

New Jersey Department of Community Affairs

SUPERSTORM SANDY COMMUNITY DEVELOPMENT BLOCK GRANT – DISASTER RECOVERY

Public Law 113-2; January 29, 2013

FR-5696-N-01; March 5, 2013

FR-5696-N-06; November 18, 2013

FR-5696-N-11; October 16, 2014



ACTION PLAN AMENDMENT NUMBER 19 - SUBSTANTIAL AMENDMENT REGARDING DISTRIBUTION OF ENERGY RESILIENCE BANK FUNDS

- **Expanding Eligible Applicants to the Energy Resilience Bank To Include For-Profit and Private Utility Critical Facilities**

PUBLIC COMMENT PERIOD: March 8, 2016 – April 7, 2016

DATE SUBMITTED TO HUD: April 15, 2016

DATE APPROVED BY HUD: July 6, 2016

Chris Christie
Governor

Kim Guadagno
Lt. Governor

Charles A. Richman
Commissioner



SECTION 1: OVERVIEW

New Jersey received HUD approval of its CDBG-DR Action Plan on April 29, 2013. The Plan described the State's allocation of the \$1,829,520,000 of first round CDBG-DR funds allocated by HUD to support New Jersey recovery efforts. Since then, the State has submitted, and HUD has approved, seventeen amendments to the Action Plan. These include Substantial Amendment No. 7, describing the allocation of \$1,463,000,000 of second round CDBG-DR funds across recovery programs, and Substantial Amendment No. 11, describing the allocation of \$501,909,000 of the third (and final) round of discretionary CDBG-DR funds across recovery programs.

In Substantial Amendment No. 7, the State created the New Jersey Energy Resilience Bank (ERB). Through the ERB, resilient distributed energy resource (DER) technologies -- combined heat and power; fuel cells; solar with storage; etc. -- are to be installed at critical facilities so they can continue operations when the electric grid fails. The ERB is administered by the New Jersey Economic Development Authority (EDA). More information on the ERB is available at: www.njeda.com/erb.

For two reasons, the first ERB funding product initially reserved \$65 million for wastewater treatment and water treatment plants. First, power outages at wastewater treatment and water plants created various post-Sandy challenges for households, businesses, communities and the environment. Second, because most wastewater treatment plants are public facilities, providing CDBG-DR funds to them would not run afoul of the federal requirements that CDBG-DR funds cannot be provided to: (i) any for-profit entity that does not meet the U.S. Small Business Administration's (SBA) definition of "small business," or (ii) any private utility.

After creating the ERB, the State sought the flexibility to provide ERB funds to for-profit critical facilities (e.g., for-profit hospital systems) as well as private utilities (e.g., private water treatment plants). On November 17, 2014, DCA submitted a formal waiver request to HUD. In short, DCA posited that critical facilities' access to ERB funding, and by extension the benefits to the households, businesses and communities served, should not depend on whether the facility happens to be organized as a for-profit or a private utility. For example, 20 of the 108 hospitals and 438 of the 617 long-term care facilities in the State are operated as for-profits and do not meet SBA's "small business" definition.

On August 25, 2015, HUD issued Federal Register Notice FR-5696-N-16 approving the State's waiver request on three conditions: (i) that the scoring methodology for

ERB projects provides preferential treatment to LMI areas and populations; (ii) that EDA require an equity contribution for for-profit critical facilities in an amount to be based on EDA's uniform underwriting standards (informed by HUD standards in Appendix A); and (iii) for for-profit entities, that financing terms (loans, forgivable loans and/or grants) for each assisted project be based on a business' financial capacity to safeguard against the potential over-subsidization of for-profit facilities.

Subject to these requirements, FR-5696-N-16 provides that the State must amend its CDBG-DR Action Plan to add new potential beneficiaries (i.e., for-profit critical facilities and private utilities that are critical facilities). The Notice specifies that this change constitutes a Substantial Amendment.

Therefore, this **Action Plan Amendment Number 19 (APA 19)** is considered a Substantial Amendment based on the express requirements of FR-5696-N-16. This Amendment is being made available in English and Spanish via the Internet at DCA's website -- <http://www.renewjerseystronger.org> -- and also can be obtained through email to sandy.recovery@dca.nj.gov or by contacting Constituent Services at 609-292-3750. If additional language translation services are needed please call 1-855-SANDYHM (1-855-726-3946). When the agent answers the line, inform them of the appropriate language. For Hearing Impaired Users, Text Telephone Service is available at (TTY/TDD) 609-984-7300 or 1-800-286-6613.

The public comment period for APA 19 will be open from March 8, 2016 to 5:00 PM (EST) on April 7, 2016. While HUD FR-5696-N-16 only requires a written comment period of seven days for this particular substantial amendment, the State will open this amendment to the full 30-day comment period process, which will include holding a public hearing on the following date and at the following location:

- March 22, 2016; Brookdale Community College (Monmouth County); 765 Newman Springs Road, Lincroft, NJ 07738; 4–7 pm.

Comments on this proposed amendment can be submitted at the hearing, or via email to sandy.publiccomment@dca.nj.gov (subject: APA 19) or U.S. mail addressed to Sandy Recovery Division, Constituent Services, NJ Department of Community Affairs, 101 South Broad Street, Post Office Box 823, Trenton, New Jersey 08625-0823. All comments are given the same consideration regardless of the method of submission.

SECTION 2: ERB BENEFICIARIES

The following language shows proposed amendments to the “Maximum Award,” “Eligible Applicants,” “Eligibility Criteria” and “Criteria for Selection” subsections of the Energy Resilience Bank Program in Action Plan Amendment No. 7. Based on the ERB waiver provided in FR-5696-N-16, proposed additions to the text are shown in **boldface** type.

Maximum Award: Funded awards will be determined based on projected cost estimates, taking into account project benefits. *<Insert>* **Per Federal Register Notice FR-5696-N-16 (August 25, 2015), any award of ERB funds to a for-profit critical facility that is not a “small business” or a private utility that constitutes a critical facility must be in the form of a mix of loans, forgivable loans and/or grants based on the applicant business’ financial capacity in order to safeguard against the potential over-subsidization of for-profit facilities.**

Eligible Applicants: Initially, water and wastewater treatment facilities will be prioritized given that infrastructure sector’s particular vulnerability to energy interruptions, as assessed through the State’s comprehensive planning effort. *<Insert>* **The State then will prioritize funding for hospitals.** The New Jersey Energy Resilience Bank could also serve other public critical facilities and assets, including *<Delete>* hospitals, emergency response facilities, municipal town centers, correctional facilities, transportation and transit networks, public housing and regional high schools that can function as shelters in the case of any emergency. Depending on HUD’s eligibility criteria, for-profit hospitals, liquid fuel refineries, distribution facilities, pipelines, and other private facilities and assets that provide critical services could also be considered.

<Insert> **In Federal Register Notice FR-5696-N16 (August 25, 2015), HUD approved the State’s request to fund for-profit and private utility critical facility applicants through the ERB, subject to three requirements: (i) that the scoring methodology for ERB projects provides preferential treatment to LMI areas and populations; (ii) that EDA require an equity contribution for for-profit critical facilities in an amount to be based on EDA’s uniform underwriting standards; and (iii) for for-profit facility applicants, that funding products be a mix of loans, forgivable loans and/or grants based on a business’ financial capacity in order to safeguard against the potential over-subsidization of for-profit facilities.**

EDA will incorporate those requirements into ERB funding products. As a result, for-profit and private utility critical facilities, and/or their designated third party owners of the DER system, may be eligible applicants for ERB funding. For ERB funding products, in addition to water and wastewater facilities, and hospitals, eligible entities may include, without limitation: long-term care facilities; emergency response facilities; municipal town centers; correctional facilities; transportation and transit networks; public housing and regional high schools that can function as shelters in the case of any emergency; and campuses that include critical facilities and/or provide sheltering in case of any emergency. Additional private utility and for-profit critical facilities also may be eligible provided that they satisfy HUD's FR-5696-N-16 requirements.

Eligibility Criteria: Must be an eligible applicant pursuing a project that will build energy resilience by ensuring the availability of a highly reliable power supply in the event that the larger electrical grid fails (due to a storm, or any other incapacitating event).

<Insert>Any eligible for-profit applicant funded through the ERB must provide an equity contribution to the project, with the amount of the contribution to be based on EDA's uniform underwriting standards.

Criteria for Selection: Individual projects will be ~~<Delete>prioritized <Insert>~~ **evaluated** based on metrics in three categories: technical feasibility, criticality and resiliency, and credit/economics. Technical feasibility will be assessed based on the technical specifications of the project including the technology used, size and scale, feasibility, environmental review, and cost and revenue estimates. Criticality and resiliency will be assessed based on the criticality and resiliency impact of the project in establishing an "island of power" that has potential to benefit vulnerable populations and decrease dependency on diesel fuel sources. A project's credit and economics will be assessed based on the credit worthiness of the sponsor and the economics of the project to ensure it is cost effective and that Bank risk exposure is managed. **<Insert>Each applicant must meet a minimum eligibility threshold score to be eligible for ERB funding.** Priority ~~<Delete>will <Insert>~~ **may** be given to applicants who maximize funding opportunities by pursuing microgrids or other designs that can address energy resilience at multiple critical facilities or across different infrastructure sectors. To be eligible for CDBG-DR funding, the individual project must address resilient energy needs at a facility that experienced a disaster-related impact from Superstorm Sandy or other qualifying disasters, and meet other HUD requirements. Recovery need, and the amount of need, will be a minimum requirement in selecting projects. ~~<Delete> Applicants need not meet all criteria to be eligible.~~

<Insert> **In addition, each ERB funding product will give preferential scoring treatment to applicants based on the LMI population the facility serves. Facilities that have a 51% or greater LMI benefit, or qualify as low-moderate area (LMA), will receive the highest scoring for the LMI Benefit factor. Facilities that have a less than 51% LMI benefit, or do not qualify as a low-moderate area (LMA), will receive scoring preference based on their LMI/LMA benefit (e.g., a facility with a 45% LMI benefit will receive more points than a facility with a 20% LMI benefit).**

SECTION 3: PUBLIC COMMENTS/RESPONSES

This proposed Substantial Amendment will be made available for public comment over a period of at least thirty days. The State also will hold a public hearing to solicit comments in connection with this proposed amendment. The date and location of the public hearing are:

- March 22, 2016; Brookdale Community College (Monmouth County); 765 Newman Springs Road, Lincroft, NJ 07738; 4–7 pm

Commenters may submit comments to this proposed amendment (i) via email to sandy.publiccomment@dca.nj.gov (Subject: APA 19); (ii) via U.S. mail; or (iii) via oral or written comments at the public hearing. All comments are given the same amount of consideration regardless of the method of submission.

After the public comment period closes, the State will synthesize the comments submitted on this proposed amendment and include responses to those comments received as part of the final amendment submitted to HUD for review and approval.