writing and, therefore, reporting of such information would not impose any additional staff time on a school district or BOCES.

#### Vested Interest

The proposed amendment also requires that districts certify that teachers and principals not have a vested interest in the test results of students whose assessments they score. The Department believes that most districts already have this security mechanism in place. However, in the event a district currently allows a teacher to score their own assessment, the Department expects that districts/BOCES can assign other teachers or faculty to score such assessments. Therefore, the Department believes that estimated value of staff time imposed by this requirement, if any, are minimal.

#### Scoring

The statute requires that a teacher receive a teacher or principal composite effectiveness score based on their score on three subcomponents (student growth on State assessments or other comparable measures; locally selected measures of student achievement and other measures of teacher and principal effectiveness). The proposed amendment sets forth the scoring ranges for the rating categories in two of these subcomponents and overall rating categories as prescribed by the statute. The proposed amendment does not require any additional staff time beyond that time imposed by statute.

#### Training

The statute requires that all evaluators be properly trained before conducting an evaluation. The proposed amendment requires that a lead evaluator be certified by the district/BOCES before conducting and/or completing a teacher's or principal's evaluation and that evaluators be properly trained. Since the training is required by statute, the only additional estimated value of staff time imposed are associated with the district or BOCES' certification and recertification of lead evaluators, which are expected to be negligible and capable of absorption using existing staff and resources.

#### Teacher and Principal Improvement Plans and Appeal Procedures

The statute also requires school districts/BOCES to develop teacher and principal improvement plans (TIP or PIP) for teachers rated ineffective or developing and to develop an appeals procedure through which a teacher or principal may challenge their APPR. The proposed amendment reiterates these statutory requirements and does not require any additional staff time on districts/BOCES relating to the development of TIP/PIPs or an appeal procedure, beyond those imposed by statute.

c. Costs to private regulated parties: None. The rule applies to annual professional performance reviews of teachers and building principals that are conducted by school districts/BOCES and does not impose any costs on private parties.

d. Cost to regulatory agency for implementing and continued administration of the rule: See above cost to State government.

#### 5. LOCAL GOVERNMENT MANDATES:

Education Law section 3012-c establishes a comprehensive evaluation system for classroom teachers and building principals. The majority of the requirements in the proposed amendment do not impose

any program, service, duty or responsibility on school districts and BOCES beyond those imposed by the statute.

The statute requires each classroom teacher and building principal to receive an APPR resulting in a single composite effectiveness score and rating of "highly effective," "effective," "developing," or "ineffective." The composite score is determined as follows:

- 20% is based on student growth on State assessments or other comparable measures of student growth (increased to 25% upon implementation of a value-added growth model).
- 20% is based on locally-selected measures of student achievement that are determined to be rigorous and comparable across classrooms as defined by the Commissioner (decreased to 15% upon implementation of value-added growth model).
- The remaining 60% is based on other measures of teacher/principal effectiveness consistent with standards prescribed by the Commissioner in regulation.

For the 2011-2012 school year, the new law only applies to classroom teachers in the common branch subjects or English language arts or mathematics in grades 4-8 and the building principals of schools in which such teachers are employed. In the 2012-2013 school year, the new evaluation system will apply to all classroom teachers and building principals. However, the Department recommends that, to the extent possible, districts and BOCES begin the process of rolling this system out for the evaluation of all classroom teachers and building principals in the 2011-2012 school year so that New York can quickly move to a comprehensive teacher and principal evaluation system. By law, the APPR is required to be a significant factor in employment decisions such as promotion, retention, tenure determinations, termination, and supplemental compensation, as well as a significant factor in teacher and principal professional development.

If a teacher or principal is rated "developing" or "ineffective," the law requires the school district/BOCES to develop and implement a teacher or principal improvement plan (TIP or PIP). Tenured teachers and principals with a pattern of ineffective teaching or performance - defined by law as two consecutive annual ineffective" ratings - may be charged with incompetence and considered for termination through an expedited hearing process.

The statute also requires all evaluators to be appropriately trained consistent with standards prescribed by the Commissioner and that appeals procedures be locally developed in each school district/BOCES.

#### 6. PAPERWORK:

The amendment to section 100.2(o) of the Commissioner's regulations requires that beginning July 1, 2011, each school district evaluate their building principals on an annual basis according to procedures developed by the governing body of each school district. Such procedures shall be filed in the district office and available for review by an individual no later than September 10th of each year.

Section 30-2.3 of the proposed amendment requires that by September 1, 2011, each school district shall adopt an APPR plan for its classroom teachers in the common branch subjects or English language arts or mathematics in grades 4-8 and its building principals of schools in which such teachers are employed. By July 1, 2012, each school district/BOCES shall adopt an APPR plan, on a form prescribed by the Commissioner, which may be an annual or multi-year plan, for all of its classroom teachers and building principals and shall submit the plan to the Commissioner for approval. The Commissioner shall approve or reject the plan by September 1, 2012, or as soon as practicable thereafter. The Commissioner may reject a plan that does not rigorously adhere to the regulations and the law. Should any plan be rejected, the Commissioner shall describe each deficiency in the submitted plan and direct that each such deficiency be resolved through collective bargaining to the extent required under article 14 of the Civil Service Law.

This section also requires that the APPR plan describe the school district's or BOCES' process for ensuring that the Department receives accurate teacher and student data, including certain identified information; how the district or BOCES will report subcomponent scores and the total composite effectiveness score for each classroom

teacher and building principal in the school district or BOCES; the assessment development, security and scoring processes utilized by the school district or BOCES, which includes a requirement that any process and assessment or measures are not disseminated to students before administration and that teachers and principals do not have a vested interest in the outcome of the assessments they score; describe the details of the evaluation system used by the district or BOCES; how the district or BOCES will provide timely and constructive feedback to teachers and building principals and the appeal procedures used by the district or BOCES.

The proposed amendment also requires a school district or BOCES that selected certain locally selected measures to certify, in its annual professional performance review plan, that the measure is rigorous and comparable across classrooms and explain how the locally selected measure meets these requirements. For school districts or BOCES that use more than one locally selected measure for a grade/subject, they must certify in their APPR plan that the measures are comparable, in accordance with the Testing Standards.

If a school district or BOCES seeks to use a teacher or principal practice rubric that is either a close adaptation of a rubric on the approved list, or a rubric that was self-developed or developed by a third-party or a newly developed rubric, the school district or BOCES must seek a variance from the Department for the use of such rubric.

The proposed amendment also requires that the process by which points are assigned in the various subcomponents and the scoring ranges for the subcomponents must be transparent and available to those being rated before the beginning of each school year.

A provider seeking to place a practice rubric in the list of approved rubrics, or an assessment on the list of approved assessments, shall submit to the Commissioner a written application that meets the requirements of sections 30-2.7 and 30-2.8, respectively. An approved rubric or approved assessment may be withdrawn for good cause. The provider may reply in writing within 10 calendar days of receipt of Commissioner's notification of intent to terminate approval.

The governing body of each school district is required to ensure that evaluators have appropriate training before conducting an evaluation under this section and the lead evaluator must be appropriately certified and periodically recertified.

If a teacher or principal is rated "developing" or "ineffective," the school district or BOCES is required to develop and implement a teacher or principal improvement plan (TIP or PIP) that complies with section 30-2.10. Such plan shall be developed locally through negotiations pursuant to Civil Service Law Article 14, and include identification of needed areas of improvement, a timeline for achieving improvement, the manner in which the improvement will be assessed and, where appropriate, differentiated activities to support improvement in those areas.

In accordance with the requirements of the statute, the proposed amendment also requires a school district or BOCES to develop an appeals procedure through which a teacher or principal may challenge their annual professional performance review.

The regulations also require the Commissioner to annually monitor and analyze trends and patterns in teacher and principal evaluation results and data to identify districts, BOCES and/or schools where evidence suggests a more rigorous evaluation system is needed to improve educator effectiveness and student learning outcomes. A school district or BOCES identified by the Department in one of the categories enumerated above may be highlighted in public reports and/or the Commissioner may order a corrective action plan, which may include, but not be limited to, requirements that the district or BOCES arrange for additional professional development, provide additional in-service training and/or utilize independent trained evaluators to review the efficacy of the evaluation system.

The above changes require that the "Compliance Schedule" section of the previously published Regulatory Impact Statement" be revised to read as follows:

#### 7. DUPLICATION:

The rule is necessary to implement Education Law section 3012-c and does not duplicate existing State or Federal requirements.

#### 8. ALTERNATIVES:

In September 2010, the Department convened an advisory committee known as the Regents Task Force on Teacher and Principal Effectiveness ("Task Force"), which is comprised of representatives of teachers, principals, superintendents of schools, school boards, school districts and board of cooperative educational services officials, and other interested parties. The Task Force has been meeting since September 2010 and they have been divided into workgroups to provide guidance and consider certain aspects of Education Law 3012-c.

After months of discussion and deliberations, the Task Force generated a written report of their recommendations. At the April 2011 Regents meeting, the Task Force presented their recommendations to the Board of Regents. Thereafter, the Department presented their recommendations, which incorporated most of the Task Force's recommendations. At that point, the Regents directed the Department to draft regulations reflecting the Department's recommendations.

On April 15, 2010, the Department posted draft regulatory language on our website for the public to review and provide informal comment. The Department received and reviewed over 250 comments on the proposed amendment, including comments from district superintendents, the Council of School Superintendents, the School Boards Association, the Governor's Office, NYSUT, SAANYS and teachers and administrators across the State. Many of these comments have been incorporated in the proposed amendment or will be addressed in guidance.

At their March meeting, the Board of Regents adopted revised regulations to implement the provisions of Chapter 21 of the Laws of 2012, which amended Education Law § 3012-c. Prior to adopting these revised regulations, the Department sent the draft regulatory language for comment to the members of the Task Force, which included district superintendents, the Council of School Superintendents, the School Boards Association, the Governor's Office, the Council of School Supervisor & Administrators, New York City, the Conference of Big 5 School Districts NYSUT, SAANYS and teachers and administrators and public interest groups across the State. Some of these comments were incorporated into the proposed amendment.

#### 9. FEDERAL STANDARDS:

The rule is necessary to implement Education Law section 3012-c. There are no applicable Federal standards concerning the APPR for classroom teachers and building principals as established in Education Law section 3012-c.

#### 10. COMPLIANCE SCHEDULE:

The proposed amendment will become effective on its stated effective date. No further time is needed to comply. By September 1, 2011, each school district shall adopt a plan for the APPR of its classroom teachers in the common branch subjects or English language arts or mathematics in grades 4-8 and its building principals of schools in which such teachers are employed, and by July 1, 2012, each school district and BOCES shall adopt a plan, on a form prescribed by the Commissioner, which may be an annual or multi-year plan, for the APPR of all classroom teachers and building principals and submit such plan to the Commissioner for approval.

#### *Regulatory Flexibility Analysis*

##### (a) Small businesses:

The purpose of the proposed rule is to implement Education Law section 3012-c, as added by Chapter 103 of the Laws of 2010 and amended by Chapter 21 of the Laws of 2012, by establishing standards and criteria for conducting annual professional performance reviews of classroom teachers and building principals employed by school districts and boards of cooperative educational services. The proposed rule does not impose any reporting, recordkeeping or other compliance requirements, and will not have an adverse economic impact, on small business. Because it is evident from the nature of the amendment that it does not affect small businesses, no further steps were needed to ascertain that fact and one were taken. Accordingly, a regulatory flexibility analysis for small businesses is not required and one has not been prepared.

##### (b) Local governments:

## 1. EFFECT OF RULE:

The rule applies to all school districts and boards of cooperative educational services ("BOCES") in the State.

## 2. COMPLIANCE REQUIREMENTS:

Education Law section 3012-c establishes a comprehensive evaluation system for classroom teachers and building principals. The majority of the requirements in the proposed amendment do not impose any program, service, duty or responsibility on school districts and BOCES beyond those imposed by the statute.

The statute requires each classroom teacher and building principal to receive an APPR resulting in a single composite effectiveness score and rating of "highly effective," "effective," "developing," or "ineffective." The composite score is determined as follows:

- 20% is based on student growth on State assessments or other comparable measures of student growth (increased to 25% upon implementation of a value-added growth model).
- 20% is based on locally-selected measures of student achievement that are determined to be rigorous and comparable across classrooms as defined by the Commissioner (decreased to 15% upon implementation of value-added growth model). The rule provides a list of local options/measures for the evaluation of teachers and principals under this subcomponent.
- The remaining 60% is based on other measures of teacher/principal effectiveness consistent with standards prescribed by the Commissioner in regulation. The rule requires that, for teachers, at least 31 of the 60 points be based on multiple classroom observations conducted by a principal or other trained administrator and, for principals, at least 31 of the 60 points be based on a broad assessment of leadership and management actions by the supervisor or a trained administrator or other trained evaluator.

For the 2011-2012 school year, the new law only applies to classroom teachers in the common branch subjects or English language arts or mathematics in grades 4-8 and the building principals of schools in which such teachers are employed. In the 2012-2013 school year, the new evaluation system will apply to all classroom teachers and building principals. However, the Department recommends that, to the extent possible, districts and BOCES begin the process of rolling this system out for the evaluation of all classroom teachers and building principals in the 2011-2012 school year so that New York can quickly move to a comprehensive teacher and principal evaluation system. By law, the APPR is required to be a significant factor in employment decisions such as promotion, retention, tenure determinations, termination, and supplemental compensation, as well as a significant factor in teacher and principal professional development.

The proposed amendment also prescribes the following requirements:

The amendment to section 100.2(o) of the Commissioner's regulations requires that beginning July 1, 2011, each school district evaluate their building principals on an annual basis according to procedures developed by the governing body of each school district. Such procedures shall be filed in the district office and available for review by an individual no later than September 10th of each year.

Section 30-2.3 of the proposed amendment requires that by September 1, 2011, each school district shall adopt an APPR plan for its classroom teachers in the common branch subjects or English language arts or mathematics in grades 4-8 and its building principals of schools in which such teachers are employed. By July 1, 2012, each school district/BOCES shall adopt an APPR plan, on a form prescribed by the Commissioner, which may be an annual or multi-year plan, for all of its classroom teachers and building principals and shall submit the plan to the Commissioner for approval. The Commissioner shall approve or reject the plan by September 1, 2012, or as soon as practicable thereafter. The Commissioner may reject a plan that does not rigorously adhere to the regulations and the law. Should any plan be rejected, the Commissioner shall describe each deficiency in the submitted plan and direct that each such deficiency be resolved through collective bargaining to the extent required under article 14 of the Civil Service Law.

This section also requires that the APPR plan describe the school

district's or BOCES' process for ensuring that the Department receives accurate teacher and student data, including certain identified information; how the district or BOCES will report subcomponent scores and the total composite effectiveness score for each classroom teacher and building principal in the school district or BOCES; the assessment development, security and scoring processes utilized by the school district or BOCES, which includes a requirement that any process and assessment or measures are not disseminated to students before administration and that teachers and principals do not have a vested interest in the outcome of the assessments they score; describe the details of the evaluation system used by the district or BOCES; how the district or BOCES will provide timely and constructive feedback to teachers and building principals and the appeal procedures used by the district or BOCES.

The proposed amendment also requires a school district or BOCES that uses certain locally selected measures to certify, in its annual professional performance review plan, that the measure is rigorous and comparable across classrooms and explain how the locally selected measure meets these requirements. For school districts or BOCES that use more than one locally selected measure for a grade/subject, they must certify in their APPR plan that the measures are comparable, in accordance with the Testing Standards.

If a school district or BOCES seeks to use a teacher or principal practice rubric that is either a close adaptation of a rubric on the approved list, or a rubric that was self-developed or developed by a third-party or a newly developed rubric, the school district or BOCES must seek a variance from the Department for the use of such rubric.

The proposed amendment also requires that the process by which points are assigned in the various subcomponents and the scoring ranges for the subcomponents must be transparent and available to those being rated before the beginning of each school year.

A provider seeking to place a practice rubric in the list of approved rubrics, or an assessment on the list of approved assessments, shall submit to the Commissioner a written application that meets the requirements of sections 30-2.7 and 30-2.8, respectively. An approved rubric or approved assessment may be withdrawn for good cause. The provider may reply in writing within 10 calendar days of receipt of Commissioner's notification of intent to terminate approval.

The governing body of each school district is required to ensure that evaluators have appropriate training before conducting an evaluation under this section and the lead evaluator must be appropriately certified and periodically recertified.

If a teacher or principal is rated "developing" or "ineffective," the school district or BOCES is required to develop and implement a teacher or principal improvement plan (TIP or PIP) that complies with section 30-2.10. Such plan shall be developed locally through negotiations pursuant to Civil Service Law article 14, and include identification of needed areas of improvement, a timeline for achieving improvement, the manner in which the improvement will be assessed and, where appropriate, differentiated activities to support improvement in those areas.

In accordance with the requirements of the statute, the proposed amendment also requires a school district or BOCES to develop an appeals procedure through which a teacher or principal may challenge their annual professional performance review.

The regulations also requires the Commissioner to annually monitor and analyze trends and patterns in teacher and principal evaluation results and data to identify districts, BOCES and/or schools where evidence suggests a more rigorous evaluation system is needed to improve educator effectiveness and student learning outcomes. A school district or BOCES identified by the Department in one of the categories enumerated above may be highlighted in public reports and/or the Commissioner may order a corrective action plan, which may include, but not be limited to, requirements that the district or BOCES arrange for additional professional development, provide additional in-service training and/or utilize independent trained evaluators to review the efficacy of the evaluation system.

## 3. PROFESSIONAL SERVICES:

The proposed amendment does not impose any additional professional services requirements on school districts or BOCES.

#### 4. COMPLIANCE COSTS:

See the Costs Section of the Regulatory Impact Statement that is published in the State Register on this publication date for an analysis of the costs of the proposed rule.

#### 5. ECONOMIC AND TECHNOLOGICAL FEASIBILITY:

The rule does not impose any additional technological requirements on school districts or BOCES. Economic feasibility is addressed above under Compliance Costs.

#### 6. MINIMIZING ADVERSE IMPACT:

The rule is necessary to implement Education Law section 3012-c, as added by Chapter 103 of the Laws of 2010 and as amended by Chapter 21 of the Laws of 2012 (S.6732/A.9554). The rule has been carefully drafted to meet statutory requirements while providing flexibility to school districts and BOCES.

#### 7. LOCAL GOVERNMENT PARTICIPATION:

In September 2010, the Department convened an advisory committee known as the Regents Task Force on Teacher and Principal Effectiveness ("Task Force"), which is comprised of representatives of teachers, principals, superintendents of schools, school boards, school districts and board of cooperative educational services officials, and other interested parties. The Task Force has been meeting since September 2010 and they have been divided into workgroups to provide guidance and consider certain aspects of Education Law 3012-c.

After months of discussion and deliberations, the Task Force generated a written report of their recommendations. At the April 2011 Regents meeting, the Task Force presented their recommendations to the Board of Regents. Thereafter, the Department presented their recommendations, which incorporated most of the Task Force's recommendations. At that point, the Regents directed the Department to draft regulations reflecting the Department's recommendations.

On April 15, 2010, the Department posted draft regulatory language on our website for the public to review and provide informal comment. The Department received and reviewed over 250 comments on the proposed amendment, including comments from district superintendents, the Council of School Superintendents, the School Boards Association, the Governor's Office, the Council of School Supervisor & Administrators, New York City, the Conference of Big 5 School Districts NYSUT, SAANYS and teachers and administrators and public interest groups across the State. Many of these comments have been incorporated in the proposed amendment or will be addressed in guidance.

At their March meeting, the Board of Regents adopted revised regulations to implement the provisions of Chapter 21 of the Laws of 2012, which amended Education Law § 3012-c. Prior to adopting these revised regulations, the Department sent the draft regulatory language for comment to the members of the Task Force, which included district superintendents, the Council of School Superintendents, the School Boards Association, the Governor's Office, the Council of School Supervisor & Administrators, New York City, the Conference of Big 5 School Districts NYSUT, SAANYS and teachers and administrators and public interest groups across the State. Some of these comments were incorporated into the proposed amendment.

#### *Rural Area Flexibility Analysis*

##### 1. TYPES AND ESTIMATED NUMBERS OF RURAL AREAS:

The proposed amendment applies to all school districts and boards of cooperative educational services (BOCES) in the State, including those located in the 44 rural counties with fewer than 200,000 inhabitants and the 71 towns and urban counties with a population density of 150 square miles or less.

##### 2. REPORTING, RECORDKEEPING, AND OTHER COMPLIANCE REQUIREMENTS; AND PROFESSIONAL SERVICES:

Education Law section 3012-c, as added by Chapter 103 of the Laws of 2010, and as amended by a Chapter of the Laws of 2012 (S.6732/A.9554) establishes a comprehensive evaluation system for classroom teachers and building principals. The majority of the requirements in the proposed amendment do not impose any program, service, duty or responsibility on school districts and BOCES beyond those imposed by the statute.

The statute requires each classroom teacher and building principal to receive an APPR resulting in a single composite effectiveness score and rating of "highly effective," "effective," "developing," or "ineffective." The composite score is determined as follows:

- 20% is based on student growth on State assessments or other comparable measures of student growth (increased to 25% upon implementation of a value-added growth model).
- 20% is based on locally-selected measures of student achievement that are determined to be rigorous and comparable across classrooms as defined by the Commissioner (decreased to 15% upon implementation of value-added growth model). The rule provides a list of local options/measures for the evaluation of teachers and principals under this subcomponent.
- The remaining 60% is based on other measures of teacher/principal effectiveness consistent with standards prescribed by the Commissioner in regulation. The rule requires that, for teachers, at least 31 of the 60 points be based on multiple classroom observations conducted by a principal or other trained administrator and, for principals, at least 31 of the 60 points be based on a broad assessment of leadership and management actions by the supervisor, a trained administrator or other trained evaluator.

For the 2011-2012 school year, the new law only applies to classroom teachers in the common branch subjects or English language arts or mathematics in grades 4-8 and the building principals of schools in which such teachers are employed. In the 2012-2013 school year, the new evaluation system will apply to all classroom teachers and building principals. However, the Department recommends that, to the extent possible, districts and BOCES begin the process of rolling this system out for the evaluation of all classroom teachers and building principals in the 2011-2012 school year so that New York can quickly move to a comprehensive teacher and principal evaluation system. By law, the APPR is required to be a significant factor in employment decisions such as promotion, retention, tenure determinations, termination, and supplemental compensation, as well as a significant factor in teacher and principal professional development.

The proposed amendment also prescribes the following requirements:

The amendment to section 100.2(o) of the Commissioner's regulations requires that beginning July 1, 2011, each school district evaluate their building principals on an annual basis according to procedures developed by the governing body of each school district. Such procedures shall be filed in the district office and available for review by an individual no later than September 10th of each year.

Section 30-2.3 of the proposed amendment requires that by September 1, 2011, each school district shall adopt an APPR plan for its classroom teachers in the common branch subjects or English language arts or mathematics in grades 4-8 and its building principals of schools in which such teachers are employed. By July 1, 2012, each school district/BOCES shall adopt an APPR plan, on a form prescribed by the Commissioner, which may be an annual or multi-year plan, for all of its classroom teachers and building principals and shall submit the plan to the Commissioner for approval. The Commissioner shall approve or reject the plan by September 1, 2012, or as soon as practicable thereafter. The Commissioner may reject a plan that does not rigorously adhere to the regulations and the law. Should any plan be rejected, the Commissioner shall describe each deficiency in the submitted plan and direct that each such deficiency be resolved through collective bargaining to the extent required under article 14 of the Civil Service Law.

This section also requires that the APPR plan describe the school district's or BOCES' process for ensuring that the Department receives accurate teacher and student data, including certain identified information; how the district or BOCES will report subcomponent scores and the total composite effectiveness score for each classroom teacher and building principal in the school district or BOCES; the assessment development, security and scoring processes utilized by the school district or BOCES, which includes a requirement that any process and assessment or measures are not disseminated to students before administration and that teachers and principals do not have a vested interest in the outcome of the assessments they score; describe

the details of the evaluation system used by the district or BOCES; how the district or BOCES will provide timely and constructive feedback to teachers and building principals and the appeal procedures used by the district or BOCES.

The proposed amendment also requires a school district or BOCES that select certain locally selected measures to certify, in its annual professional performance review plan, that the measure is rigorous and comparable across classrooms and explain how the locally selected measure meets these requirements. For school districts or BOCES that use more than one locally selected measure for a grade/subject, they must certify in their APPR plan that the measures are comparable, in accordance with the Testing Standards.

If a school district or BOCES seeks to use a teacher or principal practice rubric that is either a close adaptation of a rubric on the approved list, or a rubric that was self-developed or developed by a third-party or a newly developed rubric, the school district or BOCES must seek a variance from the Department for the use of such rubric.

The proposed amendment also requires that the process by which points are assigned in the various subcomponents and the scoring ranges for the subcomponents must be transparent and available to those being rated before the beginning of each school year.

A provider seeking to place a practice rubric in the list of approved rubrics, or an assessment on the list of approved assessments, shall submit to the Commissioner a written application that meets the requirements of sections 30-2.7 and 30-2.8, respectively. An approved rubric or approved assessment may be withdrawn for good cause. The provider may reply in writing within 10 calendar days of receipt of Commissioner's notification of intent to terminate approval.

The governing body of each school district is required to ensure that evaluators have appropriate training before conducting an evaluation under this section and the lead evaluator must be appropriately certified and periodically recertified.

If a teacher or principal is rated "developing" or "ineffective," the school district or BOCES is required to develop and implement a teacher or principal improvement plan (TIP or PIP) that complies with section 30-2.10. Such plan shall be developed locally through negotiations pursuant to Civil Service Law article 14, and include identification of needed areas of improvement, a timeline for achieving improvement, the manner in which the improvement will be assessed and, where appropriate, differentiated activities to support improvement in those areas.

In accordance with the requirements of the statute, the proposed amendment also requires a school district or BOCES to develop an appeals procedure through which a teacher or principal may challenge their annual professional performance review.

The regulations also requires the Commissioner to annually monitor and analyze trends and patterns in teacher and principal evaluation results and data to identify districts, BOCES and/or schools where evidence suggests a more rigorous evaluation system is needed to improve educator effectiveness and student learning outcomes. A school district or BOCES identified by the Department in one of the categories enumerated above may be highlighted in public reports and/or the Commissioner may order a corrective action plan, which may include, but not be limited to, requirements that the district or BOCES arrange for additional professional development, provide additional in-service training and/or utilize independent trained evaluators to review the efficacy of the evaluation system.

### 3. COSTS:

See the "Costs" Section of the Regulatory Impact Statement that is published in the State Register on this publication date for an analysis of the costs of the proposed rule, which include costs for school districts and BOCES across the State, including those located in rural areas.

### 4. MINIMIZING ADVERSE IMPACT:

The rule is necessary to implement Education Law section 3012-c. The rule has been carefully drafted to meet statutory requirements while providing flexibility to school districts and BOCES. Since the statute applies to all school districts and BOCES throughout the State, it was not possible to establish different compliance and reporting

requirements for regulated parties in rural areas, or to exempt them from the rule's provisions.

### 5. RURAL AREA PARTICIPATION:

In September 2010, the Department convened an advisory committee known as the Regents Task Force on Teacher and Principal Effectiveness ("Task Force"), which is comprised of representatives of teachers, principals, superintendents of schools, school boards, school districts and board of cooperative educational services officials, and other interested parties. The Task Force has been meeting since September 2010 and they have been divided into workgroups to provide guidance and consider certain aspects of Education Law 3012-c.

After months of discussion and deliberations, the Task Force generated a written report of their recommendations. At the April 2011 Regents meeting, the Task Force presented their recommendations to the Board of Regents. Thereafter, the Department presented their recommendations, which incorporated most of the Task Force's recommendations. At that point, the Regents directed the Department to draft regulations reflecting the Department's recommendations.

On April 15, 2010, the Department posted draft regulatory language on our website for the public to review and provide informal comment. The Department received and reviewed over 250 comments on the proposed amendment, including comments from district superintendents, the Council of School Superintendents, the School Boards Association, the Governor's Office, the Council of School Supervisor & Administrators, New York City, the Conference of Big 5 School Districts NYSUT, SAANYS and teachers and administrators and public interest groups across the State. Many of these comments were incorporated in the proposed amendment adopted in May 2011 or have been addressed in guidance.

At their March meeting, the Board of Regents adopted revised regulations to implement the provisions of Chapter 21 of the Laws of 2012, which amended Education Law § 3012-c. Prior to adopting these revised regulations, the Department sent the draft regulatory language for comment to the members of the Task Force, which included district superintendents, the Council of School Superintendents, the School Boards Association, the Governor's Office, the Council of School Supervisor & Administrators, New York City, the Conference of Big 5 School Districts NYSUT, SAANYS and teachers and administrators and public interest groups across the State. Some of these comments were incorporated into the proposed amendment.

### *Job Impact Statement*

The purpose of the proposed rule is to implement Education Law section 3012-c, as added by Chapter 103 of the Laws of 2010 and Chapter 21 of the Laws of 2012, by establishing standards and criteria for conducting annual professional performance reviews of classroom teachers and building principals employed by school districts and boards of cooperative educational services. Because it is evident from the nature of the proposed rule that it will have no impact on the number of jobs or employment opportunities in New York State, no further steps were needed to ascertain that fact and none were taken. Accordingly, a job impact statement is not required and one has not been prepared.

### *Assessment of Public Comment*

The agency received no public comment.

## REVISED RULE MAKING NO HEARING(S) SCHEDULED

### **Policy and Guidelines Prohibiting Discrimination and Harassment of Students**

**I.D. No.** EDU-07-12-00011-RP

PURSUANT TO THE PROVISIONS OF THE State Administrative Procedure Act, NOTICE is hereby given of the following revised rule:

**Proposed Action:** Addition of section 100.2(jj) to Title 8 NYCRR.

**Statutory authority:** Education Law, sections 11(1-7), 12(1) and (2), 13(1-3), 14(1-3), 101(not subdivided), 207(not subdivided), 305(1), (2) and 2854(1)(b); and L. 2010, ch. 482

**Subject:** Policy and guidelines prohibiting discrimination and harassment of students.

**Purpose:** To establish criteria for issuance of policy and guidelines relating to the Dignity for All Students Act (ch.482, L. 2010).

**Text of revised rule:** Subdivision (jj) of section 100.2 of the Regulations of the Commissioner of Education is added, effective July 3, 2012, as follows:

(jj) *Dignity For All Students School Employee Training Program.*

(1) *Definitions. As used in this subdivision:*

(i) *School employee means an employee as defined in subdivision 3 of section 1125 of the Education Law, or an employee of a charter school.*

(ii) *School property means in or within any building, structure, athletic playing field, playground, parking lot or land contained within the real property boundary line of a public elementary or secondary school, including a charter school; or in or on a school bus, as defined in section 142 of the Vehicle and Traffic Law.*

(iii) *School function means a school-sponsored extracurricular event or activity.*

(iv) *Discrimination and harassment means an act against any student, by employees or students on school property or at a school function, that creates a hostile environment by conduct, with or without physical contact and/or by verbal threats, intimidation or abuse, of such a severe nature that:*

(a) *has or would have the effect of unreasonably and substantially interfering with a student's educational performance, opportunities or benefits, or mental, emotional and/or physical well-being; or*

(b) *reasonably causes or would reasonably be expected to cause a student to fear for his or her physical safety.*

*Such conduct shall include, but is not limited to, threats, intimidation, or abuse based on a person's actual or perceived race, color, weight, national origin, ethnic group, religion, religious practice, disability, sexual orientation, gender or sex; provided that nothing in this subdivision shall be construed to prohibit a denial of admission into, or exclusion from, a course of instruction based on a person's gender that would be permissible under Education Law sections 3201-a or 2854(2)(a) and Title IX of the Education Amendments of 1972 (20 U.S.C. section 1681, et seq.), or to prohibit, as discrimination based on disability, actions that would be permissible under section 504 of the Rehabilitation Act of 1973.*

(v) *Disability means a disability as defined in subdivision 21 of section 292 of the Executive Law.*

(vi) *Sexual orientation means actual or perceived heterosexuality, homosexuality or bisexuality.*

(vii) *Gender means actual or perceived sex and shall include a person's gender identity or expression.*

(2) *On or before July 1, 2012, each school district and each charter school shall establish guidelines for its school or schools to implement, commencing with the 2012-2013 school year and continuing in each school year thereafter, Dignity for All Students school employee training programs to promote a positive school environment that is free from discrimination and harassment; and to discourage and respond to incidents of discrimination and/or harassment on school property or at a school function. Such guidelines shall be approved by the board of education, trustees or sole trustee of the school district (or by the chancellor of the city school district, in the case of the City School District of the City of New York) or by the board of trustees of the charter school.*

(3) *The guidelines shall include, but not be limited to, providing employees, including school and district administrators and instructional and non-instructional staff, with:*

(i) *training to:*

(a) *raise awareness and sensitivity to potential acts of discrimination or harassment directed at students that are committed by students or school employees on school property or at school functions; including, but not limited to, discrimination or harassment based on a person's actual or perceived race, color, weight, national origin, ethnic group, religion, religious practices, disability, sexual orientation, gender or sex; and*

(b) *training to enable employees to prevent and respond to incidents of discrimination and harassment;*

(c) *such training may be implemented and conducted in conjunction with existing professional development training pursuant to subparagraph 100.2(dd)(2)(ii) of this Title and/or with any other training for school employees; and*

(ii) *guidelines relating to the development of nondiscriminatory instructional and counseling methods.*

(4) *At least one employee in every school shall be designated as a Dignity Act Coordinator and instructed in the provisions of this subdivision and thoroughly trained in methods to respond to human relations in the areas of race, color, weight, national origin, ethnic group, religion, religious practice, disability, sexual orientation, gender and sex.*

(i) *The designation of each Dignity Act Coordinator shall be approved by the board of education, trustees or sole trustee of the school district (or in the case of the City School District of the City of New York,*

*by the principal of the school in which the designated employee is employed) or, in the case of a charter school, by the board of trustees.*

(ii) *The name(s) and contact information for the Dignity Act Coordinator(s) shall be shared with all school personnel, students, and persons in parental relation, which shall include, but is not limited to, providing the name, designated school and contact information of each Dignity Act Coordinator by:*

(a) *listing such information in the code of conduct and updates posted on the Internet website, if available, of the school or school district, or of the board of cooperative educational services, pursuant to subclause 100.2(l)(2)(iii)(b)(1) of this Part;*

(b) *including such information in the plain language summary of the code of conduct provided to all persons in parental relation to students before the beginning of each school year, pursuant to subclause 100.2(l)(2)(iii)(b)(3);*

(c) *include such information in at least one district or school mailing per school year to parents and persons of parental relation and, if such information changes, in at least one subsequent district or school mailing as soon as practicable thereafter;*

(d) *posting such information in highly-visible areas of school buildings; and*

(e) *making such information available at the district and school-level administrative offices.*

(iii) *In the event a Dignity Act Coordinator vacates his or her position, another school employee shall be immediately designated for an interim appointment as Coordinator, pending approval of a successor Coordinator by the applicable governing body as set forth in subparagraph (i) of this paragraph within 30 days of the date the position was vacated. In the event a Coordinator is unable to perform the duties of his or her position for an extended period of time, another school employee shall be immediately designated for an interim appointment as Coordinator, pending return of the previous Coordinator to his or her duties as Coordinator.*

**Revised rule compared with proposed rule:** Substantial revisions were made in section 100.2(jj)(1), (3) and (4).

**Text of revised proposed rule and any required statements and analyses may be obtained from** Mary Gammon, State Education Department, Office of Counsel, State Education Building, Room 148, 89 Washington Ave., Albany, NY 12234, (518) 474-6400, email: legal@mail.nysed.gov

**Data, views or arguments may be submitted to:** Ken Slentz, Deputy Commissioner P-12 Education, State Education Department, State Education Building 2M West, 89 Washington Ave., Albany, NY 12234, (518) 474-5520, email: NYSEDPI2@mail.nysed.gov

**Public comment will be received until:** 30 days after publication of this notice.

#### **Revised Regulatory Impact Statement**

Since publication of a Notice of Proposed Rule Making in the State Register on February 15, 2012, the proposed rule has been revised as follows.

Section 100.2(jj)(1)(ii) has been revised to delete "or at a school function" from the definition of "school property" to conform to the statutory definitions of such terms in Education Law sections 11(1) and (2).

Section 100.2(jj)(1)(iv) has been revised to delete the term "intentional" in the definition of "Discrimination and harassment" because this term does not appear in the Dignity Act (Chapter 482 of the laws of 2010).

Section 100.2(jj)(3)(i)(a) has been revised to replace the term "gender identity" with "gender" to conform to Education Law section 13(3) which references "gender" only. Furthermore, Education Law section 11(6) defines "gender" to include "a person's gender identity or expression."

Section 100.2(jj)(3)(i)(b) has been revised to reverse the order of the terms "harassment and discrimination" to conform to their appearance in Education Law section 13(2)(b).

Section 100.2(jj)(3) is revised to clarify that training may also include instructional and non-instructional staff and to provide, consistent with Education Law section 13(3), that guidelines for training programs include guidelines relating to the development of nondiscriminatory instructional and counseling methods.

Section 100.2(jj)(4)(ii) is revised to ensure that the names and contact information of Dignity Act Coordinators is made known to school personnel, students, and persons in parental relation by requiring such information be: (1) included in the codes of conduct and updates posted on school websites; (2) included in the plain language summaries of the codes of conduct; (3) included in at least one district or school mailing per school year to parents and persons of parental relation or, if such information changes, in at least one subsequent district or school mailing as soon as practicable thereafter; (4) posted in highly-visible areas of school buildings; and (5) made available at the district and school-level administrative offices.

The above changes require that the following sections of the previously published Regulatory Impact Statement be revised to read as follows:

#### 5. LOCAL GOVERNMENT MANDATES:

The proposed rule is necessary to conform the Commissioner's Regulations with the Dignity Act and will not impose any additional program, service, duty or responsibility beyond those by the statute.

Consistent with Education Law section 2801 and section 13 of Article 2, as respectively amended and added by Chapter 482 of the Laws of 2010, the proposed rule requires each school district, BOCES and charter school to create guidelines to provide:

- On or before July 1, 2012, for schools to implement school employee training programs, commencing with the 2012 -13 school year and thereafter, to promote a positive school environment that is free from discrimination and harassment and to discourage and respond to incidents of discrimination and/or harassment on school property or at a school function. Employee training guidelines shall be approved by the board of education, trustees or sole trustee of the school district (or by the chancellor of the city school district, in the case of the City School District of the City of New York) or by the board of trustees of the charter school.
- Training for employees, including school and district administrators and instructional and non-instructional staff:
  - (i) to raise awareness and understanding of the school district's Code of Conduct pursuant to section 100.2(l) of this Title;
  - (ii) to raise awareness and sensitivity to potential acts of discrimination or harassment directed at students that are committed by students or school employees on school property or at school functions; including, but not limited to, discrimination or harassment based on a person's actual or perceived race, color, weight, national origin, ethnic group, religion, religious practices, disability, sexual orientation, gender or sex; and
  - (iii) to enable employees to prevent and respond to incidents of harassment and discrimination.

Such training may be implemented and conducted in conjunction with existing professional development training pursuant to 100.2(dd)(2)(ii) of this Title and/or with any other training for school employees.

- guidelines relating to the development of nondiscriminatory instructional and counseling methods.

At least one employee in every school shall be designated as a Dignity Act Coordinator and instructed in the provisions of the proposed rule and thoroughly trained in methods to respond to human relations in the areas of race, color, weight, national origin, ethnic group, religion, religious practice, disability, sexual orientation, gender and sex.

(i) The designation of each Dignity Act Coordinator shall be approved by the board of education, trustees or sole trustee of the school district (or in the case of the City School District of the City of New York, by the principal of the school in which the designated employee is employed) and, in the case of a charter school, by the board of trustees.

(ii) The name(s) and contact information for the Dignity Act Coordinator(s) shall be shared with all school personnel, students, and persons in parental relation, which shall include, but is not limited to, providing the name, designated school and contact information of each Dignity Act Coordinator by:

- (a) listing such information in the code of conduct and updates posted on the Internet website, if available, of the school or school district, or of the board of cooperative educational services, pursuant to subclause 100.2(l)(2)(iii)(b)(1) of this Part;
- (b) including such information in the plain language summary of the code of conduct provided to all persons in parental relation to students before the beginning of each school year, pursuant to subclause 100.2(l)(2)(iii)(b)(3);
- (c) include such information in at least one district or school mailing per school year to parents and persons of parental relation and, if such information changes, in at least one subsequent district or school mailing as soon as practicable thereafter;
- (d) posting such information in highly-visible areas of school buildings; and
- (e) making such information available at the district and school-level administrative offices.

(iii) In the event a Dignity Act Coordinator vacates his or her position, another school employee shall be immediately designated for an interim appointment as Coordinator, pending approval of a successor Coordinator by the applicable governing body within 30 days of the date the position was vacated. In the event a Coordinator is unable to perform the duties of his or her position for an extended period of time, another school employee shall be immediately designated for an interim appointment as Coordinator, pending return of the previous Coordinator to his or her duties as Coordinator.

#### 6. PAPERWORK:

Consistent with Education Law section 2801 and section 13 of Article 2, as respectively amended and added by Chapter 482 of the Laws of 2010,

the proposed rule requires each school district, BOCES and charter school to create guidelines to provide, on or before July 1, 2012, for schools to implement school employee training programs, commencing with the 2012 -13 school year and thereafter, to promote a positive school environment that is free from discrimination and harassment and to discourage and respond to incidents of discrimination and/or harassment on school property or at a school function. Employee training guidelines shall be approved by the board of education, trustees or sole trustee of the school district (or by the chancellor of the city school district, in the case of the City School District of the City of New York) or by the board of trustees of the charter school.

#### Revised Regulatory Flexibility Analysis

Since publication of a Notice of Proposed Rule Making in the State Register on February 15, 2012, the proposed rule has been revised as set forth in the Revised Regulatory Impact Statement filed herewith.

The changes require that the Compliance Requirements section of the previously published Regulatory Flexibility Analysis for Small Businesses and Local Government be revised to read as follows.

#### 2. COMPLIANCE REQUIREMENTS:

The proposed rule is necessary to conform the Commissioner's Regulations with the Dignity Act and will not impose any additional program, service, duty or responsibility beyond those by the statute.

Consistent with Education Law section 2801 and section 13 of Article 2, as respectively amended and added by Chapter 482 of the Laws of 2010, the proposed rule requires each school district, BOCES and charter school to create guidelines to provide:

- On or before July 1, 2012, for schools to implement school employee training programs, commencing with the 2012 -13 school year and thereafter, to promote a positive school environment that is free from discrimination and harassment and to discourage and respond to incidents of discrimination and/or harassment on school property or at a school function. Employee training guidelines shall be approved by the board of education, trustees or sole trustee of the school district (or by the chancellor of the city school district, in the case of the City School District of the City of New York) or by the board of trustees of the charter school.
- Training for employees, including school and district administrators and instructional and non-instructional staff:
  - (i) to raise awareness and understanding of the school district's Code of Conduct pursuant to section 100.2(l) of this Title;
  - (ii) to raise awareness and sensitivity to potential acts of discrimination or harassment directed at students that are committed by students or school employees on school property or at school functions; including, but not limited to, discrimination or harassment based on a person's actual or perceived race, color, weight, national origin, ethnic group, religion, religious practices, disability, sexual orientation, gender or sex; and
  - (iii) to enable employees to prevent and respond to incidents of harassment and discrimination.

Such training may be implemented and conducted in conjunction with existing professional development training pursuant to 100.2(dd)(2)(ii) of this Title and/or with any other training for school employees.

- guidelines relating to the development of nondiscriminatory instructional and counseling methods.

At least one employee in every school shall be designated as a Dignity Act Coordinator and instructed in the provisions of the proposed rule and thoroughly trained in methods to respond to human relations in the areas of race, color, weight, national origin, ethnic group, religion, religious practice, disability, sexual orientation, gender and sex.

(i) The designation of each Dignity Act Coordinator shall be approved by the board of education, trustees or sole trustee of the school district (or in the case of the City School District of the City of New York, by the principal of the school in which the designated employee is employed) and, in the case of a charter school, by the board of trustees.

(ii) The name(s) and contact information for the Dignity Act Coordinator(s) shall be shared with all school personnel, students, and persons in parental relation, which shall include, but is not limited to, providing the name, designated school and contact information of each Dignity Act Coordinator by:

- (a) listing such information in the code of conduct and updates posted on the Internet web site, if available, of the school or school district, or of the board of cooperative educational services, pursuant to subclause 100.2(l)(2)(iii)(b)(1) of this Part;
- (b) including such information in the plain language summary of the code of conduct provided to all persons in parental relation to students before the beginning of each school year, pursuant to subclause 100.2(l)(2)(iii)(b)(3);
- (c) include such information in at least one district or school mailing per school year to parents and persons of parental relation and, if such information changes, in at least one subsequent district or school mailing as soon as practicable thereafter;

(d) posting such information in highly-visible areas of school buildings; and  
 (e) making such information available at the district and school-level administrative offices.

(iii) In the event a Dignity Act Coordinator vacates his or her position, another school employee shall be immediately designated for an interim appointment as Coordinator, pending approval of a successor Coordinator by the applicable governing body within 30 days of the date the position was vacated. In the event a Coordinator is unable to perform the duties of his or her position for an extended period of time, another school employee shall be immediately designated for an interim appointment as Coordinator, pending return of the previous Coordinator to his or her duties as Coordinator.

**Revised Rural Area Flexibility Analysis**

Since publication of a Notice of Proposed Rule Making in the State Register on February 15, 2012, the proposed rule has been revised as set forth in the Revised Regulatory Impact Statement filed herewith.

The changes require that the Reporting, Recordkeeping and Other Compliance Requirements; and Professional Services section of the previously published Rural Area Flexibility Analysis be revised to read as follows.

**2. REPORTING, RECORDKEEPING AND OTHER COMPLIANCE REQUIREMENTS; AND PROFESSIONAL SERVICES:**

The proposed rule is necessary to conform the Commissioner’s Regulations with the Dignity Act and will not impose any additional program, service, duty or responsibility beyond those by the statute.

Consistent with Education Law section 2801 and section 13 of Article 2, as respectively amended and added by Chapter 482 of the Laws of 2010, the proposed rule requires each school district, BOCES and charter school to create guidelines to provide:

- On or before July 1, 2012, for schools to implement school employee training programs, commencing with the 2012 -13 school year and thereafter, to promote a positive school environment that is free from discrimination and harassment and to discourage and respond to incidents of discrimination and/or harassment on school property or at a school function. Employee training guidelines shall be approved by the board of education, trustees or sole trustee of the school district (or by the chancellor of the city school district, in the case of the City School District of the City of New York) or by the board of trustees of the charter school.
- Training for employees, including school and district administrators and instructional and non-instructional staff:

(i) to raise awareness and understanding of the school district’s Code of Conduct pursuant to section 100.2(l) of this Title;

(ii) to raise awareness and sensitivity to potential acts of discrimination or harassment directed at students that are committed by students or school employees on school property or at school functions; including, but not limited to, discrimination or harassment based on a person’s actual or perceived race, color, weight, national origin, ethnic group, religion, religious practices, disability, sexual orientation, gender or sex; and

(iii) to enable employees to prevent and respond to incidents of harassment and discrimination.

Such training may be implemented and conducted in conjunction with existing professional development training pursuant to 100.2(dd)(2)(ii) of this Title and/or with any other training for school employees.

- guidelines relating to the development of nondiscriminatory instructional and counseling methods.

At least one employee in every school shall be designated as a Dignity Act Coordinator and instructed in the provisions of the proposed rule and thoroughly trained in methods to respond to human relations in the areas of race, color, weight, national origin, ethnic group, religion, religious practice, disability, sexual orientation, gender and sex.

(i) The designation of each Dignity Act Coordinator shall be approved by the board of education, trustees or sole trustee of the school district (or in the case of the City School District of the City of New York, by the principal of the school in which the designated employee is employed) and, in the case of a charter school, by the board of trustees.

(ii) The name(s) and contact information for the Dignity Act Coordinator(s) shall be shared with all school personnel, students, and persons in parental relation, which shall include, but is not limited to, providing the name, designated school and contact information of each Dignity Act Coordinator by:

(a) listing such information in the code of conduct and updates posted on the Internet web site, if available, of the school or school district, or of the board of cooperative educational services, pursuant to subclause 100.2(l)(2)(iii)(b)(1) of this Part;

(b) including such information in the plain language summary of the code of conduct provided to all persons in parental relation to students before the beginning of each school year, pursuant to subclause 100.2(l)(2)(iii)(b)(3);

(c) include such information in at least one district or school mailing per school year to parents and persons of parental relation and, if such information changes, in at least one subsequent district or school mailing as soon as practicable thereafter;

(d) posting such information in highly-visible areas of school buildings; and

(e) making such information available at the district and school-level administrative offices.

(iii) In the event a Dignity Act Coordinator vacates his or her position, another school employee shall be immediately designated for an interim appointment as Coordinator, pending approval of a successor Coordinator by the applicable governing body within 30 days of the date the position was vacated. In the event a Coordinator is unable to perform the duties of his or her position for an extended period of time, another school employee shall be immediately designated for an interim appointment as Coordinator, pending return of the previous Coordinator to his or her duties as Coordinator.

The proposed rule will not impose any additional professional services requirements.

**Revised Job Impact Statement**

Since publication of a Notice of Proposed Rule Making in the State Register on February 15, 2012, the proposed rule has been revised as set forth in the Revised Regulatory Impact Statement filed herewith.

The proposed rule, as so revised, relates to school employee training under the Dignity for All Students Act (L. 2010, Ch. 482), and will not have an adverse impact on jobs or employment opportunities. Because it is evident from the nature of the revised proposed rule that it will have a positive impact, or no impact, on jobs or employment opportunities, no further steps were needed to ascertain those facts and none were taken. Accordingly, a job impact statement is not required and one has not been prepared.

**Assessment of Public Comment**

Since publication of a Notice of Proposed Rule Making in the State Register on February 15, 2012, the State Education Department received the following comments.

**1. COMMENT:**

In order to offer proper support to school districts, the State must fund at least one full time person to oversee the Dignity Act training and implementation and insure it is carried out with fidelity.

**DEPARTMENT RESPONSE:**

The comment is beyond the scope of the proposed regulation since additional Legislation would be needed to authorize and provide such funding. The Department is considering developing a “static,” non-interactive webinar as an economic and efficient means to provide basic Dignity Act Coordinator (DAC) training to the field.

**2. COMMENT:**

Recommend that section 100.2(jj)(1)(iv) be revised to delete the term “intentional” in the definition of “Discrimination and harassment” because this term does not appear in the statute.

**DEPARTMENT RESPONSE:**

The Department has revised the definition to delete such term since it does not appear in the statute.

**3. COMMENT:**

Recommend that section 100.2(jj)(3)(i), relating to training to raise awareness and sensitivity to potential acts of discrimination or harassment, be revised to address cyberbullying/texting as forms of discrimination and harassment that may initiate off school property but impact school functions.

**DEPARTMENT RESPONSE:**

The language in section 100.2(jj)(3)(i) is taken directly from the Dignity Act, which does not directly address cyberbullying/texting as forms of discrimination and harassment. In the absence of specific statutory provisions, the Department believes that issues concerning cyberbullying/texting are best addressed in guidance rather than in regulation, since guidance can be provided in a more timely and responsive way than regulations, especially since this is an area of law that continues to rapidly evolve.

**4. COMMENT:**

Recommend that section 100.2(jj)(4), which requires at least one employee in every school be designated as a Dignity Act Coordinator, be revised to clarify the term “school.” If the intent is for a Coordinator to be in each school building, then it is recommended that “school building” replace “school.”

**DEPARTMENT RESPONSE:**

Use of the term “school” is consistent with Education Law section 13, which requires one staff member at every school, and not school building, to be designated as a DAC. In some school districts, there can be multiple “schools” housed in a single school building. Therefore, pursuant to the statute, each of these schools would be required to have a designated DAC.

**5. COMMENT:**

Recommend that section 100.2(jj)(4)(iii), relating to the filling of vacancies in the position of Dignity Act Coordinator, be deleted since school districts and boards of cooperative educational services already have processes to fill vacancies.

**DEPARTMENT RESPONSE:**

The Department disagrees and believes that this provision is necessary to make it clear to school districts, BOCES and charter schools that they must have someone acting as DAC at all times. In addition, the Department believes that the board of education, BOCES or governing body of the charter school must be involved in the filling of a vacancy in the position of DAC, in order to elevate the standing of the position and to make it clear that this is an important and necessary position.

**6. COMMENT:**

Revise the proposed rule to clarify that training may also include non-instructional staff.

**DEPARTMENT RESPONSE:**

The Department agrees and has amended section 100.2(jj)(3) to read: "The guidelines shall include, but not be limited to, providing employees, including school and district administrators and instructional and non-instructional staff, with: (i) training to raise awareness and sensitivity to potential acts of discrimination or harassment. . ."

**7. COMMENT:**

All school personnel benefit from understanding how to respond to bullying, intimidation, and biased-based harassment. Furthermore, training is most effective when staff have access to it within the first two months of the school year, so that they can use what they have learned as soon as possible. Therefore, it is recommended that the proposed rule be revised to include a requirement that the Dignity Act Coordinator (DAC) do "turnkey" training with all school staff to share what they have learned, that all such training occur before October 31st of each year, and that all staff be given the option to attend. The proposed rule should be revised to provide that the Department either offer such training for DACs or authorize designated service providers to perform this training, and to clarify how this training will take place.

**DEPARTMENT RESPONSE:**

The Department acknowledges that a turnkey approach might lessen the burden imposed on schools by the statute's unfunded mandate. However, providing turnkey training to trainers in large cities, BOCES, and/or Joint Management Team areas would impose substantial costs. Therefore, the Department is considering developing a "static," non-interactive webinar to provide basic DAC training to the field. This is the most economical route and will ensure a consistent message is shared across schools.

**8. COMMENT:**

The proposed rule should be revised to clarify the role and responsibilities of the Dignity Act Coordinator (DAC), so that schools may choose an appropriate candidate and help candidates understand the time commitment associated with the role. The DAC should be responsible for coordination of employee training, implementation of district policy, ensuring inclusive curriculum, and final responsibility for investigations and student discipline. The DAC must have administrative credentials to manage student discipline such as a vice principal or other senior administrator, have interaction with students, authority to implement policy changes based on the Dignity Act, and the ability to further implementation without compromising other professional responsibilities.

**DEPARTMENT RESPONSE:**

The Department believes that since the role of the DAC will vary from school-to-school and from district-to-district, depending on the varying needs and circumstances particular to each school and district across the State, from large city school districts to small rural districts, the determination of the specific role and duties of the DAC is best left as a local decision to be made by each school district, BOCES and charter school to best address their individual needs and circumstances. In addition, the Department may consider issuing guidance regarding recommended best practices with respect to the DAC's duties.

**9. COMMENT:**

The position of Dignity Act Coordinator (DAC) is most effective when parents have direct access. To ensure that parents and guardians know who the DAC is, it is recommended that the proposed rule be revised to add more specific requirements in regards to making this information public, including: mandating posting of the name of the DAC on school web pages, mandating posting the name and contact information of the DAC in areas deemed "highly visible" in school buildings, and sending parents a mailing at the beginning of the year with the name of the DAC and his or her contact information.

**DEPARTMENT RESPONSE:**

The Department agrees that parents and persons in parental relation should have access to DAC contact information. Communication between persons in parental relation, teachers, and the DAC and other educational professionals within the school is essential to the overall support and suc-

cess of students. Therefore, section 100.2(jj)(4)(ii) has been revised to require that the name, designated school and contact information of each DAC be provided by (1) including this information in the code of conduct and updates posted on the Internet web site, if available, of the school or school district, or of the board of cooperative educational services; (2) including the information in the plain language summary of the code of conduct provided to all persons in parental relation to students before the beginning of each school year; (3) including the information in at least one district or school mailing per school year to parents and persons of parental relation and, if such information changes, in at least one subsequent district or school mailing as soon as practicable thereafter; (4) posting the information in highly-visible areas of school buildings; and (5) making the information available at the district and school-level administrative offices.

**10. COMMENT:**

The proposed rule should be revised to encourage regular evaluations of training programs school districts to assess their effectiveness, and include evaluations of select school districts and charter schools by Department on at least an annual basis. The Department is also encouraged to evaluate non-district based professional development services which offer training for either Dignity Act Coordinators or general employee training under the Dignity Act.

**DEPARTMENT RESPONSE:**

Although the Department agrees that evaluations can be beneficial, there is no requirement in the Dignity Act to provide them and they would be a fiscal burden to impose on school districts and the Department at this time, given that no funding for such evaluations by either school districts or the Department has been provided in the Dignity Act or other legislation.

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## Department of Financial Services

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### NOTICE OF ADOPTION

#### Independent Adjusters

**I.D. No.** DFS-52-11-00019-A

**Filing No.** 290

**Filing Date:** 2012-04-10

**Effective Date:** 2012-04-25

PURSUANT TO THE PROVISIONS OF THE State Administrative Procedure Act, NOTICE is hereby given of the following action:

**Action taken:** Amendment of Part 26 (Regulation 25) of Title 11 NYCRR.

**Statutory authority:** Financial Services Law, sections 202 and 302; and Insurance Law, sections 301 and 2108

**Subject:** Independent Adjusters.

**Purpose:** To authorize the licensing of independent adjusters for multi-peril crop insurance.

**Text of final rule:** Section 26.3 is hereby amended to add a new subdivision (k) to read as follows:

*(k) Independent adjuster, multi-peril crop insurance. The independent adjuster, multi-peril crop insurance, shall have authority to investigate and adjust all claims arising under policies of multi-peril crop insurance that are reinsured by the Risk Management Agency, an agency of the United States Department of Agriculture.*

Section 26.4 is hereby amended to add a new subdivision (c) to read as follows:

*(c) In order to qualify for a multi-peril crop adjuster's license, an applicant must have received accreditation from the federal Crop Adjuster Proficiency Program, administered by National Crop Insurance Services, Inc.*

A new Section 26.7 is promulgated to read as follows:

*§ 26.7 Reporting of actions*

*An adjuster shall report to the superintendent any administrative action taken against the adjuster in another jurisdiction or by another governmental agency in this state within thirty days of the final disposition of the matter, including decertification or other action related to the adjuster's proficiency to adjust multi-peril crop insurance claims. The report shall include a copy of the order, consent to order and any other relevant legal documents.*

**Final rule as compared with last published rule:** Nonsubstantive changes were made in section 26.4(c).

*Text of rule and any required statements and analyses may be obtained from:* David Neustadt, NYS Department of Financial Services, One State Street, New York, NY 10004, (212) 709-1690, email: david.neustadt@dfs.ny.org

**Revised Job Impact Statement**

Changes made to the last published rule do not necessitate revision to the previously published JIS. There is only one non-substantive change made to the text of the regulation: the second use of the article “the” is deleted from subdivision (c) of section 26.4.

**Assessment of Public Comment**

The agency received no public comment.

## Public Service Commission

### NOTICE OF WITHDRAWAL

**Authorization to Transfer Real Property**

**I.D. No.** PSC-37-11-00011-W

PURSUANT TO THE PROVISIONS OF THE State Administrative Procedure Act, NOTICE is hereby given of the following action:

**Action taken:** Notice of proposed rule making, I.D. No. PSC-37-11-00011-P, has been withdrawn from consideration. The notice of proposed rule making was published in the *State Register* on September 14, 2011.

**Subject:** Authorization to transfer real property.

**Reason(s) for withdrawal of the proposed rule:** Withdrawn by staff.

### PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

**Whether a Proposed Agreement for the Provision of Water Service by Saratoga Water Services, Inc. is in the Public Interest**

**I.D. No.** PSC-17-12-00007-P

PURSUANT TO THE PROVISIONS OF THE State Administrative Procedure Act, NOTICE is hereby given of the following proposed rule:

**Proposed Action:** The Public Service Commission is considering whether to approve, deny, or modify, in whole or in part, the petition of Saratoga Water Services, Inc. for a waiver of the company’s tariff and approval of the terms of a service agreement.

**Statutory authority:** Public Service Law, sections 4(1), 20(1) and 89-b

**Subject:** Whether a proposed agreement for the provision of water service by Saratoga Water Services, Inc. is in the public interest.

**Purpose:** Whether the Commission should issue an order approving the proposed provision of water service.

**Substance of proposed rule:** The Commission is considering whether to approve, deny, or modify, in whole or in part a Petition in which Saratoga Water Services, Inc. (Saratoga) seeks issuance of an Order (a) approving the terms and conditions of a certain “Agreement For The Provision of Water Service”, dated April 21, 2009 (Agreement) between Saratoga and CDP 3 Silos, LLC as being in the public interest; (b) determining that the provision of water service by Saratoga in accordance with the terms set forth in the Agreement is in the public interest; (c) waiving Saratoga’s tariff provisions to the extent they are inconsistent with the Agreement, and (d) waiving the applicability of the provisions of 16 N.Y.C.R.R. Parts 501 and 502 to the extent they are inconsistent with the Agreement.

*Text of proposed rule and any required statements and analyses may be obtained by filing a Document Request Form (F-96) located on our website <http://www.dps.state.ny.us/f96dir.htm>. For questions, contact:* Leann Ayer, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 486-2655, email: leann.ayer@dps.ny.gov

**Data, views or arguments may be submitted to:** Jaclyn A. Brillling, Secretary, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 474-6530, email: Secretary@dps.ny.gov

**Public comment will be received until:** 45 days after publication of this notice.

**Regulatory Impact Statement, Regulatory Flexibility Analysis, Rural Area Flexibility Analysis and Job Impact Statement**

Statements and analyses are not submitted with this notice because the proposed rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.

(09-W-0643SP1)

### PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

**Whether a Proposed Agreement for the Provision of Water Service by Saratoga Water Services, Inc. is in the Public Interest**

**I.D. No.** PSC-17-12-00008-P

PURSUANT TO THE PROVISIONS OF THE State Administrative Procedure Act, NOTICE is hereby given of the following proposed rule:

**Proposed Action:** The Public Service Commission is considering whether to approve, deny, or modify, in whole or in part, the petition of Saratoga Water Services, Inc. for a waiver of the company’s tariff and approval of the terms of a service agreement.

**Statutory authority:** Public Service Law, sections 4(1), 20(1) and 89-b

**Subject:** Whether a proposed agreement for the provision of water service by Saratoga Water Services, Inc. is in the public interest.

**Purpose:** Whether the Commission should issue an order approving the proposed provision of water service.

**Substance of proposed rule:** The Commission is considering whether to approve, deny, or modify, in whole or in part a Petition in which Saratoga Water Services, Inc. (Saratoga) seeks issuance of an Order (a) approving the terms and conditions of a certain “Agreement For The Provision of Water Service”, dated January 11, 2008 (Agreement) between Saratoga and Albany Partners, LLC as being in the public interest; (b) determining that the provision of water service by Saratoga in accordance with the terms set forth in the Agreement is in the public interest; (c) waiving Saratoga’s tariff provisions to the extent they are inconsistent with the Agreement, and (d) waiving the applicability of the provisions of 16 N.Y.C.R.R. Parts 501 and 502 to the extent they are inconsistent with the Agreement.

*Text of proposed rule and any required statements and analyses may be obtained by filing a Document Request Form (F-96) located on our website <http://www.dps.state.ny.us/f96dir.htm>. For questions, contact:* Leann Ayer, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 486-2655, email: leann.ayer@dps.ny.gov

**Data, views or arguments may be submitted to:** Jaclyn A. Brillling, Secretary, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 474-6530, email: Secretary@dps.ny.gov

**Public comment will be received until:** 45 days after publication of this notice.

**Regulatory Impact Statement, Regulatory Flexibility Analysis, Rural Area Flexibility Analysis and Job Impact Statement**

Statements and analyses are not submitted with this notice because the proposed rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.

(08-W-0201SP1)

### PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

**Whether a Proposed Agreement for the Provision of Water Service by Saratoga Water Services, Inc. is in the Public Interest**

**I.D. No.** PSC-17-12-00009-P

PURSUANT TO THE PROVISIONS OF THE State Administrative Procedure Act, NOTICE is hereby given of the following proposed rule:

**Proposed Action:** The Public Service Commission is considering whether to approve, deny, or modify, in whole or in part, the petition of Saratoga Water Services, Inc. for a waiver of the company’s tariff and approval of the terms of a service agreement.

**Statutory authority:** Public Service Law, sections 4(1), 20(1) and 89-b

**Subject:** Whether a proposed agreement for the provision of water service by Saratoga Water Services, Inc. is in the public interest.

**Purpose:** Whether the Commission should issue an order approving the proposed provision of water service.

**Substance of proposed rule:** The Commission is considering whether to approve, deny, or modify, in whole or in part a Petition in which Saratoga Water Services, Inc. (Saratoga) seeks issuance of an Order (a) approving the terms and conditions of a certain “Agreement For The Provision of Water Service”, dated December 5, 2008 (Agreement) between Saratoga

and Saratoga Malta LLC as being in the public interest; (b) determining that the provision of water service by Saratoga in accordance with the terms set forth in the Agreement is in the public interest; (c) waiving Saratoga's tariff provisions to the extent they are inconsistent with the Agreement, and (d) waiving the applicability of the provisions of 16 N.Y.C.R.R. Parts 501 and 502 to the extent they are inconsistent with the Agreement.

**Text of proposed rule and any required statements and analyses may be obtained by filing a Document Request Form (F-96) located on our website <http://www.dps.state.ny.us/f96dir.htm>. For questions, contact:** Leann Ayer, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 486-2655, email: leann.ayer@dps.ny.gov

**Data, views or arguments may be submitted to:** Jaclyn A. Brillling, Secretary, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 474-6530, email: Secretary@dps.ny.gov

**Public comment will be received until:** 45 days after publication of this notice.

**Regulatory Impact Statement, Regulatory Flexibility Analysis, Rural Area Flexibility Analysis and Job Impact Statement**

Statements and analyses are not submitted with this notice because the proposed rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.

(11-W-0114SP1)

**PROPOSED RULE MAKING  
NO HEARING(S) SCHEDULED**

**Authorization to Transfer Certain Real Property**

**I.D. No.** PSC-17-12-00010-P

PURSUANT TO THE PROVISIONS OF THE State Administrative Procedure Act, NOTICE is hereby given of the following proposed rule:

**Proposed Action:** The Public Service Commission is considering the petition of Niagara Mohawk Power Corporation d/b/a National Grid to transfer an approximately 10.7 acre parcel of unimproved real property in the Town of Amherst, Erie County to Timothy J. Waterman.

**Statutory authority:** Public Service Law, section 70

**Subject:** Authorization to transfer certain real property.

**Purpose:** To decide whether to approve the transfer certain real property.

**Substance of proposed rule:** By petition dated July 15, 2011, Niagara Mohawk Power Corporation d/b/a National Grid seeks to transfer an approximately 10.7 acre parcel of unimproved real property in the Town of Amherst, Erie County to Timothy J. Waterman. The Commission may approve, modify, or reject, in whole or in part, the actions requested in the petition.

**Text of proposed rule and any required statements and analyses may be obtained by filing a Document Request Form (F-96) located on our website <http://www.dps.state.ny.us/f96dir.htm>. For questions, contact:** Leann Ayer, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 486-2655, email: leann.ayer@dps.ny.gov

**Data, views or arguments may be submitted to:** Jaclyn A. Brillling, Secretary, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 474-6530, email: Secretary@dps.ny.gov

**Public comment will be received until:** 45 days after publication of this notice.

**Regulatory Impact Statement, Regulatory Flexibility Analysis, Rural Area Flexibility Analysis and Job Impact Statement**

Statements and analyses are not submitted with this notice because the proposed rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.

(11-E-0379SP2)

**PROPOSED RULE MAKING  
NO HEARING(S) SCHEDULED**

**Rehearing Petition of the Willows Homeowners Association and Record Keeping Requirements for Small Water Companies**

**I.D. No.** PSC-17-12-00011-P

PURSUANT TO THE PROVISIONS OF THE State Administrative Procedure Act, NOTICE is hereby given of the following proposed rule:

**Proposed Action:** The Commission is considering whether to grant, deny

or modify the petition for rehearing of the Willows Homeowners Association regarding the rates charged by Aqua New York, Inc. and waiver of some record keeping requirements for small water companies.

**Statutory authority:** Public Service Law, sections 22, 89-c(3) and 89-i

**Subject:** Rehearing petition of the Willows Homeowners Association and record keeping requirements for small water companies.

**Purpose:** Ruling on the rehearing petition and waiving some record keeping requirements for small water companies.

**Substance of proposed rule:** The Public Service Commission will accept, reject or modify a petition for rehearing filed by the Willows Homeowners Association (Willows Association) regarding the rates charged by Aqua New York, Inc. (Aqua NY) to ratepayers of its Dykeer water system. The Willows Association filed a petition under Public Service Law § 89-i challenging the rates of Aqua NY. The Commission rejected that petition, but ordered a prospective reduction in Aqua NY's rates to correct an error in calculating the company's rate base. The Willows Association filed a petition for rehearing on December 20, 2011 alleging errors in law and fact in the Commission's rejection of its petition and refusal to grant a refund for payments based on the inflated rate base.

The Commission will also consider whether to waive record keeping requirements related to documentation of plant (16 NYCRR § 733.10) for small water companies.

**Text of proposed rule and any required statements and analyses may be obtained by filing a Document Request Form (F-96) located on our website <http://www.dps.state.ny.us/f96dir.htm>. For questions, contact:** Leann Ayer, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 486-2655, email: leann.ayer@dps.ny.gov

**Data, views or arguments may be submitted to:** Jaclyn A. Brillling, Secretary, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 474-6530, email: Secretary@dps.ny.gov

**Public comment will be received until:** 45 days after publication of this notice.

**Regulatory Impact Statement, Regulatory Flexibility Analysis, Rural Area Flexibility Analysis and Job Impact Statement**

Statements and analyses are not submitted with this notice because the proposed rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.

(10-W-0652SP2)

**PROPOSED RULE MAKING  
NO HEARING(S) SCHEDULED**

**Transfer of Franchises, Approval for Use of Revenues, Certificate of Share Exchange and Transactions Between Affiliates**

**I.D. No.** PSC-17-12-00012-P

PURSUANT TO THE PROVISIONS OF THE State Administrative Procedure Act, NOTICE is hereby given of the following proposed rule:

**Proposed Action:** The Commission is considering whether to approve or reject, in whole or in part, a request by Corning Natural Gas Corporation to reorganize its current and prospective businesses into a holding company structure and for the funding of related transactions.

**Statutory authority:** Public Service Law, sections 70, 107, 108 and 110

**Subject:** Transfer of franchises, approval for use of revenues, certificate of share exchange and transactions between affiliates.

**Purpose:** To authorize the formation of a holding company and to use proceeds from debt and equity issuance for related transactions.

**Substance of proposed rule:** The Public Service Commission is considering whether to approve, deny or modify, in whole or in part, a petition of Corning Natural Corporation pursuant to Sections 70, 107, 108 and 110 of the PSL for authority to form a holding company and for approval of certain related transactions.

**Text of proposed rule and any required statements and analyses may be obtained by filing a Document Request Form (F-96) located on our website <http://www.dps.state.ny.us/f96dir.htm>. For questions, contact:** Leann Ayer, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 486-2655, email: leann.ayer@dps.ny.gov

**Data, views or arguments may be submitted to:** Jaclyn A. Brillling, Secretary, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 474-6530, email: Secretary@dps.ny.gov

**Public comment will be received until:** 45 days after publication of this notice.

**Regulatory Impact Statement, Regulatory Flexibility Analysis, Rural Area Flexibility Analysis and Job Impact Statement**

Statements and analyses are not submitted with this notice because the proposed rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.  
(12-G-0141SP1)

**PROPOSED RULE MAKING  
NO HEARING(S) SCHEDULED**

**Whether a Proposed Agreement for the Provision of Water Service by Saratoga Water Services, Inc. is in the Public Interest**

I.D. No. PSC-17-12-00013-P

PURSUANT TO THE PROVISIONS OF THE State Administrative Procedure Act, NOTICE is hereby given of the following proposed rule:

**Proposed Action:** The Public Service Commission is considering whether to approve, deny, or modify, in whole or in part, the petition of Saratoga Water Services, Inc. for a waiver of the company's tariff and approval of the terms of a service agreement.

**Statutory authority:** Public Service Law, sections 4(1), 20(1) and 89-b

**Subject:** Whether a proposed agreement for the provision of water service by Saratoga Water Services, Inc. is in the public interest.

**Purpose:** Whether the Commission should issue an order approving the proposed provision of water service.

**Substance of proposed rule:** The Commission is considering whether to approve, deny, or modify, in whole or in part a Petition in which Saratoga Water Services, Inc. (Saratoga) seeks issuance of an Order (a) approving the terms and conditions of a certain "Agreement For The Provision of Water Service", dated March 14, 2012 (Agreement) between Saratoga and Malta Land Company, LLC as being in the public interest; (b) determining that the provision of water service by Saratoga in accordance with the terms set forth in the Agreement is in the public interest; (c) waiving Saratoga's tariff provisions to the extent they are inconsistent with the Agreement, and (d) waiving the applicability of the provisions of 16 N.Y.C.R.R. Parts 501 and 502 to the extent they are inconsistent with the Agreement.

**Text of proposed rule and any required statements and analyses may be obtained by filing a Document Request Form (F-96) located on our website <http://www.dps.state.ny.us/f96dir.htm>. For questions, contact:** Leann Ayer, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 486-2655, email: leann.ayer@dps.ny.gov

**Data, views or arguments may be submitted to:** Jaclyn A. Brillling, Secretary, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 474-6530, email: Secretary@dps.ny.gov

**Public comment will be received until:** 45 days after publication of this notice.

**Regulatory Impact Statement, Regulatory Flexibility Analysis, Rural Area Flexibility Analysis and Job Impact Statement**

Statements and analyses are not submitted with this notice because the proposed rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.

(12-W-0137SP1)

**PROPOSED RULE MAKING  
NO HEARING(S) SCHEDULED**

**Issuance of Long-Term Debt**

I.D. No. PSC-17-12-00014-P

PURSUANT TO THE PROVISIONS OF THE State Administrative Procedure Act, NOTICE is hereby given of the following proposed rule:

**Proposed Action:** The Public Service Commission is considering whether to approve, modify, or reject, a petition filed by United Water New York Inc. seeking the Commission's authorization to issue and sell up to \$30,000,000 of unsecured promissory notes.

**Statutory authority:** Public Service Law, section 89-f

**Subject:** Issuance of long-term debt.

**Purpose:** To allow United Water New York Inc. to issue long-term debt to refinance high cost debt and for other lawful corporate purposes.

**Substance of proposed rule:** United Water New York Inc. seeks the Commission's authorization to enter into one or more agreement(s) for the sale

on a negotiated basis of up to an aggregate principal amount of unsecured \$30,000,000 of promissory notes and enter into any and all other agreements that would be negotiated and required at a later date with respect to the foregoing.

**Text of proposed rule and any required statements and analyses may be obtained by filing a Document Request Form (F-96) located on our website <http://www.dps.state.ny.us/f96dir.htm>. For questions, contact:** Leann Ayer, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 486-2655, email: leann.ayer@dps.ny.gov

**Data, views or arguments may be submitted to:** Jaclyn A. Brillling, Secretary, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 474-6530, email: Secretary@dps.ny.gov

**Public comment will be received until:** 45 days after publication of this notice.

**Regulatory Impact Statement, Regulatory Flexibility Analysis, Rural Area Flexibility Analysis and Job Impact Statement**

Statements and analyses are not submitted with this notice because the proposed rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.

(12-W-0159SP1)

**PROPOSED RULE MAKING  
NO HEARING(S) SCHEDULED**

**Whether a Proposed Agreement for the Provision of Water Service by Saratoga Water Services, Inc. is in the Public Interest**

I.D. No. PSC-17-12-00015-P

PURSUANT TO THE PROVISIONS OF THE State Administrative Procedure Act, NOTICE is hereby given of the following proposed rule:

**Proposed Action:** The Public Service Commission is considering whether to approve, deny, or modify, in whole or in part, the petition of Saratoga Water Services, Inc. for a waiver of the company's tariff and approval of the terms of a service agreement.

**Statutory authority:** Public Service Law, sections 4(1), 20(1) and 89-b

**Subject:** Whether a proposed agreement for the provision of water service by Saratoga Water Services, Inc. is in the public interest.

**Purpose:** Whether the Commission should issue an order approving the proposed provision of water service.

**Substance of proposed rule:** The Commission is considering whether to approve, deny, or modify, in whole or in part a Petition in which Saratoga Water Services, Inc. (Saratoga) seeks issuance of an Order (a) approving the terms and conditions of a certain "Agreement For The Provision of Water Service", dated December 5, 2008 (Agreement) between Saratoga and Thomas P. Deveno and Thomas J. Farone as being in the public interest; (b) determining that the provision of water service by Saratoga in accordance with the terms set forth in the Agreement is in the public interest; (c) waiving Saratoga's tariff provisions to the extent they are inconsistent with the Agreement, and (d) waiving the applicability of the provisions of 16 N.Y.C.R.R. Parts 501 and 502 to the extent they are inconsistent with the Agreement.

**Text of proposed rule and any required statements and analyses may be obtained by filing a Document Request Form (F-96) located on our website <http://www.dps.state.ny.us/f96dir.htm>. For questions, contact:** Leann Ayer, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 486-2655, email: leann.ayer@dps.ny.gov

**Data, views or arguments may be submitted to:** Jaclyn A. Brillling, Secretary, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 474-6530, email: Secretary@dps.ny.gov

**Public comment will be received until:** 45 days after publication of this notice.

**Regulatory Impact Statement, Regulatory Flexibility Analysis, Rural Area Flexibility Analysis and Job Impact Statement**

Statements and analyses are not submitted with this notice because the proposed rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.

(12-W-0148SP1)

**PROPOSED RULE MAKING  
NO HEARING(S) SCHEDULED**

**Water Rates and Charges**

I.D. No. PSC-17-12-00016-P

PURSUANT TO THE PROVISIONS OF THE State Administrative Procedure Act, NOTICE is hereby given of the following proposed rule:

**Proposed Action:** The PSC is considering a request from Debora A. Lambert, d/b/a Green Meadow Park Water Company to increase its annual revenues by \$19,387 or 77%, for a surcharge to recover costs of several expenditures, and to convert its tariff to an electronic tariff.

**Statutory authority:** Public Service Law, sections 4(1), 5(1)(f), 89-c(1) and (10)

**Subject:** Water rates and charges.

**Purpose:** For approval to increase Green Meadow Park Water Company annual revenues by about \$19,387 or 77%.

**Text of proposed rule:** On February 7, 2012, Debora A. Lambert, d/b/a Green Meadow Park Water Company (Green Meadow or the company) filed a request to increase its annual revenues by \$19,387 or 77%, to become effective July 1, 2012. The company also requested to implement a surcharge to recover the actual costs of several extraordinary expenditures they were directed to undertake. Green Meadow also requested that its existing tariff be converted to an electronic tariff schedule. The company provides metered water service 89 residential customers in the Town of LaGrange, Dutchess County.

The company's proposed tariff is available on the Commission's Home Page on the World Wide Web ([www.dps.ny.gov](http://www.dps.ny.gov)) located under Commission Documents – Tariffs). The Commission may approve or reject, in whole or in part, or modify the company's request.

**Text of proposed rule and any required statements and analyses may be obtained by filing a Document Request Form (F-96) located on our website <http://www.dps.state.ny.us/f96dir.htm>. For questions, contact:** Leann Ayer, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 486-2655, email: [leann.ayer@dps.ny.gov](mailto:leann.ayer@dps.ny.gov)

**Data, views or arguments may be submitted to:** Jaclyn A. Brillling, Secretary, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 474-6530, email: [Secretary@dps.ny.gov](mailto:Secretary@dps.ny.gov)

**Public comment will be received until:** 45 days after publication of this notice.

**Regulatory Impact Statement, Regulatory Flexibility Analysis, Rural Area Flexibility Analysis and Job Impact Statement**

Statements and analyses are not submitted with this notice because the proposed rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.

(12-W-0041SP2)

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## Racing and Wagering Board

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### EMERGENCY RULE MAKING

#### Qualifying Performances for Horses That Compete at Harness Racetracks

**I.D. No.** RWB-17-12-00002-E

**Filing No.** 281

**Filing Date:** 2012-04-04

**Effective Date:** 2012-04-04

PURSUANT TO THE PROVISIONS OF THE State Administrative Procedure Act, NOTICE is hereby given of the following action:

**Action taken:** Addition of section 4113.5(a)(1)(i) to Title 9 NYCRR.

**Statutory authority:** Racing, Pari-Mutuel Wagering and Breeding Law, sections 101(1) and 301(1)

**Finding of necessity for emergency rule:** Preservation of general welfare.

**Specific reasons underlying the finding of necessity:** The Board has determined that immediate adoption of this rule is necessary for the preservation of the general welfare and that compliance with the requirements of subdivision 1 of Section 202 of the State Administrative Procedure Act would be contrary to the public interest.

This rule is necessary to protect the general welfare of the horse racing industry and the thousands of jobs that are created through it. On March 26, 2012, Saratoga Raceway closed its racetrack to racing due to an outbreak of strangles, a highly contagious bacteria-borne equine disease. The Saratoga track is scheduled to re-open on April 11, 2012 and shipping restrictions associated with the strangles outbreak are expected to be lifted at the same time. As a result of this

outbreak, the shipping of harness race horses was restricted at Saratoga and other New York State racetracks where these harness horses travel to compete. As result, horses that were scheduled to meet qualification requirements were unable to do so. Subsequently, the horse racing economy and the revenues derived for support of government, have been adversely impacted. This amendment is critically needed to restore harness racing to its normal levels in New York State as soon as possible. The Board has determined that a temporary 30-day emergency rule allowing for a 60-day qualification period will suffice.

**Subject:** Qualifying performances for horses that compete at harness racetracks.

**Purpose:** Extend to 60-days the qualification period for standardbred horses due to limitations on shipping horses and quarantine.

**Text of emergency rule:** Subparagraph (i) of Paragraph 1 of Subdivision (a) of section 4113.5 of 9E NYCRR is added to read as follows:

(1) The horse does not show a charted line of a current performance meeting the qualifying standards at the track for the class of race. Current performance shall be defined as a start within 30 days of the date of the race to which declared. A performance on or after September 1 of the preceding year, shall be considered current for a horse making its first start of the current year before June 1 at Vernon Downs, Saratoga Raceway, Monticello Raceway, and Goshen Historic Track. Official workouts shall be acceptable as qualifying performances for this paragraph for horses with previous satisfactory races.

(i) *Notwithstanding the requirements stated in Paragraph 1, during the period of April 4, 2012 through May 4, 2012 inclusive, "current performance" shall be defined as a start within 60 days of the date of the race to which declared.*

**This notice is intended** to serve only as an emergency adoption, to be valid for 90 days or less. This rule expires May 3, 2012.

**Text of rule and any required statements and analyses may be obtained from:** John J. Googas, New York State Racing and Wagering Board, One Broadway Center, Suite 600, Schenectady, New York 12305-2553, (518) 395-5400, email: [info@racing.ny.gov](mailto:info@racing.ny.gov)

#### Regulatory Impact Statement

1. **Statutory authority:** Racing, Pari-Mutuel Wagering and Breeding Law, sections 101 and 301. Under Section 101, the Board has general jurisdiction over all horse racing activities and all pari-mutuel racing activities. Section 301 authorizes the Board to prescribe rules and regulations for harness racing.

2. **Legislative objectives:** To ensure that that the conduct of harness racing is consistent with the public interest, convenience and necessity and with the best interests of racing generally.

3. **Needs and benefits:** The amendment is necessary to allow horses to compete at harness racetracks and thereby derive income. Racing and qualification schedules were severely disrupted in March and April due to the outbreak of strangles among harness racehorses within New York State. As a result of the outbreak, shipping of horses was prohibited at certain tracks, three weeks of racing was cancelled at Saratoga Raceway, and the training/qualification schedules for scores of horses were negatively impacted. This amendment is necessary to ensure that horse owners, drivers, trainers and grooms remain employed and economically viable by allowing horses to qualify for a race even though unforeseen circumstances have prevented their horses from qualifying. Current performances and qualifying races are used to gauge a horse's speed, endurance and competitive spirit. Such performance provides the public with the assurance that a horse is capable of racing in a competitive manner.

Preserving those racetrack job opportunities is in the best interest of racing generally. The amendment will extend the 30-day qualification period to 60 days for the period of April 4, 2012 through May 4, 2012. The purpose of the existing rule is to ensure that horses are qualified to compete at the level at which the public will be wagering upon their performance. This amendment is necessary to ensure that harness racing is able to recover to it fullest capacity and that revenue in support of government through pari-mutuel wagering is preserved.

#### 4. Costs:

(a) Costs to regulated parties for the implementation of and continuing compliance with the rule: There are no costs to regulated parties. In fact, under the current rule, due to the costs of supporting and train-

ing a horse, horse owners may be losing money because of the limited opportunities to qualify, compete and earn money. This rule would reduce costs for horse owners by allowing them to compete more and earn money.

(b) Costs to the agency, the state and local governments for the implementation and continuation of the rule: None.

(c) The information, including the source(s) of such information and the methodology upon which the cost analysis is based: The Office of Counsel of the New York State Racing and Wagering Board made this analysis based upon nature of the rule.

(d) There are no costs, therefore the Board cannot provide an exact estimate of costs.

5. Local government mandates: None. Local governments do not regulate horse racing in the State of New York.

6. Paperwork: None.

7. Duplication: None. The New York State Racing and Wagering Board is the only entity whose duty is to regulate horse racing in the State of New York, and there are no other controlling rules or regulations with any other government agency.

8. Alternatives: No alternatives were considered given the narrowly tailored purpose of adopting a 30-day extension for qualification. The need for this rule is dictated by the unforeseen consequences of a contagious equine infection and the Board has decided that a specific rule extending the qualification period is all that is required to ensure that harness racing is restored as soon and as practicable as possible.

9. Federal standards: None.

10. Compliance schedule: Once adopted, the rule can be implemented immediately upon publication in the State Register.

**Regulatory Flexibility Analysis, Rural Area Flexibility Analysis and Job Impact Statement**

This proposal does not require a Regulatory Flexibility Statement, Rural Area Flexibility Statement or Job Impact Statement as it allows the Board to extend the qualification period for a harness racehorse. These proposed amendments do not impact upon State Administrative Procedure Act section 102(8), nor do they affect employment. It will not impose an adverse economic impact on reporting, recordkeeping or other compliance requirements on small businesses in rural or urban areas nor on employment opportunities. This emergency rulemaking will not have an adverse impact on jobs. In fact, this rulemaking will help preserve jobs in New York State. Due to an outbreak in March of strangles, a contagious bacterial infection that affects horses, several racetracks imposed limitations in shipping horses out or into their facilities. Saratoga Raceway discontinued racing altogether between March 26, 2012 and April 11, 2012. Monticello Raceway and Buffalo Raceway enacted limits on shipping of horses into their tracks. This had an adverse impact on the qualifying schedule and racing plans for owners and trainers across the state. Under this emergency amendment, the qualifying period for horses that wish to compete will be extended to 60 days from 30 days to allow harness horses to qualify and compete and thereby restore full pari-mutuel harness racing in New York State.

## Urban Development Corporation

### EMERGENCY RULE MAKING

#### Downstate Revitalization Fund Program

**I.D. No.** UDC-17-12-00001-E

**Filing No.** 277

**Filing Date:** 2012-04-03

**Effective Date:** 2012-04-03

PURSUANT TO THE PROVISIONS OF THE State Administrative Procedure Act, NOTICE is hereby given of the following action:

**Action taken:** Addition of Part 4249 to Title 21 NYCRR.

**Statutory authority:** Urban Development Corporation Act, section 5(4); L. 2008, ch. 57, part QQ, section 16-r; L. 1968, ch. 174

**Finding of necessity for emergency rule:** Preservation of public health, public safety and general welfare.

**Specific reasons underlying the finding of necessity:** Effective provision of economic development assistance in accordance with the enabling legislation requires the creation of the Rule. Program assistance will address the dangers to public health, safety and welfare by providing financial, project development, or other assistance for the purposes of supporting investment in distressed communities in the downstate region, and in support of such projects that focus on: encouraging business, community and technology-based development and supporting innovative programs of public and private cooperation working to foster new investment, job creation and small business growth.

**Subject:** Downstate Revitalization Fund Program.

**Purpose:** Provide the basis for administration of The Downstate Revitalization Fund including evaluation criteria and application process.

**Text of emergency rule: Part 4249**

#### DOWNSTATE REVITALIZATION FUND PROGRAM

##### Section 4249.1 General

*These regulations set forth the types of available assistance, evaluation criteria, application and project process and related matters for the Downstate Revitalization Fund (the "Program"). The Program was created pursuant to § 16-r of the New York State Urban Development Corporation Act, as added by Chapter 57 of the Laws of 2008 (the "Act") for the purposes of supporting investment in distressed communities in the downstate region and in support of projects that focus on encouraging business, community, and technology-based development, and supporting innovative programs of public and private cooperation working to foster new investment, job creation and small business growth.*

##### Section 4249.2 Definitions

*For purposes of these regulations, the terms below will have the following meanings:*

(a) "Corporation" shall mean the New York State Urban Development Corporation doing business as Empire State Development Corporation.

(b) "Distressed community" shall mean a census tract, or defined portion thereof, that, according to the most recent census data available, has (1) a poverty rate of at least 20% for the year to which the data relate; and (2) an unemployment rate of at least 1.25 times the statewide unemployment rate for the year to which the data relate.

(c) "Downstate" shall mean the following New York State counties, subject to ESDC Directors' approval: Bronx, Dutchess, Kings, Nassau, New York, Orange, Putnam, Queens, Richmond, Rockland, Suffolk, and Westchester.

##### Section 4249.3 Types of Assistance

*The Program offers assistance in the form loans and/or grants to for-profit businesses, not-for-profit corporations, public benefit corporations, municipalities, and research and academic institutions, for activities including, but not limited to, the following:*

(a) support for projects identified through collaborative efforts as part of the overall growth strategy for the local economy, including, but not limited, to smart growth and energy efficiency initiative; intellectual capital capacity building;

(b) support for the attraction or expansion of a business including, but not limited to, those primarily engaged in activities identified as a strategic industry and minority-owned and women-owned business enterprises as defined respectively by subdivisions (c) and (f) of section nine hundred fifty-seven of the General Municipal Law and section three hundred ten of the Executive Law;

(c) support for land acquisition and/or the construction, acquisition or expansion of buildings, machinery and equipment associated with a project; and

(d) support for projects located in an investment zone as defined by paragraph (i) of subdivision (d) of section 957 of the General Municipal Law.

##### Section 4249.4 Eligibility

(a) Eligible applicants shall include, but not be limited to, business improvement districts, local development corporations, economic development organizations, for profit businesses, not-for-profit corporations, public benefit corporations, municipalities, counties, research and academic institutions, incubators, technology parks, private firms, regional planning councils, tourist attractions and community facilities.

(b) The Corporation shall be eligible for assistance in the form of loans, grants, or monies contributing to projects for which the Corporation or a subsidiary act as developer.

(1) The Corporation may act as developer in the acquisition, renovation, construction, leasing or sale of development projects authorized pursuant to this Program in order to stimulate private sector investment within the affected community.

(2) In acting as a developer, the Corporation may borrow for purposes of this subdivision for approved projects in which the lender's recourse is solely to the assets of the project, and may make such arrangements and agreements with community-based organizations and local development corporations as may be required to carry out the purposes of this section.

(3) Prior to developing and such project, the Corporation shall secure a firm commitment from entities, independent of the Corporation, for the purchase or lease of such project. Such firm commitment shall be evidenced by a memorandum of understanding or other document describing the intent of the parties.

(4) Projects authorized under this subdivision whether developed by the Corporation or a private developer, must be located in distressed communities, for which there is demonstrated demand within the particular community.

(c) Program assistance is available for the following funding tracks:

(1) Business Investment Business Investments are capital expenditures that facilitate an employer's ability to create new jobs in New York State or retain jobs that are otherwise in jeopardy. Within the Business Investment Track, five-year job commitments will be required of all beneficiaries; it is by underwriting these job commitments that ESDC is best able to forecast the economic benefits of providing assistance to any particular project. Applicants will therefore be required to commit to the number of jobs At Risk that will be retained by the proposed project, the number of new jobs that will be created by the project, and the average salaries of each. Failure to achieve or maintain these employment commitments will subject a beneficiary to potential recapture of assistance.

(2) Infrastructure Investment The Funds will finance infrastructure investments in order to attract new businesses and expand existing businesses, thereby fostering further investment. Infrastructure investments are capital expenditures for infrastructure including transportation, water and sewer, communication, and energy generation and distribution. Infrastructure also includes the construction of parking garages. Unlike the other two Tracks, Infrastructure Investment may be used to finance planning or feasibility studies relating to capital expenditures. The Infrastructure Investment Track is appropriate only for infrastructure activity for unidentified end-users or for multiple users; infrastructure projects that will serve a single identified entity must apply for assistance under the Business Investment Track, which may be used to fund infrastructure expenses. Although projects without identified users may be funded under the Infrastructure Investment Track, preference under this Track will be given to projects with identified tenants.

(i) Job commitments: Infrastructure Investment projects that are able to provide job commitments will be viewed favorably. However, it is important to note that (a) few Infrastructure Investment projects are anticipated to be able to provide job commitments and (b) if the employer will be an entity other than the Applicant, a third party guarantee of the Applicant's job commitment must be provided by the prospective employer and that prospective employer must be found by ESDC to be creditworthy.

(3) Downtown Redevelopment Downtown neighborhoods - whether major commercial areas of big cities or one block stretches of village main streets - are important generators of economic activity in New York State. In an effort to strengthen these cores of commerce, the Downtown Redevelopment Track will finance rehabilitation and new construction in downtown areas statewide. Funding will be available for a range of commercial uses, including retail, office and commercial. Funding will also be available for projects that are likely to increase tourism, including hotels, cultural institutions and entertainment facilities, and streetscape improvements. This Track will not be used to finance speculative development, and therefore only projects in which 60% of the square footage has been pre-leased generally will be considered.

(i) Job commitments: Downtown Redevelopment projects that are able to provide job commitments will be viewed favorably. However, it is important to note that (a) few Downtown Redevelopment projects are anticipated to be able to provide job commitments and (b) if the employer will be an entity other than the Applicant, a third party guarantee of the Applicant's job commitment must be provided by the prospective employer and that prospective employer must be found by ESDC to be creditworthy.

(d) No full-time employee of the state or full-time employee of any agency, department, authority or public benefit corporation (or any subsidiary of a public benefit corporation) of the state shall be eligible to receive assistance under this initiative, nor shall any business, the major-

ity ownership interest of which is beneficially controlled by any such employee, be eligible for assistance under this initiative.

Section 4249.5 Evaluation criteria

(a) The Corporation shall give priority in granting assistance to those projects:

(1) with significant private financing or matching funds through other public entities;

(2) likely to produce a high return on public investment;

(3) with existence of significant support from the local business community, local government, community organizations, academic institutions and other regional parties;

(4) deemed likely to increase the community's economic and social viability;

(5) with cost benefit analysis that demonstrates increased economic activity, sustainable job creation and investments;

(6) located in distressed communities;

(7) whose application is submitted by multiple entities, both public and private; or

(8) such other requirements as determined by the Corporation as are necessary to implement the provisions of the Program.

(9) Applications for assistance will be scored competitively, using a point system. Applications under each Track will be scored separately; requests for assistance under one Track thus will not be scored against requests for assistance under another Track.

Following are the scoring criteria and the points assigned to each area:

Criterion	Business	Infrastructure	Downtown
Private financing leveraged	10	10	5
Public financing leveraged	5	5	5
Return on public investment	10	5	5
Increased economic activity	10	5	5
Distressed Census Tract	10	10	10
Application supported by multiple public/private entities	7	7	7
Local/regional support	3	3	3
Significant regional breadth, likely to have wide regional impact, or likely to increase the community's economic and social viability	5	5	5
Minority or women-owned business enterprise	5	5	5
Comports with identifiable regional development plans/initiatives	5	5	5
Loan v. grant	10	10	10
ESDC credit score (considers cash flow, collateral and guarantees)	10	10	10
Project readiness	5	5	5
Sustainable development	5	5	5
Reuse/remediation	5	5	5
Identified tenants	5	5	5
Potential to revitalize a downtown neighborhood	3	3	3

Consistency/ preserve architectural character	2	2	2
President & CEO discretion	10	10	10
Total	110	110	110

(i) *President & CEO discretion: ESDC's President & CEO will be able to assign up to 10 points in recognition of factors not otherwise captured in the scoring, such as geographic distribution throughout the State and a project's potentially transformative nature.*

(ii) *Scoring process: Applications will be scored in ESDC's regional offices, with assistance from ESDC's central office in estimating a project's fiscal and economic benefits and performing credit analysis. Funding recommendations will be made based on scoring results and final decisions will be made once President & CEO discretionary points have been assigned.*

**Section 4249.6 Application and Approval Process**

(a) *The Corporation may, at its discretion and within available appropriations, issue requests for proposals and may at other times accept direct applications for program assistance.*

(b) *Promptly after receipt of the application, the Corporation shall review the application for eligibility, completeness, and conformance with the applicable requirements of the Act and this Rule. Applications shall be processed in full compliance with the applicable provisions 16-r of the Act.*

(c) *If the proposal satisfies the applicable requirements and initiative funding is available, the proposal may be presented to the Corporation's directors for adoption consideration in accordance with applicable law and regulations. The directors normally meet once a month. If the project is approved for funding and if it involves the acquisition, construction, reconstruction, rehabilitation, alteration or improvement of any property, the Corporation will schedule a public hearing in accordance with the Act and will take such further action as may be required by the Act and applicable law and regulations. After approval by the Corporation and a public hearing the project may then be reviewed by the State Public Authorities Control Board ("PACB"), which also generally meets once a month, in accordance with PACB requirements and policies. Following directors' approval, and PACB approval, if required, documentation will be prepared by the Corporation. Notwithstanding the foregoing, no initiative project shall be funded if sufficient initiative monies are not received by the Corporation for such project.*

**Section 4249.7 Confidentiality**

*To the extent permitted by law, all information regarding the financial condition, marketing plans, manufacturing processes, production costs, customer lists, or other trade secrets and proprietary information of a person or entity requesting assistance from the Corporation, which is submitted by such person or entity to the Corporation in connection with an application for assistance, shall be confidential and exempt from public disclosures.*

**Section 4249.8 Expenses**

(a) *An application fee of \$250 must be paid to the Corporation for projects that involve acquisition, construction, reconstruction, rehabilitation alteration or improvement of real property, the financing of machinery and equipment and working capital loans and loan guarantees before final review of an application can be completed. This fee will be refunded in the event the application is withdrawn or rejected.*

(b) *The Corporation will assess a commitment fee of up to two percent of the amount of any Program loan involving projects for acquisition, construction, reconstruction, rehabilitation, alteration or improvement of real property, the financing of machinery and equipment and working capital payable upon acceptance of commitment with up to 1 percent rebated at closing. No portion of the commitment fee will be repaid if the commitment lapses and the project do not close. The Corporation will assess a fee of up to 1 percent, payable at closing, of the amount of any Program grant involving the acquisition, construction, reconstruction, rehabilitation, alteration or improvement of real property or the financing of machinery and equipment or any loan guarantee.*

(c) *The applicant will be obligated to pay for expenses incurred by the Corporation in connection with the project, including, but not limited to, expenses related to attorney, appraisals, surveys, title insurance, credit searches, filing fees, public hearing expenses and other requirements deemed appropriate by the Corporation.*

**Section 4249.9 Affirmative action and non-discrimination**

*Program applications shall be reviewed by the Corporation's affirmative action department, which shall, in consultation with the applicant and/or proposed recipient of the program assistance and any other rele-*

*vant involved parties, develop appropriate goals, in compliance with applicable law (including section 2879 of the public authorities law, article fifteen-A of the executive law and section 6254(11) of the unconsolidated laws) and the Corporation's policy, for participation in the proposed project by minority group members and women. Compliance with laws and the Corporation's policy prohibiting discrimination in employment on the basis of age, race, creed, color, national origin, gender, sexual preference, disability or marital status shall be required.*

**This notice is intended** to serve only as an emergency adoption, to be valid for 90 days or less. This rule expires July 1, 2012.

**Text of rule and any required statements and analyses may be obtained from:** Antovk Pidedjian, New York State Urban Development Corporation, 633 Third Avenue, 37th Floor, New York, NY 10017, (212) 803-3792, email: apidedjian@empire.state.ny.us

**Regulatory Impact Statement**

1. **Statutory Authority:** Section 9-c of the New York State Urban Development Corporation Act Chapter 174 of the Laws of 1968, as amended (the "Act"), provides, in part, that the corporation shall, assisted by the commissioner of economic development and in consultation with the department of economic development, promulgate rules and regulations in accordance with the state administrative procedure act.

Section 12 of the Act provides that the corporation shall have the right to exercise and perform its powers and functions through one or more subsidiary corporations.

Section 16-r of the Act provides for the creation of the Downstate Revitalization Fund. The corporation is authorized, within available appropriations, to provide financial, project development, or other assistance from such fund to eligible entities as set forth in this subdivision for the purposes of supporting investment in distressed communities in the downstate region, and in support of such projects that focus on: encouraging business, community, and technology-based development, and supporting innovative programs of public and private cooperation working to foster new investment, job creation and small business growth.

2. **Legislative Objectives:** Section 16-r of the Act sets forth the Legislative intent of the Downstate Revitalization Fund to provide financial assistance to eligible entities in New York with particular emphasis on: supporting investment in distressed communities in the downstate region, and in support of projects that focus on encouraging business, community, and technology-based development, and supporting innovative programs of public and private cooperation working to foster new investment, job creation, and small business growth.

It further states such activities include but are not limited to: support for projects identified through collaborative efforts as part of the overall growth strategy for the local economy, including, but not limited to, smart growth and energy efficiency initiatives, intellectual capital capacity building; support for the attraction or expansion of a business including, but not limited to, those primarily engaged in activities identified as a strategic industry and minority-owned and women-owned business enterprises as defined by subdivisions (c) and (g) of section nine hundred fifty-seven of the general municipal law; support for land acquisition and/or the construction, acquisition or expansion of buildings, machinery, and equipment associated with a project; and support for projects located in an investment zone as defined by paragraph (i) of subdivision (d) of section 957 of the general municipal law.

The Legislative intent of Section 16-r of the Act is to assist business in downstate New York in a time of need and to promote the retention and creation of jobs and investment in the region.

The adoption of 21 NYCRR Part 4249 will further these goals by setting forth the types of available assistance, evaluation criteria, application and project process and related matters for the Downstate Revitalization Fund.

3. **Needs and Benefits:** As envisioned, the program would focus new investments on business, community and technology-based development. While the downstate region has experienced relatively strong growth in recent years, there still remain a significant number of areas that demonstrate high levels of economic distress. As measured by the poverty rate, the Bronx, at over 30%, ranks as the poorest urban county in the U.S. Brooklyn (Kings County) continues to rank among the top ten counties with the highest poverty rates in the country (22.6%). Overall, the poverty rate in New York City is just over 20%. The Community Service Society study, *Poverty in New York City, 2004: Recovery?*, concluded that if the number of New York City residents who live in poverty resided in their own municipality, they would constitute the 5th largest city in the U.S. Beyond the New York metro area in the Hudson Valley, the poverty rate exceeds 9%. Disproportionate levels of unemployment, population and job loss have left significant areas of the downstate region with shrinking revenue bases and opportunities for economic revitalization.

In order to address these needs, Program assistance is available for the following funding tracks:

(1) Business Investment Business Investments are capital expenditures that facilitate an employer's ability to create new jobs in New York State or retain jobs that are otherwise in jeopardy. Within the Business Investment Track, five-year job commitments will be required of all beneficiaries; it is by underwriting these job commitments that ESDC is best able to forecast the economic benefits of providing assistance to any particular project. Applicants will therefore be required to commit to the number of jobs At Risk that will be retained by the proposed project, the number of new jobs that will be created by the project, and the average salaries of each. Failure to achieve or maintain these employment commitments will subject a beneficiary to potential recapture of assistance.

(2) Infrastructure Investment The Funds will finance infrastructure investments in order to attract new businesses and expand existing businesses, thereby fostering further investment. Infrastructure investments are capital expenditures for infrastructure including transportation, water and sewer, communication, and energy generation and distribution. Infrastructure also includes the construction of parking garages. Unlike the other two Tracks, Infrastructure Investment may be used to finance planning or feasibility studies relating to capital expenditures. The Infrastructure Investment Track is appropriate only for infrastructure activity for unidentified end-users or for multiple users; infrastructure projects that will serve a single identified entity must apply for assistance under the Business Investment Track, which may be used to fund infrastructure expenses. Although projects without identified users may be funded under the Infrastructure Investment Track, preference under this Track will be given to projects with identified tenants.

Job commitments: Infrastructure Investment projects that are able to provide job commitments will be viewed favorably. However, it is important to note that (1) few Infrastructure Investment projects are anticipated to be able to provide job commitments and (2) if the employer will be an entity other than the Applicant, a third party guarantee of the Applicant's job commitment must be provided by the prospective employer and that prospective employer must be found by ESDC to be creditworthy.

(3) Downtown Redevelopment Downtown neighborhoods – whether major commercial areas of big cities or one block stretches of village main streets – are important generators of economic activity in New York State. In an effort to strengthen these cores of commerce, the Downtown Redevelopment Track will finance rehabilitation and new construction in downtown areas statewide. Funding will be available for a range of commercial uses, including retail, office and commercial. Funding will also be available for projects that are likely to increase tourism, including hotels, cultural institutions and entertainment facilities, and streetscape improvements. This Track will not be used to finance speculative development, and therefore only projects in which 60% of the square footage has been pre-leased generally will be considered.

Job commitments: Downtown Redevelopment projects that are able to provide job commitments will be viewed favorably. However, it is important to note that (1) few Downtown Redevelopment projects are anticipated to be able to provide job commitments and (2) if the employer will be an entity other than the Applicant, a third party guarantee of the Applicant's job commitment must be provided by the prospective employer and that prospective employer must be found by ESDC to be creditworthy.

The Corporation used the Implan® regional economic analysis system to model employment and personal income multipliers for construction spending to estimate the direct, indirect and induced jobs related to the Fund amounts assumed to be devoted to capital spending on infrastructure and construction-related activity.

New York State may collect approximately \$0.66 million in personal income tax and sales tax on income spending. To estimate the personal income tax revenues generated by this spending, the Corporation assumed the tax calculation for single or married filing separately on taxable income over \$20,000, using the standard deduction and 6.85% on income over \$20,000. Sales tax was estimated on taxable disposable income earned by wage earners. The Corporation assumed that 75% of gross income is disposable income and 40% of that is taxable.

This level of capital spending (assumed to be primarily on site development, infrastructure, building rehabilitation and new construction) will provide the basis for further investment in a broad range of economic activity.

As a result of Program assistance awarded to date, 1,176 jobs have been created and 2,882 jobs have been retained. Assistance to all three tracks has resulted in significant leveraging of public/private investment.

These remaining funds will be provided to eligible recipients as worthy projects are presented.

4. Costs: The 2008-2009 New York State Budget (page 884, lines 5 thru 15) allocated \$35 million to support investment in projects that would promote the revitalization of distressed areas in the downstate region. Monies were reappropriated in the 2009-2010 New York State Budget

(page 760, lines 15-24) and the 2010-2011 New York State Budget (page 717, lines 18-27).

Thus far, \$31,825,000 in assistance has been awarded to eligible recipients within the three targeted tracks of business investment, infrastructure investment and downtown redevelopment. \$3,175,000 remains in Program funding.

The Fund is funded through the issuance of Personal Income Tax bonds. In addition to the interest costs, it is expected that fees and costs associated with issuing bonds, including the Corporation's fee, underwriting, banking and legal fees, will be approximately 1.6%.

The costs to municipalities and other regulated parties involved would depend on the extent to which they participate in and support the proposed projects. For municipalities, this may involve matching funds or the commitment of other public resources for project development. Participation is voluntary and would be considered on a case-by-case basis depending on the location of the municipality involved.

An application fee of \$250 must be paid to the Corporation for projects that involve acquisition, construction, reconstruction, rehabilitation alteration or improvement of real property, the financing of machinery and equipment and working capital loans and loan guarantees before final review of an application can be completed. This fee will be refunded in the event the application is withdrawn or rejected.

The Corporation will assess a commitment fee of up to two percent of the amount of any Program loan involving projects for acquisition, construction, reconstruction, rehabilitation, alteration or improvement of real property, the financing of machinery and equipment and working capital payable upon acceptance of commitment with up to 1 percent rebated at closing. No portion of the commitment fee will be repaid if the commitment lapses and the project does not close. The Corporation will assess a fee of up to 1 percent, payable at closing, of the amount of any Program grant involving the acquisition, construction, reconstruction, rehabilitation, alteration or improvement of real property or the financing of machinery and equipment or any loan guarantee.

The applicant will be obligated to pay for expenses incurred by the Corporation in connection with the project, including, but not limited to, expenses related to attorney, appraisals, surveys, title insurance, credit searches, filing fees, public hearing expenses and other requirements deemed appropriate by the Corporation.

5. Paperwork / Reporting: There are no additional reporting or paperwork requirements as a result of this rule on regulated parties. Standard applications used for most other Corporation assistance will be employed keeping with the Corporation's overall effort to facilitate the application process for all of the Corporation's clients. The rule provides that the Corporation may, however, require applicants to submit materials prior to submission of a formal application to determine if a proposal meets eligible criteria for Fund assistance.

6. Local Government Mandates: The Fund imposes no mandates – program, service, duty, or responsibility – upon any city, county, town, village, school district or other special district. To the contrary, the Fund offers local governments potentially enhanced resources, either directly or indirectly, to encourage economic and employment opportunities for their citizens. Participation in the program is optional; local governments who do not wish to be considered for funding do not need to apply.

7. Duplication: The regulations do not duplicate any existing state or federal rule.

8. Outreach: The National Federation of Independent Business, New York Farm Bureau, and the New York Conference of Mayors were consulted during this rulemaking and comments requested. In addition, 17 rural organizations, cooperatives, and agricultural groups and 10 local government associations were also notified.

ESDC received 10 responses to its outreach to interested parties on the proposed regulations. Much of the responses received consisted of general supporting statements for the programs or critique of the enabling legislation.

Listed are several comments received on the proposed rules related to the Downstate Revitalization Fund and our response to the comment.

1. Regulations should be drafted to give priority to projects in developed areas that use smart growth principles, and that promote energy efficiency and conservation.

Section 4249.3, Part (a) provides for “support for projects identified through collaborative efforts as part of the overall growth strategy for the local economy, including but not limited to, smart growth and energy efficiency initiatives.”

2. Regulations should clearly define “distressed communities” using specific, objective criteria.

Section 4249.2, Part (a) defines “Distressed Communities.”

3. A streamlined application and reporting process is important to encourage small business participation.

ESDC uses one standard application for this, and many other economic development programs. The information required under Section 4249.6

“Application and approval process” from all applicants is needed for the corporation to make sound investment decisions. Private financing institutions request similar, if not more robust information from their applicants.

4. Regulations should allow for municipal comments when the applicant is not a municipality.

Section 4249.5, Part 3 gives preference to projects with the “existence of significant support from the local business community, local government, community organizations, academic institutions and other regional parties.”

9. Alternatives: The Fund proposed regulations provide for a variety of potential program outcomes, by type of assistance, eligible applicants, and eligible uses.

These program criteria were informed through an extensive strategic planning process managed for Downstate ESDC by the management consultant A. T. Kearney. Their report, *Delivering on the Promise of New York State*, developed a strategy for the State to capitalize on its rich and diverse assets to encourage the growth of the Innovation Economy.

The examples of alternatives given above were provided during the outreach portion of the rulemaking process. All of the suggestions offered were from members of the small business community and local governments who responded to the Corporations request for input. All of the suggestions were included in the rules and regulations submitted with this Regulatory Impact Statement.

10. Federal Standards: There are no minimum federal standards related to this regulation. The regulation is not inconsistent with any federal standards or requirements.

11. Compliance Schedule: The regulation shall take effect immediately upon adoption.

**Regulatory Flexibility Analysis**

1. Effects of Rule: “Small business” is defined by the State Economic Development law to be an enterprise with 100 or fewer employees. The vast majority - roughly 98 percent - of New York State businesses are small businesses.

We applied this criterion to ESD’s models of the Downstate economy to determine how many small businesses could benefit from the Downstate Revitalization Fund. We limited the analysis to industries that are likely to have eligible businesses: manufacturing, transportation and warehousing, information, finance and insurance, professional and technical services, management of companies and enterprises, and arts, entertainment and recreation.

Across these 7 broad sectors our analysis indicates that approximately 115,000 small businesses will be eligible for funding under the Downstate Revitalization Fund.

In addition approximately 2,000 municipalities and local economic development-oriented organizations will be eligible for funding.

2. Compliance Requirements: There are no compliance requirements for small businesses and local governments in these regulations.

3. Professional Services: Applicants do not need to obtain professional services to comply with these regulations.

4. Compliance Costs: To the extent that there are existing capabilities at the local level to administer projects involving Downstate Revitalization Fund investments, there should be relatively little, if any additional administration costs.

5. Economic and Technological Feasibility: Compliance with these regulations should be economically and technologically feasible for small businesses and local governments.

6. Minimizing Adverse Impact: This rule has no adverse impacts on small businesses or local governments because it is designed to provide financing for joint discretionary and competitive economic development projects for distressed communities. In addition the rule specifies that project evaluation criteria include significant support from the local business community, local government, community organizations, academic institutions, and other regional parties. Because this program is open to for-profit businesses confidentiality features are included in the application process.

7. Small Business and Local Government Participation: The National Federation of Independent Business, New York Farm Bureau, and the New York Conference of Mayors were consulted during this rulemaking and comments requested. In addition, 17 rural organizations, cooperatives, and agricultural groups and 10 local government associations were also notified.

ESDC received 10 responses to its outreach to interested parties on the proposed regulations. Much of the responses received consisted of general supporting statements for the programs or critique of the enabling legislation.

Listed are several comments received on the proposed rules related to the Downstate Revitalization Fund and our response to the comment.

1. Regulations should be drafted to give priority to projects in developed areas that use smart growth principles, and that promote energy efficiency and conservation.

Section 4249.3, Part (a) provides for “support for projects identified through collaborative efforts as part of the overall growth strategy for the local economy, including but not limited to, smart growth and energy efficiency initiatives.”

2. Regulations should clearly define “distressed communities” using specific, objective criteria.

Section 4249.2, Part (a) defines “Distressed Communities.”

3. A streamlined application and reporting process is important to encourage small business participation.

ESDC uses one standard application for this, and many other economic development programs. The information required under Section 4249.6 “Application and approval process” from all applicants is needed for the corporation to make sound investment decisions. Private financing institutions request similar, if not more robust information from their applicants.

4. Regulations should allow for municipal comments when the applicant is not a municipality.

Section 4249.5, Part 3 gives preference to projects with the “existence of significant support from the local business community, local government, community organizations, academic institutions and other regional parties.”

**Rural Area Flexibility Analysis**

1. Types and Estimated Numbers of Rural Areas: The ESD Downstate region is almost non-rural character. Of the 44 counties defined as rural by the Executive Law § 481(7), none are in the Downstate region. Of the 9 counties that have certain townships with population densities of 150 persons or less per square mile, only two counties - Dutchess and Orange - are in the Downstate region.

2. Reporting, Recordkeeping and Other Compliance Requirements and Professional Services: The rule will not impose any new or additional reporting or recordkeeping requirements; no affirmative acts will be needed to comply; and, it is not anticipated that applicants will have to secure any professional services in order to comply with this rule.

3. Costs: The costs to municipalities and other regulated parties involved would depend on the extent to which they participate in and support the proposed projects. For municipalities, this may involve matching funds or the commitment of other public resources for project development.

4. Minimizing Adverse Impact: The purpose of the Downstate Revitalization Fund Program is to maximize the economic benefit of new capital investment in distressed areas of the downstate region. The statute stipulates that projects must be located in distressed communities for which there is a demonstrated demand. This suggests that cooperation among state, local, and private development entities will seek to maximize the Program’s effectiveness and minimize any negative impacts.

5. Rural Area Participation: This rule maximizes geographic participation by not limiting applicants to those only in urban areas or only in rural areas, except for the requirement that applicants must be in downstate counties and be in distressed communities. The extent of local government support for a project is a significant criteria for project acceptance. A public hearing may also be required under the NYS Urban Development Corporation Act. The National Federation of Independent Business, New York Farm Bureau, and the New York Conference of Mayors were consulted during this rulemaking and comments requested. In addition, 17 rural organizations, cooperatives, and agricultural groups and 10 local government associations were also asked for their review and comment.

**Job Impact Statement**

These regulations will not adversely affect jobs or employment opportunities in New York State. The regulations are intended to improve the economy of Downstate New York through strategic investments to support investments in distressed communities in downstate regions and to support projects that focus on encourage responsible development.

There will be no adverse impact on job opportunities in the state.

**EMERGENCY  
RULE MAKING**

**Economic Development Fund Program (“EDF”)**

**I.D. No.** UDC-17-12-00003-E

**Filing No.** 282

**Filing Date:** 2012-04-04

**Effective Date:** 2012-04-04

PURSUANT TO THE PROVISIONS OF THE State Administrative Procedure Act, NOTICE is hereby given of the following action:

**Action taken:** Addition of sections 4243.36 and 4243.37 to Title 21 NYCRR.

**Statutory authority:** Urban Development Corporation Act, sections 9-c and 16-i; and L. 1968, ch. 174

**Finding of necessity for emergency rule:** Preservation of public health, public safety and general welfare.

**Specific reasons underlying the finding of necessity:** The modification to the rule facilitates the provision of Economic Development Fund emergency assistance to (i) retail and service businesses ("Retail and Service Businesses") located in the Towns of Crown Point, Moriah, and Ticonderoga, New York, and the Village of Port Henry, New York and agricultural and manufacturing businesses located in Essex County New York ("Agricultural Manufacturing Businesses") and adversely affected by the October 16, 2010 emergency permanent closing of the unsafe Lake Champlain Bridge and (ii) Retail and Service Businesses and Agricultural and Manufacturing Businesses located in Essex County, New York and adversely affected by storms and flooding occurring from and including August 27, 2011 and continuing through and including September 8, 2011.

**Subject:** Economic Development Fund Program ("EDF").

**Purpose:** Provide the basis for administration of The Champlain Bridge and August-September 2011 Storm and Flood Recovery Fund within EDF.

**Text of emergency rule:** CHAMPLAIN BRIDGE AND AUGUST - SEPTEMBER 2011 STORM AND FLOOD, RECOVERY FUND

*Section 4243.36 Generally*

*Champlain Bridge and August - September Storm and Flood Recovery Fund (the "Fund") provides General Development Financing assistance on an emergency basis (i) for retail and service businesses ("Retail and Service Businesses") located in the Towns of Crown Point, Moriah, and Ticonderoga, New York, the Village of Port Henry, New York and agricultural and manufacturing businesses, located in Essex County, New York, ("Agricultural and Manufacturing Businesses") and adversely affected by the October 16, 2010 emergency permanent closing of the unsafe Lake Champlain Bridge and (ii) Retail and Service Businesses and Agricultural and Manufacturing Businesses located in Essex County, New York and adversely affected by storms and flooding occurring from and including August 27, 2011 and continuing through and including September 8, 2011.*

*Section 4243.37 Champlain Bridge and August - September 2011 Storm and Flood Recovery Fund Assistance*

*(a) In order to provide General Development Financing assistance to Retail and Service Businesses and Agricultural and Manufacturing Businesses in Eligible Areas (as defined below), the following provisions of the rule are modified as follows solely for Fund assistance.*

*(i) "Eligible Area" shall mean: (a) for assistance with respect to the closure of the Bridge Closure, as defined below, (1) with respect to assistance for Retail and Service Businesses the Towns of Crown Point, Moriah, and Ticonderoga, New York, the Village of Port Henry, New York and (2) with respect to assistance for Agricultural and Manufacturing Businesses, Essex County, New York; and (b) for assistance with respect to damages and losses caused by or related to storms and flooding occurring from and including August 27, 2011 and continuing through and including September 8, 2011, in Essex County, New York.*

*(ii) "Bridge Closure" shall mean the October 16, 2010 emergency permanent closing of the unsafe Lake Champlain Bridge.*

*(iii) The term "Distressed Area" in subpart 4233.2(a)(7) shall also include the Eligible Areas.*

*(iv) The term "Eligible Applicant" in subpart 4233.2(a)(11) shall also include all Retail and Service Businesses and Agricultural and Manufacturing Businesses.*

*(v) The term "Eligible Business" in subpart 4233.2(a)(12) shall also include all Retail and Service Businesses and Agricultural and Manufacturing Businesses.*

*(vi) The term "Eligible Recipient" in subpart 4233.2(a)(13)(iii) shall also include all Retail and Service Businesses and Agricultural and Manufacturing Businesses.*

*(vii) The term "Ineligible Cost" in subpart 4233.2(a)(22) subpart (v) does not apply.*

*(viii) The term "Ineligible Recipient" in subpart 4233.2(a)(23) subparts (i), (ii), (iii) and (iv) does not apply.*

*(ix) Subpart 4243.7 regarding fees does not apply, there are no fees for Fund assistance.*

**This notice is intended** to serve only as an emergency adoption, to be valid for 90 days or less. This rule expires July 2, 2012.

**Text of rule and any required statements and analyses may be obtained from:** Antovk Pidedjian, New York State Urban Development Corporation, 633 Third Avenue, 37th Floor, New York, NY 10017, (212) 803-3792, email: apidedjian@esd.ny.gov

**Regulatory Impact Statement**

1. Statutory Authority: Section 9-c of the New York State Urban Development Corporation Act Chapter 174 of the Laws of 1968, as amended (the "Act"), provides, in part, that the Corporation shall, assisted by the Commissioner of Economic Development and in consultation with the Department of Economic Development, promulgate rules

and regulations in accordance with the State Administrative Procedure Act.

Section 16-i of the Act established the Economic Development Fund and authorizes the New York State Urban Development Corporation d/b/a Empire State Development Corporation (the "Corporation"), within available appropriations, to provide grants for the purpose of creating or retaining jobs or preventing, reducing or eliminating unemployment or underemployment. The proposed regulations modify Chapter L, Part 4243 of Title 21 NYCRR.

2. Legislative Objectives: Section 16-i of the Act sets forth the legislative objective of authorizing the Corporation, within available appropriations, to provide grants and loans in order to promote the economic health of New York state by facilitating the creation or retention of jobs or would increase business activity within a municipality or region of the state. The adoption of 21 NYCRR Part 4243.36 and 4243.37 will further these goals by modifying 21 NYCRR Part 4243 in order to provide General Development Financing assistance on an emergency basis (i) retail and service businesses ("Retail and Service Businesses") located in the Towns of Crown Point, Moriah, and Ticonderoga, New York, and the Village of Port Henry, New York and agricultural and manufacturing businesses located in Essex County New York ("Agricultural Manufacturing Businesses") and adversely affected by the October 16, 2010 emergency permanent closing of the unsafe Lake Champlain Bridge and (ii) Retail and Service Businesses and Agricultural and Manufacturing Businesses located in Essex County, New York and adversely affected by storms and flooding occurring from and including August 27, 2011 and continuing through and including September 8, 2011, in order to facilitate the retention of jobs and increase business activity within those municipalities and the affected region.

3. Needs and Benefits: The Governor declared a state of emergency in Essex County and surrounding areas due to the emergency closure of the unsafe Lake Champlain Bridge (which was subsequently demolished). For nearly eighty years, the bridge had been a major transportation route between the Ticonderoga, Crown Point and Port Henry areas of the State and the Vergennes, Middlebury and Burlington areas of Vermont. The loss of the bridge resulted in a 100 mile detour until a new bridge could be designed and constructed. Even with an emergency ferry service to handle limited traffic, local businesses lost customers and incurred increase costs that would cause business closures, and require layoffs and firing. The Governor also declared a state of emergency in Essex County and surrounding areas due to the storms and flooding occurring from and including August 27, 2011 and continuing through and including September 8, 2011. The modifications to the rule would allow affected businesses to receive economic assistance in order to retain jobs and mitigate layoffs and firings and increase business activity.

4. Costs: The Program is funded by a State appropriation for the Economic Development Fund and there are no other costs.

5. Paperwork / Reporting: There are no additional reporting or paperwork requirements as a result of this rule on businesses participating in the Program. Standard applications and loan and grant documents used for most other assistance by the Corporation will be employed in keeping with the Corporation's overall effort to facilitate the application process for all of the Corporation's clients.

6. Local Government Mandates: The Program imposes no mandates - program, service, duty, or responsibility - upon any city, county, town, village, school district or other special district.

7. Duplication: The regulations do not duplicate any existing state or federal rule.

8. Alternatives: There are no alternatives to this regulation for providing emergency assistance for business affected by the storms and flooding occurring from and including August 27, 2011 and continuing through and including September 8, 2011 and the closing of the Lake Champlain Bridge in order to retain jobs in the affected area.

9. Federal Standards: There are no minimum federal standards related to this regulation. The regulation is not inconsistent with any federal standards or requirements.

10. Compliance Schedule: The regulation shall take effect immediately upon adoption.

**Regulatory Flexibility Analysis**

1. Effects of Rule: The modification of the Rule pursuant to Parts 4243.36 and 4243.37 provide Economic Development Fund assistance (also referred to as Champlain Bridge and August - September 2011 Recovery Fund) in order to provide emergency Economic Development Fund General Development Financing assistance to (i) retail and service businesses ("Retail and Service Businesses") located in the Towns of Crown Point, Moriah, and Ticonderoga, New York, and the Village of Port Henry, New York and agricultural and manufacturing businesses located in Essex County New York ("Agricultural Manufacturing Businesses") and adversely affected by the October 16, 2010 emergency permanent closing of the unsafe Lake Champlain Bridge and (ii) Retail and

Service Businesses and Agricultural and Manufacturing Businesses located in Essex County, New York and adversely affected by storms and flooding occurring from and including August 27, 2011 and continuing through and including September 8, 2011 in order to preserve business activity and the jobs by these businesses that would otherwise be reduced or lost due to the loss of customers and increased costs arising from the unexpected permanent closing (and subsequent demolition) of the unsafe Lake Champlain Bridge and the August - September 2011 storms and floods.

2. Compliance Requirements: There are no compliance requirements for small businesses and local governments in these regulations.

3. Professional Services: Applicants do not need to obtain professional services to comply with these regulations.

4. Compliance Costs: There are no compliance costs for small businesses and local governments in these regulations.

5. Economic and Technological Feasibility: There are no compliance costs for small businesses and local governments in these regulations so there is no basis for determining the economic and technological feasible for compliance with the rule by small businesses and local governments.

6. Minimizing Adverse Impact: This rule has no adverse impacts on small businesses or local governments because it is designed to provide low interest loans to community based lending organizations in order to enhance the ability of such organizations to fund loans to small businesses.

7. Small Business and Local Government Participation: The modification to the rule facilitates providing emergency assistance to all agricultural, manufacturing, retail, and service small businesses located in the Towns of Crown Point, Moriah, and Ticonderoga, New York, and the Village of Port Henry, New York and Essex County, New York affected by the emergency closing and demolition of the Lake Champlain Bridge and the storms and flooding occurring from and including August 27, 2011 and continuing through and including September 8, 2011.

#### **Rural Area Flexibility Analysis**

1. Types and Estimated Numbers of Rural Areas: (i) retail and service businesses ("Retail and Service Businesses") located in the Towns of Crown Point, Moriah, and Ticonderoga, New York, and the Village of Port Henry, New York and agricultural and manufacturing businesses located in Essex County New York ("Agricultural Manufacturing Businesses") and adversely affected by the October 16, 2010 emergency permanent closing of the unsafe Lake Champlain Bridge and (ii) Retail and Service Businesses and Agricultural and Manufacturing Businesses located in Essex County, New York and adversely affected by storms and flooding occurring from and including August 27, 2011 and continuing through and including September 8, 2011 are eligible to apply for Economic Development Fund General Development Financing pursuant to the Champlain Bridge Recovery Fund (the "Program").

2. Reporting, Recordkeeping and Other Compliance Requirements and Professional Services: The modification of the rule will not impose any new or additional reporting or recordkeeping requirements; no affirmative acts will be needed to comply; and, it is not anticipated that applicants will have to secure any professional services in order to comply with this rule.

3. Costs: There should be no costs to small businesses receiving assistance other than the minimal costs of preparing a simple application for program assistance.

4. Minimizing Adverse Impact: The purpose of the rule modification is to provide General Development Financing assistance from the Economic Development Fund on an emergency basis for (i) retail and service businesses ("Retail and Service Businesses") located in the Towns of Crown Point, Moriah, and Ticonderoga, New York, and the Village of Port Henry, New York and agricultural and manufacturing businesses located in Essex County New York ("Agricultural Manufacturing Businesses") and adversely affected by the October 16, 2010 emergency permanent closing of the unsafe Lake Champlain Bridge and (ii) Retail and Service Businesses and Agricultural and Manufacturing Businesses located in Essex County, New York and adversely affected by storms and flooding occurring from and including August 27, 2011 and continuing through and including September 8, 2011.

5. Rural Area Participation: This rule provides emergency assistance to agricultural, manufacturing, retail and service business in rural Essex County, New York and the Towns of Crown Point, Moriah, and Ticonderoga, New York, and the Village of Port Henry, New York.

#### **Job Impact Statement**

This modification to Part 4243 of Title 21 NYCRR will not adversely affect jobs or employment opportunities in New York State. The regulations are intended to improve the economy of New York, particularly by providing emergency Economic Development Fund assistance from the Economic Development Fund for (i) retail and service businesses ("Retail and Service Businesses") located in the Towns of Crown Point, Moriah, and Ticonderoga, New York, and the Village of Port Henry, New York and agricultural and manufacturing businesses located in Essex County

New York ("Agricultural Manufacturing Businesses") and adversely affected by the October 16, 2010 emergency permanent closing of the unsafe Lake Champlain Bridge and (ii) Retail and Service Businesses and Agricultural and Manufacturing Businesses located in Essex County, New York and adversely affected by storms and flooding occurring from and including August 27, 2011 and continuing through and including September 8, 2011.

There will be no adverse impact on job opportunities in the state.

## **EMERGENCY RULE MAKING**

### **Capital Access Program**

**I.D. No.** UDC-17-12-00004-E

**Filing No.** 283

**Filing Date:** 2012-04-04

**Effective Date:** 2012-04-04

PURSUANT TO THE PROVISIONS OF THE State Administrative Procedure Act, NOTICE is hereby given of the following action:

**Action taken:** Addition of Part 4251 to Title 21 NYCRR.

**Statutory authority:** Urban Development Corporation Act, section 5(4); L. 2011, ch. 103, section 16-K; and L. 1968, ch. 174

**Finding of necessity for emergency rule:** Preservation of public health, public safety and general welfare.

**Specific reasons underlying the finding of necessity:** The current economic crisis, including high unemployment and the immediate lack of financing from traditional financial institutions for job generating small business, are the reasons for the emergency adoption of this Rule which is required for the immediate implementation of the Capital Access Program in order to promptly provide assistance to the State's small businesses in order to sustain and increase employment generated by these businesses.

**Subject:** Capital Access Program.

**Purpose:** Provide the basis for administration of the Capital Access Program.

**Substance of emergency rule:** The Capital Access Program (the "Program") was created pursuant to Chapter 103 of the Laws of 2011 (the "Enabling Legislation"). The general purpose of the Program is to promote economic development in the State by assisting small businesses that otherwise find it difficult to obtain regular or sufficient bank financing through the funding of loan loss reserves for loans made to such small businesses by participating financial institutions.

The Enabling Legislation creates Section 16-k of the New York State Urban Development Corporation Act (the "Act"), which governs the Program. The Enabling Legislation requires the New York State Urban Development Corporation (the "Corporation") to promulgate rules and regulations for the Program (the "Rules") in accordance with the provisions of the State Administrative Procedure Act. The Rules set forth the framework for the eligibility, evaluation criteria, application and project process and administrative procedures of the Program as follows:

#### **1. Program Operations:**

A participating financial institution shall provide to the Corporation a plan for the marketing of the Program to eligible small businesses, including small businesses in highly distressed areas and MWBEs, with appropriate lending objectives identified by the participating financial institution for such areas and businesses. Program loans to eligible small businesses shall only be for the purposes of expansion, facility or technology upgrading, start-up or working capital purposes. No program loan will exceed five hundred thousand dollars in principal amount. For each program loan, there shall be deposited in the loan loss reserve fund an amount, specified or agreed to in writing by the Corporation, from both the participating financial institution and the eligible small business borrower, aggregating neither less than three percent nor more than seven percent of the principal amount of the program loan, whereby the amount contributed by the eligible small business is not greater than fifty percent of such aggregate. With respect to each program loan, it shall be certified to the Corporation in such a fashion and with such supporting information as the Corporation shall prescribe, that the participating financial institution has made such loan and delivered the aggregate loan loss reserve fund contribution with respect to such loan. The Corporation, after satisfactory certification pursuant to the Rules shall transfer to the loan loss reserve fund an amount, as determined by the Corporation, that is (1) not less than the aggregate contribution of the participating financial institution and the small business with respect to such loan, and (2) not greater than one hundred fifty percent of such aggregate contributions as determined by the Corporation.

## 2. Program Administration:

The Corporation may administer the Program through a third party agent, which may be the New York Business Development Corporation, established under section 210 of the Banking Law, provided, however, that if the third party agent is to be a financial institution other than the New York Business Development Corporation, then such third party agent will be selected pursuant to a competitive process. With respect to these third party agents, the Rules specify requirements for contract duration, performance evaluation and contract renewals.

## 3. Application and Approval Process:

The Corporation shall identify, review, and approve eligible participating financial institutions through an open recruitment and enrollment process. Participating financial institutions participating in the Program will possess sufficient commercial lending experience, financial and managerial capabilities, and operational skills to meet the Program objectives. The Rules provide guidance as to what documents can be provided by various lending entities to assist in the Corporation's evaluation of applicants.

## 4. Auditing, Compliance and Reporting:

The Rules set forth requirements for quarterly and annual reporting from participating financial institutions, including updated specific information regarding loan loss reserve funds and individual program loans. The Corporation may conduct audits of participating financial institutions in order to ensure compliance with the provisions of applicable laws and regulations, and with respect to and agreements between the Participating Financial Institution and the Corporation and the Agent.

**This notice is intended** to serve only as an emergency adoption, to be valid for 90 days or less. This rule expires July 2, 2012.

**Text of rule and any required statements and analyses may be obtained from:** Antovk Pidedjian, New York State Urban Development Corporation, 633 Third Avenue, 37th Floor, New York, NY 10017, (212) 803-3792, email: apidedjian@esd.ny.gov

## Regulatory Impact Statement

1. **Statutory Authority:** Section 9-c of the New York State Urban Development Corporation Act Chapter 174 of the Laws of 1968 (Uncon. Laws section 6259-c), as amended (the "Act"), provides, in part, that the Corporation shall, assisted by the Commissioner of Economic Development, promulgate rules and regulations in accordance with the State Administrative Procedure Act.

Section 16-k of the Act provides for the creation of the Capital Access Program (the "Program") and authorizes the New York State Urban Development Corporation d/b/a Empire State Development (the "Corporation"), within available appropriations, to provide low interest loans to Community Based Lending Organizations and Participating Financial Institutions, in order to provide funding for those organizations' loans to New York's small businesses that are unable to obtain adequate credit or adequate terms for such credit.

2. **Legislative Objectives:** Section 16-k of the Act (Uncon. Laws section 6266-k, added by Chapter 103 of the Laws of 2011) sets forth the Legislative objective of authorizing the Corporation, within available appropriations, to provide low interest loans to financial institutions and other community based lending organizations, in order to provide funding for those organizations' loans to New York's small businesses that are unable to obtain adequate credit or adequate terms for such credit. The adoption of 21 NYCRR Part 4251 will further these goals by setting forth the types of available assistance, evaluation criteria, the application process and related matters for the Program.

3. **Needs and Benefits:** The State has allocated \$18,994,204 of federal funds to provide low interest loans to financial institutions and other community based lending organizations, in order to provide funding for those organizations' loans to New York's small businesses that are unable to obtain adequate credit or adequate terms for such credit. Small businesses have been determined to be a major source of employment throughout the State. Small businesses have historically had difficulties obtaining financing or refinancing in order to remain competitive and grow their operations, and the current economic difficulties have exacerbated this problem. Providing loans to small businesses should sustain and potentially increase the employment provided by such businesses, especially during this period of historically high unemployment and underemployment. The Program allows the Corporation to use either the New York Business Development Corporation or another third party contracted through a competitive process by the Corporation to administer the Capital Access Program. The rule further facilitates the administration of the Program by defining eligible and ineligible small businesses, eligible uses of the proceeds of loans to small businesses and other criteria to be applied by the institutions in making loans to small businesses.

4. **Costs:** The Program is funded by a State appropriation of federal funds in the amount of \$18,994,204 dollars. Pursuant to the rule, principal

amount of Program Loans will not be greater than \$500,000. The costs to participating financial institutions or community based lending organizations would depend on the extent to which they participate in the Program and their effectiveness and efficiency in making small business loans.

5. **Paperwork / Reporting:** There are no additional reporting or paperwork requirements as a result of this rule for Program participants except those required by the statute creating the Program such as an annual report on the organization's lending activity and providing information in connection with an audit by the Corporation with respect to the organization's use of Program funds. Standard applications and loan documents used for most other assistance by the Corporation will be employed in keeping with the Corporation's overall effort to facilitate the application process for all of the Corporation's clients.

6. **Local Government Mandates:** The Program imposes no mandates - program, service, duty, or responsibility - upon any city, county, town, village, school district or other special district.

7. **Duplication:** The regulations do not duplicate any existing state or federal rule.

8. **Alternatives:** While larger financial institutions can potentially provide small business financing and the community based lending organizations already provide small business financing, access to financing remains limited. The State has established the Program in order to enhance the access of small businesses to such financing, and the proposed rule provides the regulatory basis for providing low interest loans to community based lending organizations for lending to small businesses in accordance with the statutory requirements of the Program.

9. **Federal Standards:** There are no minimum federal standards related to this regulation. The regulation is not inconsistent with any federal standards or requirements.

10. **Compliance Schedule:** The regulation shall take effect immediately upon adoption.

## Regulatory Flexibility Analysis

1. **Effects of Rule:** In the rule: "Small business" is defined as a business that is resident and authorized to do business in the State, independently owned and operated, not dominant in its field, and employs one hundred or fewer persons on a full time basis; "Community Based Lending Organization" is defined as including community development financial institutions, small business lending consortia, certified development companies, providers of United States department of Agriculture business and industrial guaranteed loans, United States Small Business Administration loan providers, community development credit unions, and community banks; and "Financial Institution" is defined as any bank, trust company, savings bank, savings and loan association or cooperative bank chartered by the State or any national banking association, federal savings and loan association or federal savings bank or any Community Based Lending Organization, provided, however, that such entity has its principal office located in the State. The rule will facilitate the statutory Program's purpose of having New York State Urban Development Corporation d/b/a Empire State Development (the "Corporation") assist small businesses, that otherwise find it difficult to obtain regular or sufficient bank financing, through the funding of loan loss reserves for loans made to such small businesses by participating financial institutions.

2. **Compliance Requirements:** There are no compliance requirements for local governments in these regulations. Small businesses must comply with the compliance requirements applicable to all participating lending institutions regardless of size. This is a voluntary program. Lending institution not wishing to undertake the compliance obligations need not participate.

3. **Professional Services:** Applicants do not need to obtain professional services to comply with these regulations.

4. **Compliance Costs:** There are no compliance costs for local governments in these regulations. With respect to small business lending institutions, they must comply with the compliance cost requirements applicable to all participating lending institutions regardless of size. This is a voluntary program. Lending institution not wishing to undertake the compliance obligations need not participate.

5. **Economic and Technological Feasibility:** There are no compliance costs for small businesses and local governments in these regulations so there is no basis for determining the economic and technological feasible for compliance with the rule by small businesses and local governments.

6. **Minimizing Adverse Impact:** This rule has no adverse impacts on small businesses or local governments because it is designed to provide access to capital through the funding of loan loss reserves for loans made to small businesses by participating financial institutions.

7. **Small Business and Local Government Participation:** A number of banks and community lending organizations were surveyed by the Corporation and were supportive of the program and its structure.

## Rural Area Flexibility Analysis

1. **Types and Estimated Numbers of Rural Areas:** Community development financial institutions serving all of the 44 counties defined as rural

by the Executive Law § 481(7), are eligible to apply for the Capital Access Program (the "Program") assistance pursuant to a State-wide request for proposals.

2. Reporting, Recordkeeping and Other Compliance Requirements and Professional Services: The rule will not impose any new or additional reporting or recordkeeping requirements other than those that would be required of any financial institution receiving a similar loan regarding such matters as financial condition, required matching funds, and utilization of Program funds, and the statutorily required annual report on the use of Program funds; no affirmative acts will be needed to comply other than the said reporting requirements and the making of loans to small businesses in the normal course of the business for any financial institution that receives Program assistance; and, it is not anticipated that applicants will have to secure any professional services in order to comply with this rule.

3. Costs: The costs to financial institutions that participate in the Program would depend on the extent to which they choose to participate in the Program, including the amount of required matching funds for their Program loans to small businesses and the administrative costs in connection with such small business loans and the fees, if any, charged to small businesses in connection with loans to such businesses that include Program funds.

4. Minimizing Adverse Impact: The purpose of the Program is to provide loans to financial institutions in order to enhance the ability of these entities to make loans to small businesses, especially those small businesses that may otherwise not be able to borrow funds at acceptable rates. This rule provides a basis for cooperation between the State and financial institutions, including lending institutions that serve rural areas of the State, in order to maximize the Program's effectiveness and minimize any negative impacts for such financial institutions and the small businesses, including small businesses located in rural areas of the State, that such financial institutions serve.

5. Rural Area Participation: This rule maximizes geographic participation by not limiting applicants to those located only in urban areas or only in rural areas. A number of financial institutions that engage in lending to rural and urban small businesses responded to a survey circulated by the Corporation regarding implementation of the Program. Their comments were considered in the rulemaking process.

#### **Job Impact Statement**

These regulations will not adversely affect jobs or employment opportunities in New York State. The regulations are intended to improve the economy of New York by providing greater access to capital for main street everyday small businesses. The Program includes minorities, women and other New Yorkers who have difficulty accessing regular credit markets.

There will be no adverse impact on job opportunities in the state.

## **EMERGENCY RULE MAKING**

### **Small Business Revolving Fund**

**I.D. No.** UDC-17-12-00005-E

**Filing No.** 284

**Filing Date:** 2012-04-04

**Effective Date:** 2012-04-04

PURSUANT TO THE PROVISIONS OF THE State Administrative Procedure Act, NOTICE is hereby given of the following action:

**Action taken:** Addition of Part 4250 to Title 21 NYCRR.

**Statutory authority:** Urban Development Corporation Act, section 5(4); L. 2010, ch. 59, section 16-t; and L. 1968, ch. 174

**Finding of necessity for emergency rule:** Preservation of general welfare.

**Specific reasons underlying the finding of necessity:** The delay in the approval of the State budget and the current economic crisis, including high unemployment and the immediate lack of financing from traditional financial institutions for job generating small business, are the reasons for the emergency adoption of this Rule which is required for the immediate implementation of the Small Business Revolving Loan Fund in order to promptly provide assistance to the State's small businesses in order to sustain and increase employment generated by these businesses.

**Subject:** Small Business Revolving Fund.

**Purpose:** Provide the basis for administration of Small Business Revolving Loan Fund including evaluation criteria and application process.

**Text of emergency rule:** *SMALL BUSINESS REVOLVING LOAN FUND Section 4250.1 Purpose.*

*The purpose of these regulations is to set forth and codify administration by the New York State Urban Development Corporation (the "Corporation") of the Small Business Revolving Loan Fund (the "Program") authorized by Section 16-t of the New York State Urban Development Corporation Act (the "Act") (Uncon. Laws section 6266-t, added by Chapter 59, Part N, section 1, of the Laws of 2010). The Corporation is authorized, within available appropriations, to provide low interest loans to community development financial institutions, in order to provide funding for those lending organizations' loans to small businesses, located within New York State, that generate economic growth and job creation within New York State but that are unable to obtain adequate credit or adequate terms for such credit. If the use of a community development financial institution is not practicable based upon an assessment of geographic and administrative capacity and other factors as determined by the Corporation, then the Corporation is authorized, within available appropriations, to provide low interest loans to the following other local community based lending organizations: small business lending consortia, certified development companies, providers of United States Department of Agriculture business and industrial guaranteed loans, United States Small Business Administration loan providers, credit unions and community banks.*

#### *Section 4250.2 Definitions.*

a) "Administrative Costs" shall mean expenses incurred by a Community Based Lending Organization in its administration of a Program Loan from the Corporation.

b) "Administrative Income" shall mean income from (i) fees charged by a Community Based Lending Organization, including application fees, commitment fees and loan guarantee fees related to the Business Loans made to borrowers by the Community Based Lending Organization and (ii) interest income earned on the portion of the Program funds held by the Community Based Lending Organization (whether such funds are undisbursed Program funds or are repayment proceeds of Business Loans made by the Community Based Lending Organization).

c) "Business Loan" shall mean a loan made by a Community Based Lending Organization to an Eligible Business for an Eligible Project that is either a Micro-Loan or a Regular Loan.

d) "Community Based Lending Organizations" shall mean community development financial institutions, small business lending consortia, certified development companies, providers of United States Department of Agriculture business and industrial guaranteed loans, United States Small Business Administration loan providers, credit unions and community banks.

e) "Community Development Financial Institution" or "CDFI" shall mean a community based organization that provides financial services and products to communities, businesses and people underserved by traditional financial institutions.

f) "Corporation" shall mean the New York State Urban Development Corporation d/b/a Empire State Development Corporation, a corporate governmental agency constituting a body corporate and politic and a public benefit corporation of the State of New York created by Chapter one hundred seventy-four of the Laws of nineteen hundred sixty-eight, as amended.

g) "Eligible Businesses" shall have the meaning given in Section 4250.3 below.

h) "Eligible Project" shall have the meaning given in Section 4250.3 below.

i) "Eligible Uses" shall have the meaning given in Section 4250.4 below.

j) "Ineligible Businesses" shall mean newspapers, broadcasting, or other news media; medical facilities, libraries, community or civic centers. It also means any business relocating from one municipality with the State to another, except when the business is relocating within a municipality with a population of at least one million and the governing body of the municipality approves or each municipality from which such business operation will be relocated agrees to such relocation.

k) "Ineligible Projects" shall mean any project that is not an Eligible Project, including, without limiting the foregoing, public infrastructure improvements and funding for providing payment or distribution as a loan to owners, members and partners or shareholders of the applicant business or their family members.

l) "Loan Fund" shall mean the Small Business Revolving Loan Fund created by the Small Business Revolving Loan Fund Legislation.

m) "Loan Fund Account" shall mean each and every account established by the Community Based Lending Organization for the purpose of depositing Program funds.

n) "Loan Fund Legislation" shall mean Section 16-t of the Act.

o) "Loan Fund Proceeds" shall mean any and all monies made available to the Corporation for deposit to the Loan Fund, including monies appropriated by the State and any income earned by, or incremental to, the amount due to the investment of the same, or any repayment of monies advanced from the Loan Fund.

p) "Micro-Loan" shall mean a Small Business loan that has a principal amount that is less than or equal to twenty-five thousand dollars.

q) "Minority Business Enterprise" shall mean a business enterprise which is at least fifty-one percent owned, or in the case of a publicly-owned business at least fifty-one percent of the common stock or other voting interests of which is owned, by one or more minority persons and such ownership must have and exercise the authority to independently control the day to day business decisions of the entity. Minority persons shall mean persons who are:

1. Black;

2. Hispanic persons of Mexican, Puerto Rican, Dominican, Cuban, Central or South American descent or either Indian or Hispanic origin, regardless of race;

3. Asian and Pacific Islander persons having origins in the Far East, Southeast Asia, the Indian sub-continent or the Pacific Islands; or

4. American Indian or Alaskan Native persons having origins in any of the original people of North America and maintaining identifiable tribal affiliations through membership and participation or community identification.

r) "Program Loan Fund Agreement" shall mean the agreement between the Corporation and the Community Based Lending Organization pursuant to which the Program funds will be disbursed to and used by the Community Based Lending Organization.

s) "Program Loan" shall mean a loan made by the Corporation to a Community Based Lending Organization.

t) "Regular Loan" shall mean a Small Business loan that has a principal amount greater than twenty-five thousand dollars.

u) "Service Delivery Area" shall mean one or more contiguous counties or municipalities to be served by the Community Based Lending Organization and described in the Program Loan Fund Agreement between the Corporation, as lender, and the Community Based Lending Organization, as borrower.

v) "Small Business" shall mean a business that is resident and authorized to do business in the State, independently owned and operated, not dominant in its field, and employs one hundred or fewer persons on a full time basis.

w) "State" shall mean the State of New York.

x) "Women Business Enterprise" shall mean a business enterprise that is at least fifty one percent owned, or in the case of a publicly-owned business at least fifty one percent of the common stock or other voting interests of which is owned, by United States citizens or permanent resident aliens, one or more who are women, regardless of race or ethnicity, and such ownership interest is real, substantial and continuing and such woman or women have and exercise the authority to independently control the day to day business decisions of the enterprise.

y) "Working Capital Loans" shall mean short and medium term loans for working capital, revolving lines of credit and seasonal inventory loans made by Community Based Lending Organizations to Eligible Businesses for Eligible Projects.

Section 4250.3 Eligible Business, Eligible Projects and Ineligible Projects.

Business Loans shall be offered by Community Based Lending Organizations on the terms and conditions that are in accordance with and subject to the Act and the provisions of this Part. Business Loans shall be provided by the Community Based Lending Organization only to Eligible Businesses for Eligible Projects and shall not be used for Ineligible Projects. The terms "Eligible Business", "Eligible Projects" and "Ineligible Projects" are defined as follows.

An "Eligible Business" is a:

1. business enterprise that is resident in and authorized to do business in New York State,

2. independently owned and operated,

3. not dominant in its field, and

4. employs one hundred or fewer persons.

An "Eligible Project" is a Business Loan from a Community Based Lending Organization to an Eligible Business in the Service Delivery Area for an Eligible Use, whereby the Community Based Lending Organization has reviewed every Business Loan application to determine the feasibility of the proposed Eligible Use(s) of the financing requested by the small business applicant, the likelihood of repayment, and the potential that the loan will generate economic development and jobs within the State. An "Eligible Project" cannot be an "Ineligible Project" as defined below.

An "Ineligible Project" shall mean: (i) a project or use that would result in the relocation of any business operation from one municipality within the state to another, except under one of the following conditions, (A) When a business is relocating within a municipality with a population of at least one million where the governing body of such municipality approves such relocation, or (B) each municipality from which such business operation will be relocated has consented to such relocation; (ii) projects with respect to newspapers, broadcasting or other news media,

medical facilities, libraries, community or civic centers, and public infrastructure improvements; (iii) providing funds, directly or indirectly, for payments, distribution or as a loan (except in the case of a loan to a sole proprietor for business use), to owners, members, partners or shareholders of the applicant business, except as ordinary income for services rendered; (iv) any project that results in a Business Loan to a person who is a member of the board or other governing body, officer, employee, or member of a loan committee, or a family member of the Community Based Lending Organization or who shall participate in any decision on the use of Program funds if such person is a party to or has a financial or personal interest in such loan.

Section 4250.4 Eligible Uses.

Eligible Uses of Program funds by a Small Business borrower of the Community Based Lending Organization are:

1. working capital;

2. acquisition and/or improvement of real property;

3. acquisition of machinery and equipment; and

4. refinancing of debt obligations provided that:

a. it does not refinance a loan already in the portfolio of the Community Based Lending Organization;

b. the refinanced loan will provide a tangible benefit to the business borrower as determined by the Corporation in writing; and

c. the aggregate of the principal of all borrower refinancing loan amounts in the Community Based Lending Organization's Program loan portfolio is not greater than twenty-five percent (25%) of the principal amount of the Corporation's Program loan to the Community Based Lending Organization.

Section 4250.5 Fees.

A Community Based Lending Organization may charge application, commitment and loan guarantee fees pursuant to a schedule of fees adopted by the institution and approved in writing by the Corporation.

Section 4250.6 Niagara, St. Lawrence, Erie, and Jefferson Counties.

Notwithstanding anything to the contrary in this rule, the Corporation shall provide at least five hundred thousand dollars in Program funds to Community Based Lending Organizations for the purpose of making loans to small businesses located in each of the following counties: Niagara, St. Lawrence, Erie and Jefferson.

Section 4250.7 Business Loan Types and Limits.

a) There shall be two categories of Business Loans to Eligible Businesses:

1. a microloan that shall have a principal amount that is less than twenty-five thousand dollars; and

2. a regular loan that shall have a principal amount not less than twenty-five thousand dollars.

b) The Program funds amount used by the Community Based Lending Organization to fund a Business Loan shall not be more than fifty percent of the principal amount of such loan and shall not be greater than one hundred and twenty-five thousand dollars.

c) No less than ten percent (10%) of the aggregate Program funds shall be allocated by the Corporation for Microloans.

Section 4250.8 General Evaluation Criteria.

a) In addition to such criteria as may be set forth by the Corporation from time to time in solicitations for applications from Community Based Lending Organizations, the Corporation shall evaluate the Program assistance application of a Community Based Lending Organization in conformance with the Act and in accordance with the criteria set forth in this Part, including as applicable:

1. The ability of the Community Based Lending Organization to analyze small business applications for Business Loans, to evaluate the credit worthiness of small businesses, and to monitor and service Business Loans.

2. The ability of the Community Based Lending Organization to review every Business Loan application in order to determine, among other things, the feasibility of the proposed Eligible Use(s) of the financing requested by the small business applicant, the likelihood of repayment, and the potential that the loan will generate economic development and jobs within the State.

3. The ability of the Community Based Lending Organization to target and market to Minority and Women-Owned Enterprises and other small businesses that are having difficulty accessing traditional credit markets.

b) The Corporation is authorized, within available appropriations, to provide low interest loans to community development financial institutions, in order to provide funding for those lending organizations' loans to small businesses, located within New York State, that generate economic growth and job creation within New York State but that are unable to obtain adequate credit or adequate terms for such credit. If the use of a community development financial institution is not practicable based upon an assessment of geographic and administrative capacity and other factors as determined by the Corporation, then the Corporation is autho-

ized, within available appropriations, to provide low interest loans to the following other local community based lending organizations: small business lending consortia, certified development companies, providers of United States Department of Agriculture business and industrial guaranteed loans, United States Small Business Administration loan providers, credit unions and community banks.

**Section 4250.9 General Requirements.**

a) Program funds shall be disbursed to a Community Based Lending Organization by the Corporation in the form of a Program Loan.

1. The term of the Program Loan shall commence upon closing of the Program Loan Fund Agreement between the Corporation and the Community Based Lending Organization.

2. The Program Loan shall carry a low interest rate determined by the Corporation based on then prevailing interest rates and the circumstances of the Community Based Lending Organization.

b) Notwithstanding the performance of the Business Loans made by the Community Based Lending Organization using Program funds, the Community Based Lending Organization shall remain liable to the Corporation with respect to any unpaid amounts due from the Community Based Lending Organization pursuant to the terms of the Corporation's Program Loan to the Community Based Lending Organization.

c) At the discretion of the Corporation, a portion of Program loan funds may be disbursed to the Community Based Lending Organization in the form of a grant or forgivable loan provided that those funds are used by the Community Based Lending Organization for administrative expenses associated with Business Loans to Eligible Borrowers for Eligible Projects, loan-loss reserves, or other eligible expenses as may be approved in writing by the Corporation.

d) Notwithstanding any provision of law to the contrary, the Corporation may establish a Program fund for Program use and pay into such fund any funds available to the Corporation from any source that are eligible for Program use, including moneys appropriated by the State.

e) Interest received by the Corporation from Program Loans to Community Based Lending Organizations may be used at the discretion of the Corporation for Program Loans and the management, marketing, and administration of the Program.

f) If the use of a community development financial institution is not practicable based upon an assessment of geographic and administrative capacity and other factors as determined by the Corporation, then the Corporation is authorized, within available appropriations, to provide low interest loans to the following other local community based lending organizations: small business lending consortia, certified development companies, providers of United States Department of Agriculture business and industrial guaranteed loans, United States Small Business Administration loan providers, credit unions and community banks.

**Section 4250.10 Loan Fund Accounts.**

Each Community Based Lending Organization shall deposit Program funds awarded by the Corporation, repayments, and interest earned into a bank account in a State or Federal chartered banking institution.

**Section 4250.11 Application and Approval Process.**

The Corporation shall identify eligible Community Based Lending Organizations through one or more competitive statewide or local solicitations.

**Section 4250.12 Auditing, Compliance and Reporting.**

a) The Community Based Lending Organization shall submit to the Corporation annual reports and additional reports as requested at the discretion of the Corporation stating:

1. The number of Business Loans made;
2. The amount of each Business Loan;
3. The amount of Program Loan proceeds used to fund each Business Loan;
4. The use of Business Loan proceeds by the borrower;
5. The number of jobs created or retained;
6. A description of the economic development generated;
7. The status of each outstanding Business Loan; and
8. Such other information as the Corporation may require.

b) The Corporation may conduct audits of the Community Based Lending Organization in order to ensure compliance with the provisions of this section, any regulations promulgated with respect thereto and agreements between the Community Based Lending Organization and the Corporation of all aspects of the use of Program funds and Business Loan transactions.

c) In the event that the Corporation finds substantive noncompliance, the Corporation may terminate the Community Base Lending Organization's participation in the Program.

d) Upon termination of a Community Based Lending Organization's participation in the Program, the Community Based Lending Organization shall return to the Corporation, promptly after its demand thereof, all Program fund proceeds held by the Community Based Lending Organization; and provide to the Corporation, promptly after its demand thereof,

an accounting of all Program funds received by the Community Based Lending Organization, including all currently outstanding Business Loans that were made using Program funds. Notwithstanding such termination, the Community Based Lending Organization shall remain liable to the Corporation with respect to any unpaid amounts due from the Community Based Lending Organization pursuant to the terms of the Corporation's loans to the Community Based Lending Organization.

e) In the event that a Community Based Lending Organization's participation in the Program is terminated, the Corporation, in its discretion, can reassign all or part of the award made to such Community Based Lending Organization to one or more Community Based Lending Organizations that are already administering the Program and that serve the same Service Area or portions thereof without an additional solicitation.

**Section 4250.13 Confidentiality.**

a) To the extent permitted by law, all information regarding the financial condition, marketing plans, manufacturing processes, production costs, customer lists, or other trade secrets and proprietary information of a person or entity requesting assistance from the Loan Fund administered through the selected Community Based Lending Organizations by the Corporation, shall be confidential and exempt from public disclosures.

b) To the extent permitted by law, no full time employee of the State of New York or any agency, department, authority or public benefit corporation thereof shall be eligible to receive assistance under this Program.

**Section 4250.14 Non-Discrimination and Affirmative Action.**

The Corporation's affirmative action and non-discrimination policies and programs are grounded in both public policy and applicable law, including but not limited to, Section 2879 of the Public Authorities Law, Article 15-A of the Executive Law and Section 6254 (11) of the Unconsolidated Laws. These laws mandate the Corporation to take affirmative action in implementing programs. The Corporation has charged the affirmative action department with overall responsibility to ensure that the spirit of these mandates is incorporated into the Corporation's policies and projects. Where applicable, the affirmative action department will work with applicants in developing an appropriate Affirmative Action Program for business and employment opportunities generated by the Corporation's participation of the Program.

**This notice is intended** to serve only as an emergency adoption, to be valid for 90 days or less. This rule expires July 2, 2012.

**Text of rule and any required statements and analyses may be obtained from:** Antovk Pidedjian, Sr. Counsel, New York State Urban Development Corporation, 633 Third Avenue, 37th Floor, New York, NY 10017, (212) 803-3792, email: apidedjian@esd.ny.gov

**Regulatory Impact Statement**

1. Statutory Authority: Section 9-c of the New York State Urban Development Corporation Act Chapter 174 of the Laws of 1968 (Uncon. Laws section 6259-c), as amended (the "Act"), provides, in part, that the Corporation shall, assisted by the Commissioner of Economic Development and in consultation with the Department of Economic Development, promulgate rules and regulations in accordance with the State Administrative Procedure Act.

Section 16-t of the Act provides for the creation of the Small Business Revolving Loan Fund (the "Program") and authorizes the New York State Urban Development Corporation d/b/a Empire State Development Corporation (the "Corporation"), within available appropriations, to provide low interest loans to Community Development Financial Institutions and other Community Based Lending Organizations, in order to provide funding for those organizations' loans to New York's small businesses that are unable to obtain adequate credit or adequate terms for such credit.

2. Legislative Objectives: Section 16-t of the Act (Uncon. Laws section 6266-t, added by Chapter 59, Part N, section 1, of the Laws of 2010) sets forth the Legislative objective of authorizing the Corporation, within available appropriations, to provide low interest loans to community development financial institutions and other community based lending organizations, in order to provide funding for those organizations' loans to New York's small businesses that are unable to obtain adequate credit or adequate terms for such credit. The adoption of 21 NYCRR Part 4250 will further these goals by setting forth the types of available assistance, evaluation criteria, the application process and related matters for the Program.

3. Needs and Benefits: The State has allocated \$25 million to provide low interest loans to community development financial institutions and other community based lending organizations, in order to provide funding for those organizations' loans to New York's small businesses that are unable to obtain adequate credit or adequate terms for such credit. Small businesses have been determined to be a major source of employment throughout the State. Small businesses have historically had difficulties obtaining financing or refinancing in order to remain competitive and grow their operations, and the current economic difficulties have exacer-

bated this problem. Providing loans to small businesses should sustain and potentially increase the employment provided by such businesses, especially during this period of historically high unemployment and underemployment. The Program (i) allows the Corporation to evaluate the effectiveness of community based lending organizations with respect to their ability to make loans to credit worthy small businesses, (ii) decentralizes to community based lending organizations the evaluation of the credit and operations of small businesses within the respective communities served by such organizations, and (iii) enhances the ability of community based lending organizations to make loans to small businesses in the communities served by such organizations. The rule facilitates these aspects of the Program by providing for a competitive process to select community based financial institutions for Program Loans and defining eligible and ineligible small businesses and eligible uses of the proceeds of loans to small businesses and other criteria to be applied by the community development financial institutions in making loans to small businesses.

4. Costs: The Program is funded by a State appropriation in the amount of twenty-five million dollars. Pursuant to the rule, community based lending organizations must provide not less than fifty percent of the principal amount of each small business loan funded with Program funds. The costs to a community based lending organization involved in the Program would depend on the extent to which they participate in the Program and their effectiveness and efficiency in making small business loans. The rule also provides for approval by the Corporation of fees charged by a community based lending institutions in connection with loans to small businesses that use Program funds.

5. Paperwork / Reporting: There are no additional reporting or paperwork requirements as a result of this rule on community based lending organizations participating in the Program except those required by the statute creating the Program such as an annual report on the organization's lending activity and providing information in connection with an audit by the Corporation with respect to the organization's use of Program funds. Standard applications and loan documents used for most other assistance by the Corporation will be employed in keeping with the Corporation's overall effort to facilitate the application process for all of the Corporation's clients.

6. Local Government Mandates: The Program imposes no mandates - program, service, duty, or responsibility - upon any city, county, town, village, school district or other special district.

7. Duplication: The regulations do not duplicate any existing state or federal rule.

8. Alternatives: While larger financial institutions can potentially provide small business financing and the community based lending organizations already provide small business financing, the State has established the Program in order to enhance the access of small businesses to such financing, and the proposed rule provides the regulatory basis for providing low interest loans to community based lending organizations for lending to small businesses in accordance with the statutory requirements of the Program.

9. Federal Standards: There are no minimum federal standards related to this regulation. The regulation is not inconsistent with any federal standards or requirements.

10. Compliance Schedule: The regulation shall take effect immediately upon adoption.

#### **Regulatory Flexibility Analysis**

1. Effects of Rule: In the rule: "Small business" is defined as a business that is resident and authorized to do business in the State, independently owned and operated, not dominant in its field, and employs one hundred or fewer persons on a full time basis; "Community Development Financial Institution" is defined as community based organization that provides financial services and products to communities, businesses and people underserved by traditional financial institutions; and "Community Based Lending Organizations" is defined as Community Development Financial Institutions, small business lending consortia, certified development companies, providers of United States Department of Agriculture business and industrial guaranteed loans, United States Small Business Administration loan providers, credit unions and community banks. The rule will facilitate the statutory Program's purpose of having New York State Urban Development Corporation d/b/a Empire State Development Corporation (the "Corporation") make low interest loans to community based lending organizations in order to provide funding for those lending organizations' loans (including microloans in principal amounts equal to or less than twenty-five thousand dollars) to small businesses, located within the State, that are unable to obtain adequate credit or credit terms for such credit.

2. Compliance Requirements: There are no compliance requirements for small businesses and local governments in these regulations.

3. Professional Services: Applicants do not need to obtain professional services to comply with these regulations.

4. Compliance Costs: There are no compliance costs for small businesses and local governments in these regulations.

5. Economic and Technological Feasibility: There are no compliance costs for small businesses and local governments in these regulations so there is no basis for determining the economic and technological feasible for compliance with the rule by small businesses and local governments.

6. Minimizing Adverse Impact: This rule has no adverse impacts on small businesses or local governments because it is designed to provide low interest loans to community based lending organizations in order to enhance the ability of such organizations to fund loans to small businesses.

7. Small Business and Local Government Participation: A number of community based lending organizations that engage in lending to small businesses responded to a survey circulated by the Corporation regarding implementation of the program as reflected in the rule.

#### **Rural Area Flexibility Analysis**

1. Types and Estimated Numbers of Rural Areas: Community development financial institutions and other community based lending organizations serving all of the 44 counties defined as rural by the Executive Law § 481(7), are eligible to apply for the Small Business Revolving Loan Fund (the "Program") assistance pursuant to a State-wide request for proposals.

2. Reporting, Recordkeeping and Other Compliance Requirements and Professional Services: The rule will not impose any new or additional reporting or recordkeeping requirements other than those that would be required of any community based lending organization receiving a similar loan regarding such matters as financial condition, required matching funds, and utilization of Program funds, and the statutorily required annual report on the use of Program funds; no affirmative acts will be needed to comply other than the said reporting requirements and the making of loans to small businesses in the normal course of the business for any community based lending organization that receives Program assistance; and, it is not anticipated that applicants will have to secure any professional services in order to comply with this rule.

3. Costs: The costs to community based lending organizations that participate in the Program would depend on the extent to which they choose to participate in the Program, including the amount of required matching funds for their Program loans to small businesses and the administrative costs in connection with such small business loans and the fees, if any, changed to small businesses in connection with loans to such businesses that include Program funds.

4. Minimizing Adverse Impact: The purpose of the Program is to provide loans to community based lending organizations in order to enhance the ability of these entities to make loans to small businesses, especially those small businesses that may not be able to borrow funds at acceptable rates from larger financial institutions. This rule provides a basis for cooperation between the State and CBLOs, including CBLO that serve rural areas of the State, in order to maximize the Program's effectiveness and minimize any negative impacts for such CBLO and the small businesses, including small businesses located in rural areas of the State, that such CBLOs serve.

5. Rural Area Participation: This rule maximizes geographic participation by not limiting applicants to those located only in urban areas or only in rural areas. A number of CBLOs that engage in lending to rural and urban small businesses responded to a survey circulated by the Corporation regarding implementation of the Program. Their comments were considered in the rulemaking process.

#### **Job Impact Statement**

These regulations will not adversely affect jobs or employment opportunities in New York State. The regulations are intended to improve the economy of New York by providing greater access to capital for main street everyday small businesses. The Program is targeted to minorities, women and other New Yorkers who have difficulty accessing regular credit markets.

There will be no adverse impact on job opportunities in the state.