

**Response to US Department of Housing and Urban Development's request for waivers for the
Federal Register Notice concerning the 2011 CDBG Disaster Recovery Funding for the State of
New Jersey
February 27, 2012
Addendum (refer to waiver 20)**

Waiver Request for P.L. 112-55 Grantees

(Note: This request does not preclude a grantee from requesting additional waivers.)

CDBG disaster recovery grants are administered under the programmatic requirements of the regular CDBG programs. But to give grantees greater flexibility to respond to their recovery needs, P.L. 112-55 (hereafter the "Appropriations Act"), permits the Department to grant waivers and institute alternative requirements. Based on past practice, the Department has determined that the following waivers and alternative requirements play a vital role in the recovery process. However, you are *not* required to request any of the below. Please cross out or delete any waivers not requested.

For each waiver requested, please complete a justification. For your convenience, the Department has provided a sample justification for each waiver. You may use the justifications provided, however they should be modified to address your community's particular disaster recovery needs. Where possible, please cite or incorporate any relevant data. Also, because certain waivers are unnecessary for entitlement grantees (based on the existing regulations) this form is divided into two parts: Part A lists the waivers applicable to all grantees while Part B lists those only applicable to states. When completed, please email a signed and dated PDF of this document to Disaster_Recovery@hud.gov. The original, signed document should be mailed to your assigned HUD office.

Part A. General Waivers & Alternative Requirements—Applicable to ALL Grantees.

1. Waive overall program benefit from 70 percent to allow 50 percent low/mod benefit.

Justification:

The 2011 hurricane disaster affected five counties in the north and three counties in the southern part of New Jersey. These counties and their communities were affected regardless of income, and caused extensive damage to community structures, businesses, housing occupied by persons and families of varying incomes, and infrastructure. The census data indicated the area wide percentage of low and moderate-income households in areas affected are low ranging from 26.25 percent in Wayne Township to 41.26 percent for Passaic County. These counties and communities have been considered "Exception Grantees" for entitlement low and moderate-income benefit on an area basis. This percentage represents the minimum percentage of low and moderate-income persons that must reside in the service area of an area benefit activity for the activity to be assisted with CDBG funds (see waiver number 24 below). Lowering the percent to 50 percent will enable the State's CDBG Program to increase the number programs for repairing housing, public facilities and infrastructure under the national objectives of urgent need and the elimination of slums and blight. Therefore, lowering the percent would help the State assist more people in the areas affected by the disaster.

2. Waive the Consolidated Plan and consistency with it until grantee updates the plan priorities.

Justification:

The effects of the 2011 hurricane disaster may have altered the CDBG entitlement programs and the State's CDBG Program's plans and priorities for meeting housing, employment, and infrastructure needs. This requirement should be waived until the Programs can update their plan, if needed. This waiver would enable entitlements to reallocate funding for disaster recovery, if needed.

3. Waive Annual Action Plan and use of the Integrated Disbursement & Information System (IDIS). Replace with Action Plan for Disaster Recovery using Disaster Recovery Grant Reporting (DRGR) system. **Note: HUD has made the use of DRGR mandatory.**

Justification:

Developing an Action Plan for Disaster Recovery and using the DRGR system will allow rapid implementation of disaster recovery grant programs and ensure conformance with provisions of the Appropriations Act. Note: HUD has made the use of DRGR is mandatory.

4. Waive the traditional certification requirements for the documentation of urgent need. Instead, allow each grantee to document how all programs and/or activities funded under the urgent need national objective respond to a disaster-related impact identified by the grantee.

Justification:

This alternative documentation requirement will allow the State to develop and implement programs to more quickly fund activities designed to address an urgent need. Examples of such activities include funding homeowner rehabilitation for families up to 120 percent of the area median income (see waiver number 7), and providing assistance to businesses affected by the floods, and unable to document the creation and/or retention of low-income jobs (see waivers numbered 14 and 15 below).

5. Waive public hearings if they are not feasible and streamline citizen participation to allow "reasonable" notice (e.g. 7 day posting of proposed Action Plan on internet).

Justification:

Modifying the regular program requirements will preserve reasonable citizen participation while expediting the recovery process and ensuring that disaster recovery funds are awarded in a timely manner. Allowing the posting of the action plan and amendments on the State's webpage instead of using newspaper advertisements and holding public hearings would expedite the process and cost considerably less.

6. Waive the Consolidated Plan Annual Performance Report (CAPER) in IDIS. Replace with quarterly reports in DRGR.

Justification:

However, the NJ State CDBG Program will be administering the funds and will be using the DRGR system, as required by HUD, to record obligations and to make draws from the line of credit, use of

the system for quarterly reporting is most efficient. Furthermore, quarterly reporting is consistent with the administration of prior year CDBG disaster recovery grants.

7. Waive provisions necessary to allow: (1) homeownership assistance to persons whose incomes are up to 120 percent of median income (supports mixed income housing), (2) new construction of housing, and (3) downpayment assistance for up to 100 percent of the downpayment.

Justification:

The broadening of Section 105(a)(24) of the 1974 Act, and a waiver of Section 105(a) is necessary following the 2011 disasters in which large numbers of affordable housing units have been damaged or destroyed. As a result of the disaster, counties and communities had their housing stock affected. These modifications will also allow the State of NJ in conjunction with the counties and communities to implement mixed-income housing recovery programs in anticipation of assisting all household that were severely impacted by the disaster.

8. Waiver to allow incentive payments to encourage households to relocate in a suitable housing development or an area promoted by the community's comprehensive recovery plan.

Justification:

As a result of the 2011 flooding, counties and communities impacted face significant hardship as a great deal of their homes were located in the 100 year floodplain. We assume this is to encourage homeowners to move out of the 100 year floodplain. However, the community desires them to stay in the community. These incentive payments could serve a dual purpose to have them move out of the floodplain yet stay in the community.

9. Limited waiver to allow emergency grant payments for up to twenty months.

Justification:

In the counties and communities impacted, the time required for a household to complete the rebuilding process will likely extend beyond three months, during which mortgage payments may be due but the home is inhabitable. Thus, this interim assistance will be critical for many households facing financial hardship during this period.

10. Limited waiver to allow the rehabilitation or reconstruction of public buildings, including temporary relocation, used for the general conduct of government.

Justification:

The counties and communities impacted have limited funds available, and many vital public buildings [e.g. City Hall] suffered significant damage from the 2011 disaster. Repairing these facilities and resuming normal operations as soon as possible will aid in the long-term recovery in the impacted counties and communities.

11. Limited waiver of anti-pirating to allow a business to return to any labor market within the same State that the business was located in before the disaster.

Justification:

The counties and communities impacted have lost many jobs since the 2011 disaster. This waiver is necessary for the counties and communities to reestablish and rebuild its employment base.

12. Waive provisions of the Uniform Relocation Act, URA (concerning one-for-one replacement of housing, acquisition and implementing regulations of an arm's length voluntary purchase, financial assistance to a displaced tenant, and a moving expense and "dislocation" allowance).

Justification:

The State of NJ in conjunction with the counties and communities impacted plans to engage in voluntary acquisition and relocation activities. The above waivers are necessary to effectively assist displaced persons in a timely and efficient manner. Specifically, waivers regarding:

- one for one replacement are necessary because the requirement, as it stands, discourages grantees from converting or demolishing disaster-damaged housing because of excessive costs that would result from replacing all such units within the specified time frame;
- an arm's length voluntary purchase are necessary to quickly carry out voluntary purchases and avoid windfall payments;
- financial assistance to a displaced tenant are necessary because a failure to suspend the one-size-fits-all requirements could impede the most effective use of disaster recovery funding; and
- a moving expense and dislocation allowance are necessary because failure to suspend and provide alternative requirements in this case would require grantees to offer allowances that do not reflect current local labor and transportation costs.

13. Waive provisions necessary to allow the grantee to determine disposition of program income.

Justification:

Prior to 2002, program income earned on disaster recovery grants was considered program income in accordance with the rules of the regular State CDBG program of the applicable grantee. As a result, the funds lost their disaster recovery identity, and thereby lost use of the waivers and streamlined alternative requirements. Therefore, the State of NJ on behalf of the counties and communities impacted requests the program income waiver so that it may maintain the use of its other waivers and alternative requirements, and be consistent with prior CDBG disaster recovery grants awarded in prior years.

14. Waive provisions necessary to allow the grantee to determine the national objective for certain economic development activities by documenting, for each person employed, the name of the business, type of job, and the annual wages or salary of the job.

Justification:

The State of NJ requests this proposed documentation because it would be simpler and quicker for participating lenders to administer, easier to verify, and would not misrepresent the amount of low and moderate-income benefit provided.

15. Waive the public benefit standards for economic development activities designed to create or retain jobs or businesses (including, but not limited to, long-term, short-term, and infrastructure projects).

Justification:

This waiver is necessary because the public benefit dollar thresholds were set more than a decade ago and, under the conditions, will likely impede recovery by limiting the amount of assistance the State of NJ can provide to the counties and communities for a critical activity.

16. Waive pre-agreement costs, to the extent it applies. Replace with HUD permission for the grantee to reimburse eligible costs incurred back to the incident date.

Justification:

Despite limited budgets, the counties and communities impacted have spent a great deal of funds on critical disaster recovery needs since the 2011 disaster. These activities have played a crucial role in the community's recovery.

17. Waive provisions necessary to allow the grantee to implement voluntary flood buyouts to help communities affected by flooding to move in whole or in part out of a floodplain.

Justification:

Although buyouts can be more expensive in the short-term than rehabilitation or reconstruction, they provide the best solution for moving homes and businesses out of harm's way. Based on the most recent damage assessment, the State of NJ wants the option to use most of the funds for buyouts and does not want to be limited to a set figure.

18. Waive 24 CFR 570.494 requiring timely distribution of funds.

Justification:

Due to the significant destruction caused by the 2011 disaster, total loss in dollars is monumental. This waiver is necessary so that the State of NJ can design and implement its programs to best achieve a stable and long-term recovery. Failure to suspend this requirement could lead to an incomplete and ineffective recovery.

19. Waive standard certifications. Replace with a disaster recovery set.

Justification:

This waiver is necessary to ensure that the counties and communities impacted meet the requirements of the 2011 Appropriations Act, and the forthcoming Federal Register notice (containing or referencing the applicable program requirements).

Part B. *Waivers & Alternative Requirements—Applicable to State Grantees ONLY.*

20. Waive requirement to allow the State of NJ to distribute funds to county and local governments and the State to carry out activities directly when needed. Conforming changes, below:

- Allow option of subrecipients where needed.
- Waive recordkeeping requirement. Replace with less stringent requirement consistent with disaster recovery efforts.
- Waive change of use of real property requirement. Replace with less stringent requirement consistent with disaster recovery efforts.
- **(Added February 27, 2012)** Waive provisions necessary to allow the State of NJ the responsibility of reviewing its activities and will address any incidences of non-compliance when the State opts to carry out DR activities directly.

Justification:

As the 2011 disaster affected a large portion of the state, the State of NJ is best able to orchestrate a coordinated and streamlined disaster response. The State will distribute funding to counties and communities impacted and with the option of carrying out activities directly, it can distribute assistance via one (or several programs) to counties, communities and applicants located in communities across the entire state. Furthermore, the State of NJ believes that in using statutory language similar to that used for prior CDBG supplemental appropriations, Congress signaled its intent that the state grantees under this appropriation also be able to carry out activities directly. **(Added February 27, 2012)** The State of NJ has been administering the State Small Cities CDBG Program since 1982 and has a good record of compliance.

21. Waive consultation with non-entitlement local governments. Replace with consultation with all disaster-affected governments including entitlements.

Justification:

The effects of the 2011 disaster were not limited to non-entitlement areas, the State of NJ must consult with all disaster-affected governments to determine need and allocate funds accordingly.

22. Waive prohibition on funding entitlement communities and Indian tribes. Replace with permission to do so.

Justification:

The effects of the 2011 disaster were not limited to non-entitlement areas the State of NJ must allocate funds according to need in both entitlement and non-entitlement areas. Note: The State of NJ was designated the grantee and to administer the funds to the affected counties and communities.

23. Replace the State CDBG planning related requirements of 570.483(b)(5) and (c)(3) with the entitlement CDBG presumption at 24 CFR 570.208(d)(4).

Justification:

In the annual entitlement program, stand-alone planning activities are presumed to meet a national objective because they are likely to include non-project specific plans such as functional land-use plans, master plans, historic preservation plans, comprehensive plans, community recovery plans, development of housing codes, zoning ordinances, and neighborhood plans. The

State of NJ believes that the use of this presumption is necessary to help the State develop an area-wide or comprehensive planning activity to guide overall redevelopment.

- 24. Waive provisions necessary to allow lowering of the low and moderate-income benefit on an area wide basis to 25 percent for all counties and communities throughout the State impacted by the disaster.


Justification:

Many counties and communities impacted by the disaster are considered by USHUD as "Exception Grantees", and has approved exception threshold as low as 26.25 percent in the area. This waiver will allow the State of NJ to fund more programs for repairing homes, public facilities and infrastructure and thus assist more people.

State and Agency: State of New Jersey, Department of Community Affairs, Small Cities CDBG Program

Name and title of authorized requestor: Terence Schrider, Administrator, Neighborhood Programs

Signature of authorized requestor:

 (acting administrator)
BRADLEY HARRINGTON

Date:

2.29.12